

Myriam Wijlens,
Yeshica Marianne Umaña Calderón (eds.)

The Wellbeing of the Child

Promotion – Protection – Rights

ReligionsRecht im Dialog Bd. 37
Law and Religion Vol. 37

LIT

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ReligionsRecht im Dialog

Law and Religion

herausgegeben von / edited by

Prof. Dr. Adrian Loretan
(Universität Luzern
University of Lucerne, Switzerland)

Band / Volume 37

LIT

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This book is printed on acid-free paper.

Bibliographic information published by the Deutsche Nationalbibliothek

The Deutsche Nationalbibliothek lists this publication in the Deutsche Nationalbibliografie; detailed bibliographic data are available on the Internet at <https://dnb.dnb.de>.

ISBN 978-3-643-91836-9 (pb)

ISBN 978-3-643-96836-4 (PDF)

ISBN 978-3-643-96860-9 (Open Access)

DOI: <https://doi.org/10.52038/9783643157515>

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Zweigniederlassung Zürich 2025

Flössergasse 10

CH-8001 Zürich

Tel. +41 (0) 78-307 91 24

E-Mail: zuerich@lit-verlag.ch <https://www.lit-verlag.ch>

Distribution:

In the UK: Global Book Marketing, e-mail: mo@centralbooks.com

In Germany: **LIT Verlag** Fresnostr. 2, D-48159 Münster

Tel. +49 (0) 2 51-620 32 22, Fax +49 (0) 2 51-922 60 99, e-mail: vertrieb@lit-verlag.de

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Foreword

“Finally, the biggest reason for hope is because you – the children and young people of today – are taking the lead on demanding urgent action, and empowering yourselves to learn about, and shape the world around you. You are taking a stand now, and we are listening.”¹

Henrietta H. Fore
UNICEF Executive Director

Origin and Purpose

The abuse of children—be it physical, emotional, mental or sexual—has led to an increased call to attend more closely to the understanding and unfolding of the wellbeing of children. This publication developed from the course *The Wellbeing of the Child: Promotion – Protection – Rights*, offered as part of the *Studium Fundamentale* at the University of Erfurt, Germany, in which professors organize and deliver interdisciplinary courses to students of all academic backgrounds. In response to the reports on sexual abuse of minors within the Roman Catholic Church Myriam Wijlens—professor of Canon Law and former member of the Pontifical Commission for the Protection of Minors in the Vatican—first developed the course in German in 2014. Convinced that theology has both something to learn and something to contribute to understanding, protecting, and promoting the wellbeing of children, local and national experts from different fields were invited to share their knowledge. The number of students from numerous disciplines wanting to attend the course quickly exceeded all expectations.

An interdisciplinary project on the rights of alleged victims of abuse during childhood in penal law² increased the awareness that the topic of the wellbeing of the child must be addressed in light of their dignity and rights, but also that it needs an international interdisciplinary approach. The COVID-19 pandemic, which

¹ FORE, Henrietta H., *An Open Letter to the World's Children. 8 Reasons Why I'm Worried, and Hopeful, About the Next Generation*. The letter was issued on the occasion of the commemoration of the 30th anniversary of the Convention of the Right of the Child in 2019: <https://www.unicef.org/child-rights-convention/open-letter-to-worlds-children#birth-registration> [5 May 2025].

² SCICLUNA, Charles J., / WIJLENS, Myriam, eds., *Rights of Alleged Victims in Penal Proceedings. Provisions in Canon Law and in the Criminal Law of Different Legal Systems*, (Baden-Baden: Nomos, 2023) 343p. Open Access: <https://www.nomos-shop.de/nomos/titel/rights-of-alleged-victims-in-penal-proceedings-id-111375/> [5 May 2025].

enabled and made online teaching necessary, created the opportunity to provide besides a course in German also an English one. This implied being able to invite speakers from different countries.

Since 2021 the course in English has been coordinated by canon lawyer Yeshica Marianne Umaña Calderón, academic assistant to the Chair of Canon Law in Erfurt. It is now being held twice each academic year. More than 35 internationally renowned experts from around the world—including UN diplomats, child psychiatrists, psychologists, pediatricians, philosophers, theologians, judges and other legal scholars—have shared their expertise on topics ranging from the digital world and human rights to humanitarian law, mental health, philosophy, sociology and theology, as well as protection and intervention in cases of sexual abuse.

These guest lecturers engage students in a deep and critical dialogue on how the wellbeing of the child intersects with children's rights and dignity across cultural, legal, and ecclesial frameworks. Encouraged by the sustained engagement of both lecturers and students, the urgency and complexity of the issues addressed, and the recognition received in 2023 as part of the ADVANCE project of the German Rectors' Conference (*Hochschulrektorenkonferenz* – HRK) which awarded the course for its international, innovative, and digital character, the idea immersed to compile this volume as a way to bring the academic exchange to a wider audience beyond the lecture hall.

The contributions presented in this volume were selected to deepen key questions that emerged over the past years in the course. The intention is also to engage a broader audience in the ongoing reflection on the wellbeing of the child. Rather than approaching the topic from a single disciplinary angle, the volume thus brings together legal, ethical, medical, psychological, theological, and sociological perspectives. Listening to the needs, challenges, dreams and aspirations of children, the interdisciplinary approach can help to explore what it means—in both normative and practical terms—to protect, promote and uphold the dignity of the child within contemporary social and institutional contexts.

The Individual Contributions

In the opening contribution of this volume, the professor of International Law at the University of Valencia and former member of the UN Committee on the Rights of the Child *Jorge Cardona Llorens* explores the meaning, scope, and challenges of the Convention on the Rights of the Child (CRC) more than 35 years after its adoption. He highlights its paradigm-shifting recognition of

children as holders of rights, particularly through the principles of the best interests of the child and the right to be heard. Cardona outlines key state obligations for implementation and reflects on the CRC's monitoring system, warning that growing demands on the Committee on the Rights of the Child are met with diminishing resources. He calls for strengthening the system to ensure the Convention's continued effectiveness.

Building on the legal foundation of children's rights, *Fabián Salvioli*, the Argentinian expert on International Law and Human Rights, and former UN Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-repetition, examines how transitional justice mechanisms can and must be adapted to address massive or systematic violations of the rights of children and adolescents. He outlines the international standards that govern such mechanisms and provides concrete examples from various contexts—including religious institutions—in which truth, reparation, and memory are essential to restore the dignity of child victims.

This perspective resonates with the comprehensive account of the Holy See's role at the United Nations by *Robert D. Murphy*, a Vatican diplomat and Deputy Permanent Observer of the Holy See to the United Nations. Murphy offers an overview of the Holy See's diplomatic engagement in global child protection efforts. He further details the Holy See's participation across different UN bodies and explains how Catholic Social Teaching informs its contributions. Murphy highlights tensions between international norms and ecclesial identity, while affirming the Holy See's commitment to the promotion of human dignity—especially that of children.

Sociologist *Garrett T. Pace* from the University of Las Vegas delves into the topic of Child Rights Education (CRE) as articulated in the Convention on the Rights of the Child. He demonstrates how CRE, when effectively implemented, transforms schools into rights-respecting environments that promote dignity, participation, and inclusion. Drawing on empirical studies and program evaluations, he calls for further investment in education so that children are not only informed about their rights but are also enabled to live them.

The juridical dimension of child participation is further explored by the German legal scholar *Robert Böttner*. He examines young people's rights and possibilities to participate in public decision-making, focusing on the evolving implementation of Article 12 of the CRC in Germany. Böttner provides an analysis of constitutional and administrative frameworks and argues that participation is not a

courtesy but a legal obligation. His contribution highlights how legal reforms and local governance can work to ensure meaningful inclusion of young voices in democratic life.

Moving into the domain of health and trauma the native New Yorker and Canadian-based pediatrician and bioethicist *Nuala P. Kenny* draws on her medical and ethical expertise to examine how the COVID-19 pandemic exposed and deepened the vulnerability of children and youth. Framing the pandemic as a syndemic, in which numerous factors combined to create a greater impact than the infection itself, she outlines how children—especially those in marginalized contexts—suffered heightened trauma and neglect. Kenny calls for a global culture of safeguarding, rooted in justice and compassion, extending beyond procedural reforms.

In line with this perspective, the USA pediatrician and legal expert *Gwenn S. O’Keeffe* offers a comprehensive overview of the opportunities and risks posed by social media and screen use for children and adolescents. She outlines the physical, psychological, and developmental consequences of excessive screen exposure, while highlighting the importance of digital literacy and balanced usage. Her analysis includes practical guidance for families, schools, and policy-makers navigating a digital landscape increasingly interwoven with childhood.

Peter G. Kirchsclaeger, professor of Ethics at the University of Lucerne, Switzerland, focuses on the ethical risks posed by artificial intelligence and data-based systems, particularly in how they affect children. Rejecting the myth of technological neutrality, he calls for the replacement of the term “artificial intelligence” with the more accurate “data-based systems” to expose their human limitations. The author proposes a human rights-based framework for technological development and governance, including the establishment of a global oversight agency modeled after the IAEA (International Atomic Energy Agency), to ensure the protection of children’s dignity in an increasingly digitized world.

The theological foundations of child protection are explored by *Marcia J. Bunge*, Lutheran theologian and leading scholar of childhood studies in the Gustavus Adolphus College, Minnesota, USA. She argues that one of the most effective ways to strengthen commitments to children is by cultivating robust conceptions of childhood that honor their full humanity. Drawing on Christian theology, biblical traditions, and interdisciplinary research, she outlines six core perspectives on children and explores their practical implications for child protection, spiritual formation, and theological education.

Bishop *Luis Manuel Ali Herrera* from Colombia offers in his capacity as Secretary of the Vatican based Pontifical Commission for the Protection of Minors (PCPM) a valuable institutional perspective on the work of this advisory body. Pope Francis established it in 2014 with the task to assist the Church in developing effective safeguarding policies. Marking the Commission's tenth anniversary and the publication of its first Annual Report, Ali Herrera recounts its evolution, from its initial listening mandate to its expanded role as a global point of reference for safeguarding in the Catholic Church. Through initiatives like the Survivor Advisory Panels and the *Memorare* Initiative, the Commission has embraced a victim-centered approach, particularly attentive to local contexts in the Global South. He presents the project of the Annual Report marking a new phase in securing transparency and accountability, which reflects the Church's growing commitment to reform.

In a related contribution *Neville Owen*, a retired senior judge of the Court of Appeal of the Supreme Court Judge of Western Australia and member of the Pontifical Commission for the Protection of Minors, reflects on the evolving concept of the *vulnerable person* in the Church's safeguarding efforts. Drawing on secular legal traditions and pastoral realities, he calls for a broader understanding of vulnerability—one that includes emotional, social, and systemic dimensions. Owen advocates for a response grounded not only in policy, but in conscience and justice.

This volume concludes with the contribution by *John Anthony Renken*, a professor of Canon Law at Saint Paul University in Ottawa, who offers an in-depth analysis of how the Catholic Church's internal legal system has evolved in response to the clerical sexual abuse crisis. He traces a significant transformation: from earlier norms that treated sexual abuse mainly as a violation of special obligations of clerics, to a more recent and explicit recognition of such abuse as a grave violation of the dignity and freedom of the victim.

Renken explains how, over the past forty years, key legal reforms in canon law have expanded the Church's definition of abuse, increased accountability for Church leaders, and introduced clearer and more robust safeguarding mechanisms. His contribution provides an accessible and well-structured overview of these legal developments, highlighting how they reflect, on the one hand, a deeper shift from focusing on the accused cleric toward placing victims at the center of the ecclesial response, while on the other hand, acknowledging that much remains to be done.

Gratitude

This volume results from sustained interdisciplinary dialogue, shaped by both scholarly research and lived institutional experience. We express deepfelt gratitude to the more than 35 experts who generously engaged with the topic over the years in the English course as well as those who accepted the invitation to contribute to this publication. A special word of thanks goes to the approximately more than 2500 students who have participated over the years in either the German or English course, enriching it with their stimulating questions, insights, and lively discussions. We are also thankful to *Brigitte Benz* for her assistance in the preparation of this publication and to Prof. Dr. *Adrian Loretan* for accepting this volume in the series *ReligionsRecht im Dialog / Law and Religion*.

It is our sincere hope that this volume will contribute to broader efforts—both within and beyond academic contexts—to promote the wellbeing and dignity of all children so that they can say, we truly listen to them.

Erfurt, June 2025

Myriam Wijlens / Yeshica Marianne Umaña Calderón

The Convention on the Rights of the Child: Meaning, Scope and New Challenges

Jorge Cardona Llorens

Introduction

Discussing the *Convention on the Rights of the Child* (CRC) means discussing an extraordinary international legal instrument. Adopted and opened for signature by the United Nations General Assembly on November 20, 1989, the Convention has nearly achieved universal ratification, having been ratified by 196 States. All the States in the world, with the sole exception of the United States of America. Notably, the latter has ratified the first two Optional Protocols to the Convention.

To date, the Convention has been supplemented by three Optional Protocols. The first two, adopted in 2000 and entering into force in early 2002, pertain to the *involvement of children in armed conflicts* (OPAC) and the *sale of children, child prostitution, and child pornography* (OPSC).

These Protocols further elaborate on the provisions of the Convention regarding these issues, specifying and detailing the obligations of the States in relation to them. As of July 2024, the OPAC has 173 ratifications, while the OPSC has 178 ratifications. Finally, the third Protocol, *concerning a communications procedure* (OPIC), was approved by the United Nations General Assembly on December 19, 2011, entered into force on April 14, 2014, and has been ratified by 52 States as of July 2024.

In this paper, we would like to focus on three aspects of the Convention: its significance and scope, that is, what it has represented over the past 35 years, as well as the primary challenges it will face in the near future, specifically over the next 10 years.

To achieve this, we will first undertake an analysis of the significance of the Convention considered in itself and in the context of the evolution of international human rights law. Secondly, we will briefly examine the main content of the Convention to understand its scope.

Lastly, we will conclude with an analysis of the principal challenges that, in our view, the Convention will face in the coming years, which include the major

implications for the Committee on the Rights of the Child due to the reforms of the United Nations international human rights protection system, the repeated attacks on it by various States, and the general landscape of polarization dominating international relations, particularly in the context of the international human rights system and children's rights.

Meaning of the Convention

The near-universal recognition of the Convention mentioned in the introduction signifies a revolutionary shift in the legal consideration of the child. However, the *Convention on the Rights of the Child* should not be viewed in isolation; rather, it must be seen as one of the steps humanity has taken in recent years on the difficult path toward the universal recognition of the rights of all individuals.

Throughout the second half of the 20th century, the paradigm concerning groups of people considered to be “in situations of vulnerability” gradually shifted. Whether dealing with ethnic minorities, women, children, persons with disabilities, etc., all these groups had traditionally been seen as “weak” and “dependent,” requiring “protection” by law. They were regarded more as “objects” of legal protection than as “subjects” of rights.

The civil rights and feminist movements, which initially advocated for the legal equality of all people regardless of race or gender, achieved the recognition of equal rights for ethnic minorities and women (explicitly reflected in International Law through the *International Convention on the Elimination of All Forms of Racial Discrimination* of 1966 and the *Convention on the Elimination of All Forms of Discrimination Against Women* of 1979). This movement gradually extended to other groups, advocating for the same recognition as rights holders, such as children (enshrined in the *Convention on the Rights of the Child* of 1989) and persons with disabilities (enshrined in the *Convention on the Rights of Persons with Disabilities* of 2006).

It is in these latter cases where the paradigm shift is most evident. Society had traditionally viewed both children and persons with disabilities as “dependent objects in need of protection.” This protection often entailed denying them legal capacity, even preventing them from participating in essential decisions affecting their lives and treating them almost as “property” of those upon whom they were made “dependent.”

In response to these positions, social movements emerged, advocating for the creation of an inclusive and integrated society, where differences are seen as

enriching and where all its members, regardless of gender, race, age, ability, or condition, are equally recognized as rights holders. The State, therefore, has the obligation to adopt the necessary measures to ensure that these rights can be exercised under sufficient and equal conditions. These social movements have gradually brought about the necessary paradigm shift towards the establishment of equitable societies in which all members are recognized as rights holders.

This is the context in which the perspective adopted by the *Convention on the Rights of the Child* (and the other aforementioned conventions) should be understood. The Convention does not proclaim new rights for children. Children have the same rights as all other individuals. The Convention's perspective is focused on the obligations of the State to ensure that these rights can be exercised by children and are respected by both the State and others.

To achieve this, as a central axis of the paradigm shift, the Convention includes two principles that can be considered "revolutionary" in relation to the previous situation: the principle of the "best interests of the child" and the principle that imposes the obligation to "listen to the child in all decisions affecting them." These two principles, enshrined in Articles 3 and 12 of the Convention, respectively, should be read together and form the basis of the new status of the child as a "subject of rights."

According to Article 3.1 of the Convention: "In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities, or legislative bodies, the best interests of the child shall be a primary consideration." This "primary" consideration, in certain cases, must be the sole consideration, as indicated by the Convention, such as in matters of adoption¹ or the separation of the child from their parents.²

According to Article 12.1 of the Convention: "States Parties shall assure to the child who is capable of forming their own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child." This means that it is not merely about "hearing" the child but "listening," which implies that the child's opinion must be taken into account (with reasons provided when the

¹ Art. 21: "States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration."

² Art. 9.1: "States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child."

decision-maker deviates from it) and that this opinion should be heard at a time when it can influence the decision.

The combined reading of these two principles constitutes the core of the paradigm of the child as a subject of rights. They represent a new perspective in the relationships between adults and children, leading to a democratic dynamic in these relationships. Children do not “belong” to anyone, not even to their parents. Children belong to themselves and must be regarded as rights holders whose interests must be considered in all decisions affecting them and whose opinions must be heard before determining the content of those interests. For example, the frequent debate in many States over the so-called “parental veto” and the question whether children belong to the State or their parents shows how far we still are from fully embracing the paradigm shift that views the child as a subject of rights who belongs exclusively to themselves, and towards whom both parents and the State have duties, powers, and responsibilities, but not rights.

Naturally, this does not mean that children are adults, nor are they mini-adults. Children are “subjects in development,” whose capacities evolve, and therefore, the exercise of their rights must be carried out in accordance with this evolution, their age, and maturity. Hence, respect is provided in Article 5 of the Convention, for the responsibilities, rights, and duties of “the parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians, or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.”

This direction and guidance, which do not substitute for the child, as it is the child who must exercise their rights, must, in all cases, be proportional to the development of the child’s capacities for the autonomous exercise of their rights.

Scope of the Convention: Its Contents

The structure of the *Convention on the Rights of the Child* can be considered as comprising eight groups of norms related to:

1. the scope of application of the Convention;
2. the general principles that inspire the Convention;
3. the general measures that States must adopt in relation to the Convention;
4. the specification of various rights to the particular situation of children;
5. the obligations related to the protection of children from rights violations to which they are particularly vulnerable;

6. the obligations concerning children in situations of intersecting vulnerabilities, aimed at reducing the greater barriers to the exercise of their rights;
7. the provisions regarding the mechanism for monitoring the implementation of the Convention; and
8. the final provisions on signature, entry into force, reservations, etc.

In this section, we will focus on the first six groups, leaving the seventh for the next part of this study. The last group will not be addressed in this paper.

Regarding the scope of application, Article 1 establishes the personal scope by defining a child as “every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.” Despite the final clause, it must be considered that the Convention applies to every individual from birth until the age of 18.

Regarding its spatial scope, Article 2.1 provides that “States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction.” As the International Court of Justice noted in the case of “Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory,” this expression means that the State's obligations under the Convention are not limited exclusively to its territory but also extend to any activity outside its territory that falls under its jurisdiction,³ as “while the jurisdiction of States is primarily territorial, it may sometimes be exercised outside the national territory.”⁴

Concerning the general principles that inspire the Convention, there are four. The first two have already been mentioned: the principle of the best interests of the child (Article 3.1) and the principle of respect for the views of the child or participation (Article 12). To these, we must add the principle of non-discrimination (Article 2) and the principle of respect for life, survival, and development (Article 6).

These four principles permeate the entire Convention, and all the rights of the child and all State obligations must be interpreted in light of them.

However, according to the doctrine of the Committee on the Rights of the Child, these are not merely principles informing the set of rights contained in the Convention but also autonomous rights, such that their non-respect in a specific case

³ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, par. 113.

⁴ *Ibidem*, par. 109.

constitutes a violation of the rights of the child in itself, without the need to link them to a specific right within the Convention. In other words, unlike other human rights treaties, such as the European Convention on Human Rights, a violation of the principle of non-discrimination can occur independently, without necessarily involving discrimination in the exercise of one of the rights provided for in the Convention. The same can be said regarding the violation of the principle of respect for the views of the child, the best interests of the child, or the right to life, survival, and development.

Alongside the general principles, a third group of norms contained in the Convention pertains to the general measures of implementation that States must adopt in relation to the Convention on the Rights of the Child. These are general measures that States must adopt solely by virtue of having ratified the Convention.

These general measures of implementation are referred to in Article 4 of the Convention, which states: “States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social, and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.”

In furtherance of this provision, the Committee on the Rights of the Child adopted General Comment No. 5 in 2003, dedicated exclusively to these types of measures. The specific content of some of these general measures of implementation has been further developed by the Committee in its General Comments No. 2 (on the role of National Human Rights Institutions in the promotion and protection of children's rights), No. 16 (on State obligations regarding the impact of the business sector on children's rights), and No. 19 (on public budgeting for the realization of children's rights). While this is not the time or place to provide a detailed commentary on these, we can summarize nine major measures that every State is obliged to undertake in relation to the Convention:

1. *Legal reform processes*: This involves the obligation to reform legislation to conform with the obligations derived from the Convention. It is not sufficient to ratify the Convention and claim that international treaties have superior hierarchy over domestic law. Legal certainty demands that all necessary legislative reforms be carried out to ensure that domestic law aligns with the obligations derived from the Convention.

2. *Development of independent human rights institutions for children:* These independent institutions must comply with the Paris Principles on the independence of human rights institutions and can consist of specific institutions for children (e.g., ombudspersons for children) or specific sections within national human rights institutions, staffed with specially trained personnel (e.g., a children's rights section within an ombudsperson's office).
3. *Ability to invoke children's rights before the courts:* If the legal system does not provide for the direct application of treaties in domestic law and requires any form of transformation or development of treaties into domestic law to invoke the rights contained in a treaty before a domestic judicial body, the State must adopt these measures upon ratifying the Convention.
4. *Development of broad strategies or agendas for children:* States must establish, within the framework of their public policies, specific policies that involve a broad strategy or agenda to comprehensively fulfill the obligations derived from the Convention. The development of Strategic Plans for Childhood is typically the primary instrument used.
5. *Development of permanent mechanisms for government coordination:* The State must coordinate the actions of all bodies responsible for implementing the obligations derived from the Convention. This coordination must be both horizontal (among the various ministries and departments involved at the state level) and vertical (among the various levels of responsibility: national, regional, and local). This coordination must be carried out by mechanisms created on a permanent basis with the specific objective of coordinating children's policies, not sporadically.
6. *Systematic supervision: data collection and evaluation:* To develop effective strategies and adopt necessary childhood policy measures to fully respect the obligations derived from the Convention, the State must collect data on the situation of children in the country, disaggregated by age, gender, ethnicity, region, etc. These data must be maintained and periodically evaluated to determine the outcomes of comprehensive childhood plans and other measures adopted.
7. *Allocation of resources for children (budget analysis, etc.):* The obligation to allocate sufficient resources implies not only the existence of such an allocation but also the ability to make it visible for evaluation purposes. This means that in all public budgets, at all levels of government responsible for children's issues, the resources allocated to fulfilling the obligations derived from the Convention must be identifiable.
8. *Education, training, and awareness-raising of the Convention:* The paradigm shift represented by the Convention must not only be reflected in the State's legislation but also transmitted to society as a whole. The only way to achieve this is by disseminating the Convention, incorporating its teachings into academic curricula at both basic and university levels, and

conducting social awareness campaigns in areas where the social mindset has yet to fully embrace the human rights perspective in the consideration of childhood.

9. *Collaboration in the implementation process with civil society, including children:* Finally, the State also has the obligation to strengthen and co-operate with civil society, including children, to ensure a true empowerment of rights holders.

All these general measures must aim to guarantee the exercise of the rights referred to in the Convention. These rights are addressed in the other three groups of norms to which we wanted to refer in this section. These norms do not establish “specific rights” for children. As mentioned, children have the same rights as other individuals.

These groups of norms establish specific obligations of the State party with a particular purpose concerning the respect for children's rights. These include:

1. *Obligations regarding the specification of certain human rights to the special situation of children:* This specification primarily relates to rights associated with two of the general principles mentioned earlier. These include:
 - 1.1 Rights concerning the resources, capacities, and contributions necessary for the child's survival and full development, including the rights to adequate food and housing, access to potable water, basic healthcare,⁵ education,⁶ recreation, and cultural activities.⁷
 - 1.2 Rights related to the participation of boys and girls to freely express their opinions and voice their views on issues affecting their social, economic, religious, cultural, and political life, such as the right to express opinions and be heard,⁸ the right to information,⁹ and freedom of association.¹⁰
2. *Obligations of the State party regarding the protection of children in situations where their vulnerability is heightened by their status as children and where their rights may be particularly violated:* This applies, for instance, to parental abduction,¹¹ protection against all forms of violence,¹²

⁵ Article 24.

⁶ Article 28, 29.

⁷ Article 31.

⁸ Article 12.

⁹ Article 13.

¹⁰ Article 15.

¹¹ Article 11.

¹² Article 19.

adoption,¹³ child labor,¹⁴ drug abuse,¹⁵ sexual exploitation,¹⁶ abduction, sale, and trafficking,¹⁷ or other forms of exploitation,¹⁸ or detention and punishment.¹⁹

3. Obligations concerning children in situations of double (or triple or higher) vulnerability to reduce the greater barriers to the exercise of their rights: This applies to children deprived of their family environment,²⁰ refugee children,²¹ children with disabilities,²² children under the care of public institutions,²³ children belonging to minorities or indigenous groups,²⁴ children involved in armed conflicts,²⁵ children who are victims of abandonment, abuse, or exploitation,²⁶ or children in conflict with the law.²⁷

In all these cases, the State assumes specific obligations to protect the respect for children's rights. In addition to the obligations established in the Convention, more specific obligations are provided in the two Optional Protocols adopted in 2000 and entered into force in early 2002. Both develop the provisions of the Convention on the issues they regulate, specifying and detailing the State's obligations concerning them. Neither Protocol implies a change in the meaning of the Convention. Undoubtedly, both increase its scope, as although the issues they address were generally referenced in the Convention, the Protocols specify, develop, and clarify the States' obligations to protect children in these situations or to combat such serious (and unfortunately frequent) violations of children's rights.

Challenges in the Short and Medium Term:

The Committee on the Rights of the Child Facing New Challenges.

As we have previously indicated, in our view, the primary future challenge facing the Convention pertains to its monitoring system, which is addressed in the last

¹³ Article 21.

¹⁴ Article 32.

¹⁵ Article 33.

¹⁶ Article 34.

¹⁷ Article 35.

¹⁸ Article 36.

¹⁹ Article 37.

²⁰ Article 20.

²¹ Article 22.

²² Article 23.

²³ Article 25.

²⁴ Article 30.

²⁵ Article 38.

²⁶ Article 39.

²⁷ Article 40.

group of provisions in the Convention, as discussed in the previous section of this paper. These provisions regulate the composition and competencies of the Committee on the Rights of the Child as the body responsible for monitoring the implementation of the Convention.

The Convention on the Rights of the Child is one of nine human rights treaties developed under the auspices of the United Nations²⁸ that provide for the establishment of a specific Committee tasked with overseeing its implementation.²⁹ All of these Committees are composed of independent experts elected by the States Parties to each treaty, and all have among their functions the review of periodic reports that States are required to submit, as well as the examination of individual communications regarding violations of the rights enshrined in the respective treaty.³⁰ Additionally, all these Committees play a crucial role in interpreting the content of their respective treaties, a function they typically exercise not only through the oversight of States but also through General Comments or other decisions.

It must be acknowledged that the creation of these ad hoc monitoring bodies was neither premeditated nor designed in advance. Rather, it is an empirical construction that began in 1965 with the creation of the Committee against Torture and has continued over the years to reach the current total of nine. However, although

²⁸ The nine treaties are: the *International Convention on the Elimination of All Forms of Racial Discrimination* (dated December 21, 1965); the *International Covenant on Civil and Political Rights* (dated December 6, 1966); the *International Covenant on Economic, Social and Cultural Rights* (dated December 16, 1966); the *Convention on the Elimination of All Forms of Discrimination against Women* (dated December 18, 1979); the *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (dated December 10, 1984); the *Convention on the Rights of the Child* (dated November 20, 1989); the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families* (dated December 18, 1990); the *Convention on the Rights of Persons with Disabilities* (dated December 13, 2006); and the *International Convention for the Protection of All Persons from Enforced Disappearance* (dated December 20, 2006).

²⁹ The nine Committees are: the Committee on the Elimination of Racial Discrimination, the Human Rights Committee, the Committee on Economic, Social and Cultural Rights, the Committee on the Elimination of Discrimination against Women, the Committee against Torture, the Committee on the Rights of the Child, the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Committee on the Rights of Persons with Disabilities, and the Committee on Enforced Disappearances.

³⁰ At the time of writing, although all nine Committees have been granted the competence to consider individual complaints through Optional Protocols, one of them has not yet exercised this competence due to not having obtained the necessary number of declarations for it to enter into force: this is the case with the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*.

each Committee was created independently, ad hoc, and has its own basis of competence in its respective treaty, the fact is that, over time, a “system” has gradually emerged that groups them together and seeks to coordinate them. This has been facilitated, first, by the fact that all were created through the same procedure (via a human rights treaty) and were entrusted with similar functions (albeit with specificities for each). Secondly, by the fact that the secretariat for all these Committees is provided by the Office of the United Nations High Commissioner for Human Rights, which allows for the sharing of some staff and the centralization of services, such as the secretariat for individual communications. Thirdly, the existence of common challenges to address and the need to avoid excessive fragmentation in the interpretation of treaties on closely related matters have led to the creation of coordination mechanisms, most notably the annual meeting of Committee Chairpersons and the recent practice of drafting General Comments jointly by several Committees.³¹

As we have noted, the Committee on the Rights of the Child, which is part of this “system,” stands at the center of the main future challenges facing the Convention on the Rights of the Child. On one hand, there is the exponential increase in its functions, making it the Committee with the most States to oversee, given that the Convention has the highest number of States Parties. This is compounded by the need to also monitor the two Optional Protocols of 2000, as well as the functions arising from the third Protocol concerning the review of individual communications of violations of the Convention and the conduct of investigations into serious or systematic violations of the Convention. On the other hand, this expansion of the Committee’s competencies is taking place at a time when the entire system of human rights treaty bodies is embroiled in a turbulent process characterized by a lack of resources and challenges to its legitimacy.

While it is true that the proliferation of treaties, monitoring bodies, and related procedures has undoubtedly allowed for better and more specific protection for an increasing number of individuals, it is also true that the system has become large—too large. Over the past four decades, the capacity of the United Nations

³¹ For example, *Joint General Recommendation* No. 31 of the Committee on the Elimination of Discrimination against Women/*General Comment* No. 18 of the Committee on the Rights of the Child (2019) *On Harmful Practices* (CEDAW/C/GC/31/Rev.1–CRC/C/GC/18/Rev.1), the *Joint General Comment* No. 3 of the CMW and No. 22 of the CRC on *General Principles Regarding the Human Rights of Children in the Context of International Migration* (CRC/C/GC/22 - CMW/C/GC/3), or the *Joint General Comment* - No. 4 of the CMW and No. 23 of the CRC (2017) - *on State obligations Regarding the Human Rights of Children in the Context of International Migration in Countries of Origin, Transit, Destination and Return*.

human rights treaty bodies has exceeded its limits. The developments of recent years, with the increase in treaties, protocols, Committees, and States Parties, have made the system increasingly complex, opaque, and cumbersome, with nine Committees composed of 172 experts in total. More than 100 States are Parties to at least seven of the nine treaties, meaning that each must submit more than one report per year to one of the Committees. Preparing such reports requires considerable effort and time from each State. Moreover, the Committees do not have the budget to meet as often as necessary to review the vast number of reports. As a clear consequence of this situation, all the Committees (some excessively so) are delayed in their review of reports and routinely examine reports submitted more than two years before their review. The system has not yet been overwhelmed because a significant number of States do not fulfill their obligation to submit reports on time. However, this means that the system remains functional because States violate their obligations, which, in turn, reduces the monitoring of human rights compliance.

The situation described, along with other circumstances, has made it clear that either reform, adaptation, or strengthening of the system is necessary. This is the context in which the United Nations General Assembly's Resolution 68/268 on *Strengthening and Enhancing the Effective Functioning of the Human Rights Treaty Body System* must be understood. However, rather than strengthening the system, this resolution has set in motion a process of weakening the entire treaty body system, including the Committee on the Rights of the Child.

For example, one of the fundamental issues in strengthening the Committee concerns its composition and the election of its members. The Committee on the Rights of the Child is composed of 18 experts, who are expected to be independent, specialized, competent, available, geographically diverse, representative of various legal cultures, gender-balanced, and multidisciplinary.

To achieve these criteria, the Convention stipulates, first, that the election of members must be conducted by the majority of the States Parties, based on candidates proposed by the States.

Undoubtedly, many of the candidates proposed by the States possess all the aforementioned qualifications. However, the process of nominating candidates, electing them by the States, and the characteristics of some elected experts reveal significant shortcomings in relation to the necessary requirements to ensure the independence of the experts and, consequently, of the Committee.

In many cases, the motivations behind a State's nomination of a particular candidate are not known. It is rare for States to consult with national human rights institutions, organized civil society specializing in the area of each Committee, or academic or scientific experts in the field. There are numerous instances where it is difficult to discern, from the candidate's curriculum vitae, their specialization in children's rights. Additionally, it is not uncommon for States to nominate a diplomat or high-ranking government official (whose independence may be difficult to presume) or someone who might face conflicts of interest regarding the issues to be addressed by the Committee.

These situations would not be of particular concern if the election process involved a rigorous selection system with clear incompatibility criteria and an assessment of the candidates' suitability for the expert role. However, the reality is that the election is conducted by secret ballot by the States Parties, without any prior public procedures for assessing suitability.

This statement does not imply that no review processes exist. The author of this text confesses to having been pleasantly surprised by many of the experiences during their selection process for the Committee on the Rights of the Child. On the one hand, they were interviewed by organized civil society, which, in pursuit of greater transparency, has initiated public review procedures through voluntary interviews that are later published, and based on which lobbying efforts are made among States. On the other hand, more States than expected requested interviews and presented delegations composed of several experts to ask in-depth questions about the Convention, its Protocols, working methods, and prior experience. It is true that it was not always clear whether the questions were asked to determine if I was an independent expert or to find out my stance on certain issues specific to the State conducting the review. However, in all cases, all of this affects the independence of the candidate. Unfortunately, not all interviews were the same, and no candidate is interviewed by all 196 States Parties, so it is unclear what the other States based their decision on regarding my candidacy.

In my opinion, public hearings by States with candidates, with the presence of organized civil society and the media, should be considered. This would ensure that all candidates could be examined by all States, prevent candidates from saying one thing to some States and the opposite to others during personal interviews, save considerable time and money spent on lengthy campaigns with candidates present in New York, make the candidates' suitability visible to the public, and enhance the independence, quality, and prestige of the Committee. Transparency is an invaluable ally of independence and the quality of the selection process. The

election process for members of the European Court of Human Rights is, in our view, a good example of these assertions.

Furthermore, in addition to independence, it is essential to ensure that the experts on the Committee are, as mentioned, specialists, competent, available, and represent an equitable balance of geography, legal cultures, gender, and disciplines involved (jurists, doctors, sociologists, economists, social workers, psychologists, etc.). Achieving this result, which has not always been the case to date, depends both on the nomination of candidates by States and on the selection processes. Both can and should be improved, especially now that, in addition to fulfilling their monitoring functions, the Committee must review individual communications concerning violations of the Convention.

However, none of this is addressed in the General Assembly's resolution on strengthening the treaty bodies. Nothing has been done to improve the situation.

Regarding the Committee's competencies, under the Convention, these can be classified as explicit and implicit. The explicit competence par excellence is the exercise of the monitoring function of compliance with the Convention by the States Parties through the review of initial and periodic reports and the formulation of observations to the States.

As for the implicit competencies, these are primarily related to the interpretation and promotion of the Convention. The Committee exercises these competencies through follow-up measures on its observations to States,³² the drafting and adoption of general comments aimed at clarifying the interpretation of certain provisions of the Convention or the obligations of States in specific situations in light of the rights of the child as contemplated in the Convention, the organization of Days of General Discussion, consisting of dedicating each year a day of general debate to a specific article of the Convention on the Rights of the Child or a question related to the rights of the child, in accordance with Article 79 of its Rules of Procedure, or the adoption of a set of decisions referred to as "recommendations," which either have a "jurisprudential" nature as they help interpret the Convention³³ or relate to the organization of its work.³⁴

³² This can be accomplished through regional seminars, visits, supplementary reports, and other similar activities.

³³ Examples include the recommendations on *Children in Armed Conflicts* (1998); *Juvenile Justice* (1999); or *Children Without Parental Care* (2005).

³⁴ Similarly, there are recommendations on *Content and Length of Reports* (2002); *Combined Reports* (2002 and 2003); or *Working in Two Chambers* (2003 and 2008).

Thus, there are many activities to be carried out during its three annual sessions, each lasting four weeks. Undoubtedly, the primary work undertaken, and the one that consumes the most time, is the monitoring of State compliance through interactive dialogue with States based on the initial reports (within the first two years after ratification of the Convention and each of the first two protocols) or periodic reports (every five years), as well as any other information received by the Committee members, whether from international institutions, civil society, or academic or scientific institutions.

As we have noted earlier, the Committee is delayed in its review of reports by more than two years, and the system has not collapsed only because a significant number of States are delayed in submitting their reports. This is the context in which the competencies assigned to the Committee by the third protocol were added. These competencies are projected in two areas: the receipt and analysis of individual communications for violations of the Convention or its Protocols, and the possibility for the Committee to conduct investigations in cases of serious or systematic violations of the Convention or its Protocols.

A massive workload for which, however, instead of providing the Committee with more resources, its resources have been reduced. Thus, it can be described as shameful and scandalous that the Committee has been subjected to economic hardship year after year, to the point where, in 2024, it was forced to reduce some of its session weeks due to budget constraints.

All of this demonstrates not only a lack of interest by many States in the international system for monitoring human rights compliance but also an explicit intention to weaken and ultimately dismantle it. All of this comes at a historic moment when, far from celebrating the achievements made in human rights and anticipating further progress, we must call to arms to defend the few gains made in the second half of the 20th century, or what remains of them.³⁵

Conclusions

In the preceding pages, we have endeavored to demonstrate the significant changes brought about by the Convention on the Rights of the Child. We are dealing with a revolutionary text that has achieved near-universal ratification but still falls short of universal compliance.

³⁵ CARDONA, Jorge, 75 Years of the Universal Declaration of Human Rights: Anything to Celebrate? in: *Revista Española de Derecho Internacional* 76 (2004) 13–22: <https://www.revista-redi.es/redi/article/view/2531/2517> [21 August 2024].

Undoubtedly, achieving such compliance is fundamentally dependent on the monitoring system. This includes general oversight of State compliance through the periodic reporting system to the Committee, as well as specific oversight through the examination of individual communications submitted to the Committee on the Rights of the Child for violations of its provisions or through the conduct of investigations into serious or systematic violations.

This is the great challenge we face: ensuring the enforcement of norms. The Third Optional Protocol to the Convention has completed the normative cycle to achieve this goal. However, it is now necessary to ensure that the established guaranteed system functions well and is effective.

To this end, improvements must be made, the overall system of which the Committee is a part must be strengthened, working procedures must be enhanced, and the Committee must be provided with additional resources. The debate is ongoing. Let us hope that, in the end, the best interests of the more than 2.5 billion children will guide the position of the States.

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Short Bio

Prof. Dr. Jorge Llorens Cardona is Professor of International Public Law and International Relations at the University of Valencia, drafter of human rights and children's rights programs for the NGO Fundación por la Justicia (Foundation for Justice) He participated in the protection mechanism of the Ibero-American Youth Rights Convention, and is a former member of the 'Committee of Wise Men' appointed by the Inter-American Court of Human Rights to study legal reform of the Inter-American human rights system. He also served as a Member of the UN Committee on the Rights of the Child.

Mechanisms of Truth, Accountability and Guarantees of Non-Repitition in Massive or Systematic Cases of Child Abuse

Fabián Salvioli

Introduction - The Protection of Children in International Human Rights Law: General and Specific Protection

Human rights can be defined as a set of interconnected and mutually reinforcing rights, which derive from the intrinsic dignity of the human person. They are recognized by the international community through legal norms that are enforceable against the States, who assume obligations to respect and guarantee them without discrimination of any kind and regardless of any condition or situation, in relation to any person who is subject to their jurisdiction permanently or temporarily.¹

The main purpose of States is to respect and guarantee human rights without discrimination; consequently, the public policy of the State – and all its organs – are created, designed and must have sufficient competence to fulfill this objective. The democratic quality of a State can be measured by the degree of enjoyment of rights by its population.

At the United Nations, since the adoption of the Universal Declaration of Human Rights,² an important network of human rights legal instruments has been built up in the form of international treaties (covenants, conventions and protocols). International supervisory bodies—treaty bodies and special procedures—have also been created; finally, monitoring mechanisms to monitor the implementation of human rights and for international monitoring of the behavior of States (examination of reports, individual communications, country visits, etc.) were established.

Although all persons are protected by the general covenants on civil, political, economic, social, cultural, and environmental rights, international human rights law has developed instruments for specific protection due to the seriousness of certain violations (torture, forced disappearances, etc.), or to protect persons

¹ SALVIOLI, Fabián, *Introducción a los derechos humanos. Concepto, fundamentos, características, obligaciones del Estado y criterios de interpretación jurídica*, (Valencia: Tirant, 2020) 118.

² UN General Assembly, *The Universal Declaration of Human Rights*, 10 December 1948.

belonging to certain groups who are in a situation of vulnerability due to different factors (poverty, disability, migration, etc.).

Age is one of the reasons that the Member States of the United Nations have taken into account to establish specific protection instruments in the field of human rights: for this reason, conventions and protocols that protect the rights of adults³ and others that protect the rights of children and adolescents have been studied and/or adopted.

In the area of children's rights, the States that are parties—by virtue of having ratified or acceded to these conventions and/or protocols—assume the obligation to adopt specific public policies aimed at effectively guaranteeing the rights of children and adolescents. Likewise, the States are subject to monitoring by different international bodies that supervise compliance with their duties and commitments, by means of different mechanisms.

The guiding criteria for carrying out these obligations of respect and protection are set out in the International Convention on the Rights of the Child, adopted by the United Nations General Assembly on November 20, 1989.⁴ Among them, the principle of “best interests”⁵ stands out. This one has been studied by the United Nations Committee on the Rights of the Child⁶ in its General Comment No. 14.⁷

In this document, the Committee on the Rights of the Child defines the best interests of the child, identifies its scope, and provides guidelines so that the different branches of government working on children's issues always act taking this criterion into account, and thus comply with the obligations assumed in the Convention.

³ The United Nations Organization is an Independent Expert on the enjoyment of human rights by older persons—a mechanism created by the Human Rights Council in 2013—, and the adoption of an International Convention on human rights of older adults is under discussion. In other international spaces such as the Inter-American system, there is already an instrument for this purpose: the *Inter-American Convention on the Protection of Human Rights of Older Adults*, 2015.

⁴ There are 196 States parties of the *Convention of the Rights of the Child*.

⁵ UN General Assembly, *Convention of the Rights of the Child*, 20 November 1989, Art. 3.1.

⁶ The Committee on the Rights of the Child is created by article 43 of the *Convention on the Rights of the Child*. It is made up of 18 independent experts, who are elected by the Assembly of States Parties to the Convention and act in their personal capacity. Said persons are elected for a term of four years and may be re-elected.

⁷ Committee on the Rights of the Child, *General Comment No. 14. On the Right of the Child to Have their Best Interests Taken as a Primary Consideration (Article 3, Paragraph 1)*, 2013.

The Committee's work has had an impact on other international institutions: in the United Nations human rights system, all treaty bodies apply the criteria established by the Committee on the Rights of the Child when examining issues relating to the rights of children and adolescents.⁸ This is the case, for example, of the Human Rights Committee when considering State reports in compliance with article 24 of the International Covenant on Civil and Political Rights, the Committee on the Elimination of All Forms of Discrimination against Women when assessing situations of girls and female adolescents, the Committee on Migrant Workers and their Families when dealing with issues involving the rights of migrant children, and the Committee on the Rights of Persons with Disabilities, to indicate special measures and reasonable accommodation for the purpose of effectively guaranteeing the rights of children with disabilities.

In 1990, a resolution of the former Commission on Human Rights created a special rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other sexual abuse of children.⁹ Later, in 2004, a special rapporteurship on trafficking in persons, especially women and children, was created.¹⁰ In fulfilling their mandates, both bodies deploy the standards identified in the Convention on the Rights of the Child and developed by the Committee on the Rights of the Child.

Regardless of the aforementioned specific mechanisms for the protection of children, all human rights special procedures within the United Nations, which carry out thematic mandates, pay special attention when they must examine issues related to violations of the rights of children and adolescents, using the consolidated standards on the subject.

Addressing Gross and Systematic Violations of Human Rights and Serious Violations of International Humanitarian Law

Every human rights violation that is committed generates duties for the responsible States: these are the obligation to investigate the facts, the prosecution and

⁸ There are 10 human rights treaty bodies in the United Nations: the Human Rights Committee; the Committee on Economic, Social and Cultural Rights; the Committee for the Elimination of Racial Discrimination; the Committee for the Elimination of All Forms of Discrimination against Women; the Committee Against Torture; the Subcommittee for the Prevention of Torture; the Committee on the Rights of the Child; the Committee on the Rights of All Migrant Workers and their Families; the Committee for the Protection of All Persons against Enforced Disappearances; and the Committee on the Rights of Persons with Disabilities.

⁹ Commission of Human Rights, *Res. 1990/68*, 11 February 1992.

¹⁰ Commission of Human Rights, *Res. 2004/110*, 19 April 2004.

conviction of the persons responsible—when appropriate—, reparations to the victim and/or his or her descendants, and the adoption of the necessary measures to ensure that similar events are not repeated.

When a country has suffered a dictatorial or authoritarian regime, or when there was an armed conflict—internal or international—the recovery of peace and the consolidation of democracy present difficulties that go beyond the legal field and enter the political arena. To confront this violent past, isolated actions are not enough, it requires the adoption of a battery of measures of different types, which are connected and move in the same direction.

The international community has come to understand that when human rights violations have been committed on a massive or systematic scale—in the context of a climate of widespread violence—the situation to be resolved is much more complex, and these events—with tragic consequences for many individuals and groups—need to be addressed in a holistic manner.

It is understood that societies that have experienced a violent period, characterized by massive and/or systematic violations of human rights, and/or serious violations of the norms of international humanitarian law, must carry out a ‘transition’ through a set of concrete measures that not only duly address the past, but also lead to the strengthening of the rule of law and social pacification. The process in which the measures adopted during this period are designed and implemented is known as the ‘transitional justice process.’

Transitional justice is the full range of processes and associated mechanisms established to address large-scale human rights abuses committed in the past in order to ensure accountability, justice, and reconciliation.

There are three elements that make it possible to identify the existence of a transitional justice process:

1. The existence of past human rights abuses, committed on a large scale (gross and/or systematic violations of human rights, and/or humanitarian law).
2. Political transition (from authoritarian to democratic rule or exit from armed conflict).
3. Battery of processes and mechanisms to deal with the past, and to make adequate reparations to the victims.

The political component that runs through the debates in transitional societies often seeks to set aside the State's human rights obligations: this is not only illegitimate, but also immoral and revictimizes the victims. The transitional justice

processes carried out in the twentieth century have been very frustrating experiences, because they posed the false dilemma of ‘truth vs. justice’ and favored the impunity of the perpetrators of atrocious crimes through amnesties and other legal figures, trying to impose on society the idea that in this way, social reconciliation and stable peace were achieved.

But these experiences have failed: far from solving the problems, the victims and their families, and civil society organizations have continued to complain, and the States must constantly give explanations before international human rights bodies, which question them for not having complied with the obligations established in the conventions, of investigation, punishment and full reparation. In these countries, the victims continue to be helpless, and social peace is false – a status quo of profound injustice has been consolidated.

At the end of the first decade of the 21st century, the United Nations Human Rights Council decided to create the Special Rapporteur on the Promotion of Truth, Justice, Reparations, and Guarantees of Non-Repetition.¹¹ According to the mandate, the Special Rapporteur will deal with situations of gross violations of human rights and serious violations of international humanitarian law, take into account the specific context of each situation in order to prevent the recurrence of crises and future human rights violations, ensure social cohesion, nation-building, ownership, and inclusion of all at the national and local levels, and promote reconciliation.

In its mandate, the rapporteurship will work with a comprehensive approach, encompassing the full range of judicial and non-judicial measures—in particular individual prosecutions, reparations, truth-seeking, institutional reform, and vetting of public employees or officials—and appropriately combining these measures.

In light of practical experience and legal developments, it is now clear that no transitional justice process can be carried out successfully outside the framework established by international human rights law, or by evading the obligations set by that regime.

Because of the general obligation to guarantee human rights, a transitional justice process must comply with the five identified pillars: truth, justice, reparations, guarantees of non-repetition, and memory. They are all connected, and States cannot choose to comply with one and discard the others. The victim-centered

¹¹ Human Rights Council, *Res. 18/7*, 29 September 2011.

approach and the gender dimension are two cross-cutting elements that apply to all pillars of the mandate.

Truth commissions produce a report that allows society to have access to a general knowledge of the events that took place; they must be composed of persons of high moral reputation and credibility and must have an interdisciplinary team highly trained in human rights, in order to receive testimonies, generate trust, and offer support to the victims. Truth commissions are not intended to establish criminal responsibility and are not a substitute for the fulfillment of the right to justice.

Serious violations of human rights and/or international humanitarian law cannot go unpunished. Those materially and intellectually responsible must be brought to justice, tried, and sentenced with penalties that reflect adequate punishment in relation to the acts perpetrated. Impunity measures—legal or *de facto*—are null and void and have no legal effect.

Reparations to the victims (and/or their families) must respond to internationally established standards: the applicable concept is that of integral reparation, which implies the cessation of the violation, restitution of the exercise of rights—when-ever possible—, rehabilitation measures, satisfaction—public apologies, acts of recognition of responsibility, naming of places or establishments after the victims, etc.—, and economic compensation for the material and immaterial damages caused.

In addition, reparations in cases of massive human rights violations tend to have a collective dimension when the victims belong to a specific group (for example, indigenous peoples). Likewise, on certain occasions it is appropriate for reparations to have transformative effects, so that the victims are not left in the same situation of vulnerability that led to the perpetration of the violations committed.

Guarantees of non-repetition form part of a fundamental pillar in transitional justice processes. It implies the adoption of legislative and other measures to put the State machinery into operation in accordance with its human rights obligations and prevent future violations from occurring. This means—among other measures—removing from State structures those who have been directly or indirectly implicated in the violations committed—the vetting process—, the normative reform of the provisions under which violations were committed, and the democratization of the security and intelligence forces.

Memory processes are another key pillar. They allow society adequately to remember the violent past it has suffered, and to remember and pay homage to the

victims. The mechanisms for fulfilling the duty of memory are dynamic, including memorials, museums, production of bibliographic and film material, artistic expressions, and educational activities at the formal and informal levels. Victims and their representatives should actively participate in the entire transitional justice process, from its design to its implementation. The voice of the victims must be a priority, and their rights must be fully guaranteed, with due respect for their wishes.

Addressing Cases of Massive or Systematic Violations of Children's Rights

Violations of the rights of children and adolescents may arise from several factors. In some cases, these factors are inter-connected; exclusively pedagogically, contexts of cultural practices, political repression, and within the framework of religious institutions can be identified. Some of the massive or systematic violations of the rights of children and adolescents carried out in the context of political repression or in the context of religious institutions have been studied in transitional justice processes—where States or institutions have embarked on using the tools offered by transitional justice. Experience shows that such situations of rights violations also make use of the cultural context.

In the Context of Traditional Cultural Practices

There are traditional cultural practices that are clearly incompatible with the standards enshrined in terms of children's rights: these include corporal punishment—in family or educational settings—child marriage and female genital mutilation.

The Committee on the Rights of the Child has addressed the problem of corporal punishment of children in its *General Comment No. 8* (2006), updated by *General Comment No. 13* (2011). The latter states that corporal punishment is an unacceptable form of physical violence and always represents degrading treatment and harmful practices. Finally, it was indicated that the best interests of the child cannot be used as an excuse to try to legitimize corporal punishment.¹²

Child marriage and female genital mutilation are harmful traditional practices that have been addressed by different United Nations treaty bodies—the Human

¹² Committee on the Rights of the Child, *General Comment No. 13: The Right of the Child not to be the Object of Any Form of Violence*, 18 April 2011, pars. 6, 22, 24, 29 and 61.

Rights Committee, the Committee against Torture, the Committee on Economic, Social and Cultural Rights—within each of their respective mandates:

In 2014, the Committee on the Rights of the Child and the Committee on the Elimination of All Forms of Discrimination against Women, adopted a joint general comment,¹³ where female genital mutilation¹⁴ and child marriage¹⁵ are identified as harmful practices. In the adopted document, a series of measures at different levels are indicated to the States, with the purpose of eradicating and preventing the commission of such practices in the future.

In Contexts of Political Repression and/or Armed Conflict

Within a general framework of political repression, the situation of vulnerability of children and adolescents is multiplied. In these contexts, certain human rights violations are favored, such as the theft of children—considered ‘spoils of war’—and identity theft. Sexual violations are also systematic, especially—although not exclusively—against women and girls. This situation is replicated in armed conflicts when they substantially affect the civilian population, to which must be added the problem of forced recruitment of children and adolescents, which sometimes results in children playing the role of both victims and perpetrators of atrocious acts. The social stigma causes many of these acts to go unreported, and legal difficulties of various kinds mean that the perpetrators are never tried and convicted.

In Latin America, the dictatorial regimes that ravaged the region between the 1970s and 1990s were characterized by massive and systematic human rights violations, and sometimes serious violations of humanitarian law.

Between 1976 and 1983 in Argentina, a systematic plan of appropriation of babies, boys and girls belonging to families of people considered political opponents of the dictatorial regime could be verified. The outstanding activity of the Grandmothers of Plaza de Mayo, has been able to achieve the implementation of the National Bank of Genetic Data,¹⁶ and from this work the identity of more than a hundred people who suffered appropriation or subtraction of identity and delivery to other families was recovered.¹⁷ The jurisprudence of the Inter-American

¹³ Committee on the Rights of the Child, *General Comment No. 18*, 8 May 2019, and Committee for the Elimination of Discrimination against Women *General Recommendation No. 31* (adopted jointly).

¹⁴ *Ibidem*, par. 19.

¹⁵ *Ibidem*, pars. 20–24.

¹⁶ Banco Nacional de Datos Genéticos, *Ley 23511*, 10 Julio 1987.

¹⁷ 132 persons by 15 January 2023.

Court of Human Rights was able to confirm this aberrant practice in several other countries in the region, always in connection with the actions of military dictatorships.¹⁸

El Salvador's report, the result of a visit to the country in 2019 by a United Nations Special Rapporteur, specifically addresses the problem of children who have suffered violations of human rights and humanitarian law during the armed conflict. In the report presented to the Human Rights Council, the Rapporteur stressed that he was able to observe numerous practices of sexual violations against children, as well as other practices, including extrajudicial executions and enforced disappearances. Also, cases of appropriation and identity theft, as well as illegal adoptions.¹⁹ Most of the facts remained insufficiently addressed, and their perpetrators remained unpunished.

The armed conflict in Nepal (1996–2006) has had as one of its characteristics facts of sexual violence perpetrated by State agents against girls and adolescents. The United Nations Special Rapporteur on Transitional Justice—along with other mandates—has called the attention of the country's authorities in relation to the lack of investigation, prosecution, and punishment of the perpetrators—pointing out a framework of absolute impunity—as well as the lack of compliance with the duty to provide reparations to the victims.²⁰

In Spain, a bill was presented in 2018 to address the problem of stolen babies during Franco's dictatorial regime. During the discussion of the proposed amendments a group of United Nations human rights special procedures has made public its position regarding the need to adopt such a law within the standards and obligations of the State under international human rights law.²¹ Resistance from some factions of parliament has so far prevented the adoption of such a law.

¹⁸ See: Inter-American Court of Human Rights, *Caso Gelman vs. Uruguay. Fondo y Reparaciones. Sentencia de 24 de febrero de 2010. Serie C N 221*; *Caso Contreras y Otros vs. El Salvador. Fondo, Reparaciones y Costas. Sentencia de 14 de octubre de 2014. Serie C N 285*.

¹⁹ Human Rights Council, *Visita a El Salvador. Informe del Relator Especial sobre la Promoción de la verdad, la justicia, la reparación y las garantías de no repetición*: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G20/176/00/PDF/G2017600.pdf> [10 December 2024].

²⁰ See: *Nepal JAL NPL 1/2022*, 9 February 2022: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26967> [10 December 2024].

²¹ See: *España OL ESP 7/2021* 6 January 2024: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=26888> [10 December 2024].

A particular problem are ‘child soldiers.’ The recruitment of children for use in armed conflict is prohibited by international law and constitutes an international crime, which entitles those responsible to criminal prosecution.²² Some international tribunals, such as the International Court for Sierra Leone²³ and the International Criminal Court, have considered cases of child recruitment in the context of armed conflict.²⁴

The second aspect to consider is the treatment to be given to forcibly recruited children, who have not only been victims but also may have been involved in the commission of war crimes, crimes against humanity or other possible human rights violations.²⁵ It is understood that mechanisms must be established to determine responsibility for the acts committed, while measures must be offered to cooperate with the victims and their families, demobilize, rehabilitate, and reintegrate into society.

Finally, in the Syrian conflict, there was a serious humanitarian situation in camps in the northeast of the country, where many children with citizenship of different States were not repatriated by their countries of origin.²⁶ Different United Nations special procedures have jointly called for joint actions, carrying out repatriations in accordance with international human rights law, and supporting their reintegration with social, psychological, and educational support, specifically considering gender aspects (for cases of rape and abuse against women and girls).²⁷

In the Context of Religious Institutions

‘Assimilation policies’ practiced by states through religious institutions have had devastating consequences for indigenous children in some countries. The 2015 report of the Truth and Reconciliation Commission of Canada found that Aboriginal children were abused, malnourished and raped, and that at least four thousand

²² International Criminal Court, *Rome Statute*, 17 July 1998, Art. 8.b.xxvi, Art. 8.e.vv.

²³ The International Tribunal for Sierra Leone determined that persons under 18 years of age would not be imprisoned, but would be subjected to truth and reconciliation courts, narrate their crimes and follow a rehabilitation program.

²⁴ Notably the Thomas Lubanga case.

²⁵ The International Tribunal for the Former Yugoslavia and the International Tribunal for Rwanda have not instituted proceedings against children under 15 years of age.

²⁶ In Al-Hol camp, the largest camp for refugees and internally displaced persons in Syria, more than 80 percent of the detainees are women and children.

²⁷ UN Human Rights Office of the High Commissioner, *Syria: UN Experts Urge 57 States to Repatriate Women and Children from Squalid Camps*, 8 February 2021: <https://www.ohchr.org/en/press-releases/2021/02/syria-un-experts-urge-57-states-repatriate-women-and-children-squalid-camps> [10 December 2024].

died from disease, neglect, accidents or abuse, while in residential schools. In 2020, a mass grave containing the remains of over two hundred children was discovered in the grounds of a ‘residential school’ in British Columbia; these were indigenous children forcibly removed from their homes and taken to these institutions.

The Kamloops Indian Residential School, where the children's remains were found, was run by the Catholic Church between the late 19th century and the late 1960s, when the federal government took control of it, until its closure in the 1970s. It was part of the Indian residential school system which, between 1831 and 1996, housed over one hundred and fifty thousand children in one hundred and thirty schools, many of them run by the Catholic Church or the federal government.

In light of the situation described above, a number of human rights special procedures have addressed the State of Canada and the Holy See, stressing that large-scale human rights violations had been committed against children belonging to indigenous communities, and that it is inconceivable that Canada and the Holy See would leave such heinous crimes unexplained, and without making full reparations available to the victims and their families.²⁸

In March and April 2022, delegations of Canada’s Inuit People and Métis Nation, alongside representatives of the Canadian Bishops’ Conference, met Pope Francis in Rome, where he listened to the testimonies of survivors of residential schools.²⁹ In July 2022 he undertook what he called a ‘penitential pilgrimage’ to Maskwacis, Québec and Iqaluit, publicly asking forgiveness for the harms of residential schools, stating that an apology is only a first step, calling for serious investigation and assistance for survivors, and committing the Church in Canada to promote indigenous cultures, languages and education in the spirit of the United Nations Declaration on the Rights of Indigenous Peoples.³⁰ Prime Minister Justin

²⁸ UN Human Rights Office of the High Commissioner, *UN Experts Call on Canada, Holy See to Investigate Mass Grave at Indigenous School*, 4 June 2021:

<https://www.ohchr.org/en/press-releases/2021/06/un-experts-call-canada-holy-see-investigate-mass-grave-indigenous-school> [10 December 2024].

²⁹ CERNUZIO, Salvatore, “Canada’s Indigenous Delegations: ‘Pope Francis Listened to our Pain,’” in: *Vatican News*, 28 March 2022: <https://www.vaticannews.va/en/pope/news/2022-03/pope-francis-canada-indigenous-delegations-audience-interview.html> [29 August 2025].

³⁰ POPE FRANCIS, *Address of His Holiness Pope Francis, Maskwacis*, 25 July 2022: <https://www.rcaanc-cirnac.gc.ca/eng/1689777364741/1689777394126> [29 August 2025]; POPE FRANCIS, *Address of His Holiness Pope Francis, Iqaluit*, 29 July 2022: <https://www.rcaanc-cirnac.gc.ca/eng/1689775033275/1689775060348> [29 August 2025];

Trudeau welcomed the apology as a responsive to the Truth and Reconciliation Commission's Call to Action #58.³¹

The United Nations Special Rapporteur on the Promotion of Truth, Justice, Reparations and Guarantees of Non-Repetition has received a large number of complaints from different countries around the world, including Belgium, Canada, Chile, Germany, Mexico, Colombia, Argentina and the United States of America, denouncing various acts committed in churches and other Catholic institutions, as well as accusations of the actions of Catholic Church officials in relation to these acts. The victims of these abuses were mostly children.

This prompted an official communication addressed to the Holy See³² expressing great concern about the institutional attempts of the Catholic Church to protect the alleged aggressors, removing them from the civil justice system, in some cases receiving them in the Vatican and denying them extradition for prosecution, or transferring them to places where they cannot suffer criminal prosecution. Deep concern was also expressed about positions within countries presenting obstacles to improving national frameworks for investigating, prosecuting, and obtaining redress for victims of sexual abuse, including claims to enforce statutes of limitations.

The Special Rapporteur also submitted a formal paper to the Pontifical Commission for the Protection of Minors regarding the rights of victims from a human rights perspective.³³ The Commission is mandated to advise the Supreme Pontiff on measures to better protect minors and persons in vulnerable situations within the Catholic Church.

POPE FRANCIS, *Address of His Holiness Pope Francis, Citadelle de Québec*, 27 July 2025: <https://www.rcaanc-cirnac.gc.ca/eng/1689771105221/1689771165771> [29 August 2025].

³¹ Prime Minister of Canada, *Statement by the Prime Minister on the Personal Apology Delivered by His Holiness Pope Francis to Survivors of the residential school system in Canada*, 25 July 2022: <https://www.pm.gc.ca/en/news/statements/2022/07/25/statement-prime-minister-personal-apology-delivered-his-holiness-pope> [29 August 2025].

³² Special Procedures Communications, *Communication Report Ref. AL VAT 1/2021*, 7 April 2021: <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunication-File?gId=26316> [10 December 2024].

³³ The paper was submitted during a seminar organized by the Pontifical Commission for the Protection of Minors in Villa Aurelia, Rome, on 13 December 2021 and published in the proceedings: SALVIOLI, Fabián, *The Rights of the Victims: International Standards and the Need of a Holistic Approach*, in SCICLUNA, Charles J. / WJLENS, Myriam, eds., *Rights of Alleged Victims in Penal Proceedings. Provisions in Canon Law and in the Criminal Law of Different Legal Systems*, (Baden-Baden: Nomos, 2023) 39-51: <https://www.nomos-shop.de/nomos/titel/rights-of-alleged-victims-in-penal-proceedings-id-111375/> [20 May 2025].

The United Nations Human Rights Committee, the body that monitors the implementation of the International Covenant on Civil and Political Rights, expressed concern about the lack of prompt, independent, thorough, and effective investigations into all allegations of abuse, mistreatment, or neglect of women and children in the Magdalene Laundries (institutions run by the Catholic Church), regretting the failure to identify all perpetrators of the violations committed, the low number of prosecutions and the lack of full and effective redress for the victims. The Committee recommended that the State of Ireland conduct prompt, independent, and thorough investigations, prosecute, and punish the perpetrators with penalties commensurate with the gravity of the crime, and ensure that all victims obtain effective redress, including adequate compensation, restitution, rehabilitation and satisfaction measures.³⁴

A Transnational Phenomenon: Illegal Intercountry Adoptions

As described, illegal adoptions occur through a wide variety of illicit practices (abduction and sale of and trafficking in children, enforced disappearance and wrongful removal of children in the context of enforced disappearance, adoptions involving fraud in the declaration of adoptability, falsification of official documents or coercion, lack of proper consent by biological parents, improper financial gain by intermediaries, and related corruption).

For these acts to be carried out, the active participation of different State officials is necessary. Discrimination against minorities and indigenous peoples, and gender discrimination and violence based on moral and religious constructs regarding the social or marital status of the mother, have been a key driver of illegal adoptions in several countries. The intercountry dimension of illegal adoptions was studied by a set of UN human rights bodies. In September 2022, they adopted a joint declaration on the topic.³⁵

When illegal intercountry adoptions occur, various human rights are violated, including the rights of every child to preserve their identity. There are devastating consequences on the lives and rights of victims. In certain conditions as provided for in international law, illegal intercountry adoptions may constitute serious crimes such as genocide or crimes against humanity. The question of illegal

³⁴ UN Human Rights Committee, *Concluding Observations on the Fourth Periodic Report of Ireland*, 19 August 2014: <https://www.ohchr.org/en/documents/concluding-observations/ccprcirlco4-concluding-observations-fourth-periodic-report> [10 December 2024].

³⁵ Committee on the Rights of the Child, et al., *Joint Statement on Illegal Intercountry Adoptions*, 29 September 2022: https://www.ohchr.org/sites/default/files/documents/hrbodies/ced/2022-09-29/JointstatementICA_HR_28September2022.pdf. [10 December 2024].

intercountry adoptions is being raised in several countries, with an increasing number of adoptees discovering inconsistencies or errors in their adoption process, and that stories they had been told about their origins and the reasons for their adoptions were fake. States must fulfil their duty to prevent illegal intercountry adoption by promulgating and implementing laws, policies, and other necessary measures concerning the adoption process.

Concerning the right to the truth and search of abducted children, the joint declaration highlights that victims of illegal intercountry adoptions have the right to know the truth. States shall ensure that all victims, including those adopted in the past, receive the assistance they need to know their origins. The State shall therefore play an active role in efforts to search for and locate missing children, for instance, creating a DNA database that includes genetic samples for all cases of wrongful removal, enforced disappearance, or falsification of identity that have been reported, with the specific purpose of re-establishing the identity of victims of illegal intercountry adoption. In implementing the right to the truth, States shall assist one another in searching for, identifying, and locating victims of illegal intercountry adoptions.

On the right to reparation, the joint statement says that victims, namely those who suffered harm as a direct result of illegal intercountry adoptions, have the right to reparation. Reparation shall incorporate a gender perspective and may include: restitution to the original situation of the victim before the illegal intercountry adoption occurred, where appropriate, and taking into account the best interests of the child; compensation for any economically assessable damage; rehabilitation, which should include medical and psychological care as well as legal and social services, counselling and facilitation; satisfaction, which should include, but is not limited to, full and public disclosure of the truth, public apology, commemorations, and tributes to the victims; guarantees of non-recurrence through legal, institutional and practical reforms.

In addition, concerning truth mechanisms, States should consider establishing, where appropriate, an independent commission of inquiry to establish the facts regarding allegations of illegal intercountry adoptions, to determine the responsibilities of the parties, and to propose measures of adequate reparation for the victims. The objective of such commissions is to assist victims in finding the truth about their origins and re-establish their true identity, make a credible historical record, recommend the adoption of guarantees of non-repetition, and thereby prevent the recurrence of illegal intercountry adoptions. States should ensure that such mechanisms incorporate a gender and child-sensitive perspective.

Conclusions: The Tools of Transitional Justice to Guarantee the Rights of Children and Adolescents

When a transitional justice process is initiated to address massive or systematic violations of the rights of children and adolescents, certain standards must be respected, starting from the basis of guaranteeing the full participation of the victims, with measures differentiated according to age, and avoiding their re-victimization.

An enormous challenge is to adapt the different components of transitional justice to child-related standards, so that the participation of children is carried out taking into account their evolving capacities. From this perspective, truth processes, criminal trials, reparations, institutional reforms, and memory programs need to be rethought.

Truth commissions should have specialized technical teams that allow for taking testimonies in safe and comfortable environments for the victims, who should be accompanied by people they trust. It is also essential to provide the necessary psychological support.

At the level of justice, the legal frameworks for the prosecution and trial of violations of the rights of minors must be adequate; proceedings must not re-victimize the victims – the sessions may not be public when necessary – and the statute of limitations must be eliminated for crimes whose victims have been minors.

Reparations must meet the standards established by international human rights law: in addition to financial compensation, appropriate rehabilitation measures (medical, psychological, psychiatric, etc.), including sexual and reproductive health measures, must be made available to the victims. Measures of satisfaction—public apologies, naming of establishments, parks or squares after victims, construction of a monument, etc.—represent a major contribution to the visibility of the acts committed in the eyes of society. Any of these actions must be carried out with the consent of the victims or the entities that represent them, for which the relevant consultation mechanisms must be established. When a social situation of vulnerability existed prior to the violations committed, reparations should have a transformative effect so as not to place the victims in the situation that favored the commission of violations against them.

Memory processes provide a great opportunity to remember and honor the victims, especially when they have been children. Artistic expressions, museums and other spaces for reflection help in the construction of the *‘never again.’*

Guarantees of non-repetition imply taking measures at different levels: a vetting process must be promoted with respect to the persons involved in the violations committed, and they must cease to occupy the institutional spaces they used to occupy—regardless of whether or not progress has been made in the criminal sanction.

In addition, regulations should be reviewed, and those that are incompatible with international conventions and standards on children should be repealed or adapted. Effective and accessible mechanisms must be established for children and adolescents to report violations of their rights.

Establish agile and safe systems of complaints and disseminate them to the community and institutions concerned by all means; there should be ex officio and impartial procedures in the institutions when violations of rights are presumed to have been committed to the detriment of children, even in the absence of a complaint. Those who conduct such proceedings should be experts in human rights and in particular in children's rights. Finally, establish human rights and children's rights education programs at all formal educational levels of the State, especially primary and secondary.

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Short Bio

Prof. Dr. Fabián Salvioli is former United Nations Special Rapporteur on Truth, Justice and Reparation (2018-2024), and former President of the United Nations Human Rights Committee. He serves as Professor of Public International Law, Director of the Human Rights Institute and Director of the Masters in Human Rights of the Faculty of Legal and Social Sciences of the National University of La Plata (Argentina).

The United Nations and the Protection of Children: The Voice of the Holy See

Robert D. Murphy

Introduction

The protection of children is a major concern for the international community, with the United Nations (UN) serving as a key platform for addressing global challenges on this issue. In that context, the Holy See offers a unique perspective firmly rooted in moral principles and grounded in its long experience in humanitarian work. This article¹ explores the role of the Holy See at the UN, emphasizing its advocacy for child welfare, the challenges it faces, and the future directions it envisions.

The title of this study, “United Nations and the Protection of Children: The Voice of the Holy See,” invites a critical exploration of how the United Nations advances the well-being and protection of children. Ahead of focusing on the specifics, it is necessary to pose some foundational questions. First, how does the United Nations Organization, a vast and complex entity, promote child welfare? Second, within this framework, what influence does the Holy See exert on the UN’s agenda and actions in this area? To address these questions, it is useful to begin with an overview of the structure of the United Nations Organization, to understand where and how it engages on the issue of child protection. This is followed by a clarification on terminology – to distinguish between the Holy See, the Vatican City State, and the Catholic Church – enabling an understanding of the specific nature of the Holy See and its mission within the UN. With these foundational aspects addressed, it becomes possible to assess the scope of progress and challenges in advancing child protection.

What is the United Nations?

The United Nations describes itself as “the one place on Earth where all the world’s nations can gather together, discuss common problems, and find shared

¹ This article is based on a presentation given on 18 December 2024 to students at the University of Erfurt, Faculty of Catholic Theology, following the course entitled “The Wellbeing of the Child: Promotion-Protection-Rights.”

solutions that benefit all of humanity.”² While the UN is often perceived through the activity of its Peacekeepers, Specialized Agencies, and Funds, its essence lies in its membership. The 193 Member States (and two Observer States – the Holy See and the State of Palestine) form the foundation of its structure, shaping its mandates and actions.

The origins of the UN can be found in the collective response to the failure of the League of Nations to prevent the devastation of World War II. Recognizing the need for a successor institution, one truly equipped to address and resolve global challenges, the leaders of the wartime Allied Powers developed and refined their plans at a series of meetings in Tehran, Moscow, Dumbarton Oaks, and Yalta. Their efforts culminated in the signing in San Francisco of the Charter of the United Nations on June 26, 1945, by 50 Member States.

The Charter outlines the objectives and principles of the UN, forming the basis for its activity and operations. The preamble of this document succinctly encapsulates its mission, emphasizing faith in fundamental human rights, respect for international law, maintenance of international peace and security, and the promotion of economic and social advancement:

*“WE THE PEOPLES OF THE UNITED NATIONS DETERMINED to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom, AND FOR THESE ENDS to practice tolerance and live together in peace with one another as good neighbors, and to unite our strength to maintain international peace and security, and to ensure, by the acceptance of principles and the institution of methods, that armed force shall not be used, save in the common interest, and to employ international machinery for the promotion of the economic and social advancement of all peoples, [...] have agreed to the present Charter of the United Nations and do hereby establish an international organization to be known as the United Nations.”*³

These guiding principles, highlighted in italics, which constitute the four pillars of the United Nations, namely: peace and security, human rights, the rule of law,

² United Nations, *About us*: <https://www.un.org/en/about-us> [3 April 2025].

³ United Nations, *Charter of the United Nations, Preamble*, 26 June 1945. Emphasis in italics added.

and development, are deeply interconnected. One cannot be fully achieved without achieving all of them. As Pope Paul VI stated: “Development [is] the new name of peace,”⁴ underscoring that development creates the conditions necessary for peace to thrive. Equally, peace and security depend on respect for human rights and justice, which in turn require adherence to the rule of law. Promoting these aspirations in tandem is a continuous endeavor for the UN, as overemphasis on one at the expense of others can lead to significant challenges.

How is the UN Structured?

Within the UN framework, six principal entities, known as Charter Bodies, as their shape and function are outlined in the Charter, determine its operations. Five of these entities are based in New York, while a sixth, the International Court of Justice, is based in The Hague, Netherlands. The five New York-based bodies are:

- 1) The General Assembly.
- 2) The Security Council.
- 3) The Economic and Social Council (ECOSOC).
- 4) The Trusteeship Council (now inactive).
- 5) The Secretariat.

The General Assembly is sometimes described as the “Parliament of the World.”⁵ All Member States, regardless of their size or influence, hold equal status: those with populations exceeding a billion, like India and China, have the same single vote as smaller nations such as Micronesia, Nauru, and Palau. This reflects the principle of “one state, one vote,”⁶ emphasizing the absolute and sovereign equality of all states.

The Security Council, the most high-profile of the bodies of the UN, holds a unique and critical mandate to maintain international peace and security.

The Economic and Social Council, commonly referred to as ECOSOC, may be less widely recognized but holds significant importance within the UN system. As its name suggests, ECOSOC focuses on economic and social development. Its comprehensive mandate makes it a vital platform for advancing the conditions necessary for sustainable growth and development.

⁴ PAUL VI, *Populorum Progressio*, Encyclical on the Development of Peoples, 26 March 1967.

⁵ FRANCIS, Dennis, *Remarks by the President of the 78th Session of the General Assembly, at the 2024 Parliamentary Hearing*, 8 February 2024.

⁶ United Nations, *Charter of the United Nations*, 26 June 1945, Article 18.

In contrast, the Trusteeship Council, once a crucial body facilitating the transition of territories from colonialism to independence, no longer functions actively. While it exists in name and remains in the UN Charter, it has not been formally dissolved, largely to avoid opening discussions on the UN Charter, which would inevitably include membership of the Security Council and other contentious issues. For now, it remains inoperative, serving as a historical reminder of a specific era in international governance.

The Secretariat, led by the current Secretary-General, António Guterres, serves as the UN's administrative and executive arm, coordinating its diverse activities worldwide.

Lastly, when the Charter of the United Nations was signed, the founding members also established the International Court of Justice as the judicial organ responsible for resolving legal disputes between States and providing advisory opinions on international law.

Understanding the specific competences of, and interplay between, these Charter Bodies is crucial for comprehending the UN's approach to complex global challenges, including issues such as child protection.

What is the Holy See?

Before exploring the structural complexities of the UN and identifying the key points of engagement for the Holy See within its framework, it is crucial first to grasp the nature and identity of the Holy See. The word *see* originates from the Latin *sedes* and refers to the seat or chair of Saint Peter, the first Pope. All subsequent Popes, who are successors of Peter, occupy this seat or *chair*. In certain languages, this concept is expressed more clearly, such as in the French *Saint-Siège*, or the German *Heiliger Stuhl*, referring to the *Holy Chair*, which, in fact, is the *Cathedra* (chair) of the Bishop of Rome in the Lateran Cathedral in Rome.

Therefore, under Canon Law, the term “*Holy See*” primarily refers to the Pope, the successor of St. Peter, and his authority as the Bishop of Rome to lead and govern the Church. The Pope is supported in his governance of the Church by the Roman Curia, which serves as its central administrative body. The Roman Curia aids the Pope in fulfilling his *Petrine Mission*, that is the spiritual and pastoral mandate as the successor of Peter to lead the universal Church.

At the same time, it should be noted that, under international law and practice, the Holy See, notwithstanding its spiritual mission, is formally recognized as a *State*, having the same rights and obligations that all other States do,

independently from the existence of the Vatican City State. The Holy See is in fact an Observer *State* at the United Nations General Assembly, a *State* party to the *Vienna Convention on Law of Treaties* and to the *Vienna Convention on International Relations*, which are open only to States, and a Member *State* of the International Atomic Energy Agency and other international, intergovernmental organizations.⁷

It is also important to bear in mind the practical and legal distinction between the Holy See, which is an international legal personality, the Catholic Church, which is a non-territorial spiritual community, and the local dioceses around the world.

While the Pope presides over the College of Bishops in a bond of unity, charity and peace, local bishops have autonomous executive, legislative and judicial powers within their own dioceses and cannot be regarded as agents or representatives of the Holy Father.⁸ Hence, the Holy See does not exercise jurisdiction, as that term is understood in international law, over individual Catholics and institutions located outside the territory of Vatican City State. Each member of the Catholic Church is subject to the laws of the respective State in which he or she lives.⁹

For its part, the Vatican City State, though geographically minuscule, exists to safeguard the absolute and visible independence of the Holy See in world affairs.¹⁰ Thus, this small state ensures the Pope's freedom to speak and act without external pressure or constraints, granting him sovereign liberty to proclaim the Gospel and address the world on behalf of the Church without compromise or obligation to any political authority.

Not surprisingly, diplomats of the Holy See frequently find themselves clarifying the distinction between the Holy See and the Vatican to their counterparts who are not familiar with the Church's structure. Indeed, it is not uncommon, even within the United Nations, for the Holy See occasionally to be misidentified as "the Vatican." It therefore becomes necessary, consistently and politely, to emphasize that the representation is on behalf of the Holy See, not the Vatican City

⁷ See: European Court of Human Rights, *J.C. and Others v. Belgium* - 11625/17 Judgment of 12 October 2021 [Section III], §§ 56-57.

⁸ See: Vatican Council II, Dogmatic Constitution *Lumen Gentium*, nn. 20, 23, 27 promulgated in 57 *AAS* 5 (1965); 1983 Code of Canon Law, cc.375, § 1, 381, § 1, 391, § 1.

⁹ See: Holy See, *Comments of the Holy See on the Concluding Observations of the Committee of the Rights of the Child* (2014), § 3.

¹⁰ See: *Treaty between the Holy See and Italy of 11 February 1929* (Lateran Treaty), *Preamble*.

State, underscoring the unique role and mission of the Holy See in international diplomacy.

In words of Cardinal Jean-Louis Tauran:

“...[T]he *subject* who enters into contact with the leading figures in international life is not the Catholic Church as a community of believers, nor the State of Vatican City – a miniscule support-State that guarantees the spiritual freedom of the Pope with the minimum territory – but *the Holy See*, namely, the Pope and the Roman Curia, universal and spiritual authority, unique center of communion; a sovereign subject of international law, of a religious and moral nature.”¹¹

The Diplomacy of the Holy See

The Holy See maintains diplomatic relations with 184 sovereign States, as well as with the Sovereign Order of Malta and the European Union. It is also a member or an observer state of various UN organs and it maintains permanent observer missions at the major UN headquarters in New York, Geneva, and Vienna, as well as the UN Mission in Nairobi (UN-Habitat), UNESCO in Paris and FAO in Rome. Additionally, the Holy See is represented at various other international organizations through its offices in Geneva, Vienna, Washington, D.C., and Cairo.

Globally, the Holy See operates 184 permanent diplomatic missions. Of these, 73 are non-residential, meaning that a single Apostolic Nuncio, or “Papal Ambassador,” is concurrently accredited to multiple countries but resides in a single physical mission. This explains the discrepancy between the total number of diplomatic relations and the number of physical missions. Sustained by roughly three hundred diplomats globally, this extensive network operates with remarkable efficiency and, despite its modest size numerically, enables the Holy See to engage effectively in international diplomacy.

Of the 184 countries with which the Holy See maintains diplomatic relations, 89 have residential diplomatic missions in Rome, while the rest maintain concurrent representation through Ambassadors based in other European Capitals.

Each year, the ambassadors accredited to the Holy See gather for the traditional exchange of New Year greetings with the Holy Father. This is a significant occasion in the diplomatic calendar. This meeting, however, goes beyond ceremonial protocol; it includes an important address by the Pope, often regarded as his

¹¹ TAURAN, Jean-Louis, “The Holy See’s Presence in International Organizations,” in: *L’Osservatore Romano*, English Edition, 22 May 2002, 8.

vision of the “State of the World.” In this address, the Holy Father provides a comprehensive overview of global developments, highlighting areas of concern, and the challenges confronting the international community. He also identifies key priorities for the coming year, offering guidance and perspective on issues of pressing concern to the Holy See and the Church at large. For example, in his address at the beginning of 2024, Pope Francis identified surrogacy, among other issues, as a key concern, and it is an issue that the Holy See has subsequently addressed within the UN context.¹² This constant reappraisal of priorities reflects the Holy See’s commitment to addressing contemporary moral and ethical challenges on the global stage.

The Holy See as Permanent Observer since 1964

The Holy See’s diplomatic presence at the United Nations reflects its unique mission to engage with the international community on issues of moral and ethical importance. In recognition of its particular role and longstanding commitment to fostering peace, the Holy See was accorded the status of Permanent Observer State at the General Assembly in 1964.

In its early years, when only 50 States signed the Charter, the United Nations established strict requirements for membership, including financial contributions, the ability to provide peacekeeping forces, and unanimous approval from the Security Council. These criteria excluded many nations that lacked the resources or geopolitical standing to meet these obligations. For such States, observer status became a practical alternative, allowing them to participate in the organization’s discussions without the responsibilities of full membership. Over the years the majority of States transitioned from observer status to full membership as and when this became possible. Switzerland was an exception to this, choosing to remain as an observer to preserve its neutrality. Finally, in 2002, Switzerland acceded to full UN membership, leaving the Holy See as the sole Non-member Observer State.

Having examined the possibility of itself seeking full membership, the Holy See determined that maintaining the status of Non-member Observer State better aligned with its specific mission. In 2004, the rights of the Holy See as an

¹² POPE FRANCIS, *Address to Members of the Diplomatic Corps Accredited to the Holy See*, 8 January 2024; See also: Dicastery for Family, Laity and Life, *At What Price? The Urgency of Moving Towards the Abolition of Surrogacy. A Meeting at the UN in Geneva to Reflect on the Exploitation and Commodification of Women and Children*, 18 June 2024.

Observer State were further developed through a General Assembly resolution.¹³ Adopted by acclamation, UNGA resolution 58/314 not only reaffirmed the Holy See's role but also highlighted the respect and support it enjoys within the international community. The resolution reaffirmed the Holy See's right to participate in the work of the General Assembly, to deliver interventions, and to exercise the right of reply, while explicitly excluding voting rights and the ability to submit resolutions independently or nominate candidates for UN positions.

Far from being a limitation, the absence of voting rights has proven to be an advantage for the Holy See. Unlike Member States, whose decisions and actions are often scrutinized through a political lens, the Holy See retains its ability to operate as a moral and ethical voice within the UN. By abstaining from political alliances and avoiding the complexities of voting, it remains free to address the General Assembly and other UN bodies with unambiguous clarity, focusing solely on advancing universal principles rooted in the Gospel and Catholic Social Teaching.

The broader goals of the Holy See's foreign policy are twofold. First, to promote and defend the freedom of the Church all around the world to proclaim the Gospel, in line with the internationally recognized right to freedom of thought, conscience and religion. Second, to promote the Christian vision of humanity and society. Hence, its contributions encompass a broad spectrum of global concerns, including peace, justice, human rights, and sustainable development. The Holy See's unique position allows it to transcend the political divisions that often complicate multilateral negotiations, offering perspectives that prioritize moral considerations over short-term interests.

The value of this approach was particularly evident in 2024, when the Holy See celebrated 60 years of having become an Observer State at the United Nations.¹⁴ This milestone was marked in the context of the High-Level Week of the General Assembly, attended by Cardinal Pietro Parolin, Secretary of State of the Holy See. This included a meeting between the Cardinal and UN Secretary-General António Guterres. The occasion clearly highlighted the enduring relevance of the Holy See's diplomatic mission in the multilateral sphere and its commitment to addressing pressing global challenges with integrity and compassion. Over the decades, the Holy See has demonstrated that its presence at the UN is not merely

¹³ UN General Assembly, *Resolution 58/314: Participation of the Holy See in the Work of the United Nations*, A/RES/58/314, 16 July 2004.

¹⁴ CASTELLANO LUBOV, Deborah, "Cardinal Parolin Commemorates 60th Anniversary of Holy See at UN," in: *Vatican News*, 1 October 2024.

symbolic but a substantive contribution to the pursuit of peace and justice on a global scale.

The Purpose of the Holy See's Presence at the UN

The Holy See's presence at the United Nations is based on its mission to promote a Christian vision of humanity and society. As noted by Pope Benedict XVI, such a vision is in natural harmony with the UN's mission to promote peace, protect fundamental human rights, foster sustainable development, respect international law, and care for the environment. He recognized that this alignment made the Church's involvement at the UN not only appropriate but necessary, as it allows the Holy See to contribute to the best elements of the Organization's work while offering guidance on moral and ethical challenges.¹⁵

To fulfill this mission, the Holy See draws upon the light of the Gospel and 2,000 years of accumulated human experience. Pope Paul VI described the Church as "an expert on humanity,"¹⁶ emphasizing its profound understanding of human dignity and social relationships. This expertise enables the Holy See to approach the complex realities of international relations with a unique perspective, one that seeks to enrich debates on global issues such as armed conflict, social injustice, and ethical dilemmas. Crucially, while the Holy See's contributions are rooted in faith, they are expressed in the language of the UN – an agreed-upon and accessible diplomatic lexicon. This ensures that its message can be understood and appreciated by representatives from diverse cultural and religious backgrounds.

Structure of the Holy See Mission and its Unique Position to Advocate for Child Protection

The practical work of the Holy See at the UN is carried out by a small but dedicated staff. Despite its modest size, the Mission is structured more effectively to address the Organization's multifaceted agenda. It is divided into two primary sections: one focuses on peace and security, including the evolving agenda of the Security Council, disarmament, peacebuilding, conflict zones, and the protection of civilians, particularly of women and children, in armed conflict; the other sector handles human rights and fundamental freedoms, in particular the freedom of religion and belief, as well as development. The work of this sector encompasses

¹⁵ BENEDICT XVI, *Address to the Members of the General Assembly of the United Nations Organization, Apostolic Journey to the United States of America and Visit to the United Nations Headquarters*, New York, 18 April 2008.

¹⁶ PAUL VI, *Address Of The Holy Father Paul VI To The United Nations Organization*, 4 October 1965.

a broad range of fundamental rights issues, including the rights of children, education, criminal justice, and racial discrimination, as well as development, particularly socio-economic advancement, and also issues related to climate. Each section is led by a priest diplomat, supported by a team that includes experts and interns, who contribute to the Mission's day-to-day coverage of the UN's activities.

The Mission's primary engagement at the United Nations includes delivering statements in debates and engaging in negotiations on resolutions. The facilitating resolution of 2004 grants the Holy See the right to speak alongside Member States, albeit after they have spoken. While some may view this as a hindrance, it can also be advantageous, allowing the Holy See, quite literally, to have the final word in discussions. Within the peace and security sector these statements address a wide range of issues, including peacekeeping, disarmament, nuclear weapons, and thematic agendas such as women, youth, and children in armed conflict. In the human rights and development portfolio, the focus is on topics such as the rights of women and children, education, development, criminal justice, and racial discrimination.

During formal debates on different agenda items, representatives deliver pre-prepared speeches approved by their respective Capitals, leaving little room for real dialogue. True interaction occurs during informal consultations, where negotiations take place on draft resolutions. In these settings, texts are circulated among the membership and subject to multiple readings, during which the representatives of Member and Observer States can propose language edits, amendments, and substantive improvements. This is where the most meaningful exchanges happen, directly on the substance of issues, and it is crucial that the best possible outcome be achieved in these consultations. Even though the resolutions of the General Assembly and the Economic and Social Council are not legally binding – only a few resolutions of the Security Council are binding on Member States – they remain vital for shaping consensus and influencing the direction of international policy and action.

Furthermore, though not legally binding on Member States, some resolutions hold significant weight within the UN system, on which they are binding. They give mandates to UN Agencies and Funds and guide their operations and priorities on the ground. While Member States may not be bound to implement them, the agencies themselves are bound to act on the instructions embedded within them. This dynamic creates a ripple effect, where resolutions indirectly influence Member States through the work of these entities. For this reason, Member States

take great care in negotiating resolutions to ensure that their perspectives and priorities are adequately represented.

The Holy See participates actively in this process, leveraging its unique position as an Observer State to advocate for, among other things, the best interests and well-being of children. Its contributions are grounded in Catholic Social Teaching and the Church's extensive global experience in education, healthcare, and provision of social services.

The Catholic Church operates a significant share of the world's educational and healthcare institutions, with estimates suggesting that roughly a quarter of global healthcare is provided by Catholic entities. This firsthand expertise lends credibility and authority to the Holy See's interventions in discussions about these topics. Catholic hospitals, schools, and relief organizations, such as Caritas and Catholic Relief Services (CRS), provide essential services in communities worldwide, from disaster relief to local social support systems. This practical involvement enriches the Holy See's contributions, ensuring its statements are rooted in lived experience rather than abstract theory.

The Work of the General Assembly on Children's Issues

Despite its limited resources, the Holy See is active across most UN fora. A primary example is the engagement in the work of the General Assembly, which is divided into six main committees. The Holy See participates to varying degrees in each of these, contributing to discussions on topics ranging from global disarmament to human rights and development. The fourth (Special Political and Decolonization) and fifth (Administrative and Budgetary) committees will not be addressed here, as they primarily deal with matters which, while important, fall outside the primary focus of this presentation, and are not integral to the Holy See's mission at the United Nations. The Holy See engages more actively and substantively in the other committees, particularly those dealing with peace and security, human rights, and development, and legal questions.

First Committee: Children, Disarmament and International Security

The First Committee of the General Assembly, which focuses on disarmament and global security challenges, is an area where the Holy See plays an active role. The work of the committee complements the role of the Security Council, particularly on issues such as nuclear disarmament, the regulation of arms, and the prevention of illicit trade in weapons. The Holy See Mission in New York monitors

these processes closely, at times offering proposals and language amendments that reflect its commitment to ethical considerations, especially the protection of the most vulnerable, such as children.

By way of illustration, one of the areas of focus is on the control of small arms and light weapons. In negotiations at a conference to review progress on this issue, the Holy See sought to introduce language emphasizing the importance of child protection, specifically addressing the plight of child soldiers.¹⁷ Even though the proposals were crafted drawing upon agreed language from previous resolutions, ensuring compatibility with existing frameworks, the positive response was minimal, and the language was, ultimately, not accepted. This was disheartening for the Holy See Mission, a sentiment shared by some UN officials engaged in demobilizing and reintegrating child soldiers into society. In short, this serves to highlight the ongoing challenge of garnering consensus on such critical issues. Despite the setback, the Holy See remains committed to raising the issue of child protection in similar fora, tailoring its language to be as broadly acceptable as possible. However, competing priorities often overshadow these efforts.

Second Committee: Children and Sustainable Development

The Second Committee (2C) of the United Nations General Assembly addresses economic and financial matters, many of which have a direct impact on the well-being of children. This committee's agenda includes critical issues such as the eradication of poverty, hunger and food security, and sustainable development, – each of which profoundly affects the youngest and most vulnerable members of society. The Holy See's engagement within 2C reflects its commitment to advocating for policies that prioritize children's needs and promote their full development.

Among the key priorities of the Second Committee is poverty eradication, a cornerstone of the 2030 Agenda for Sustainable Development. At the recent Summit of the Future in September 2024, world leaders reaffirmed the imperative to lift individuals and communities out of poverty, recognizing it as foundational to addressing broader global challenges. Poverty disproportionately affects children, depriving them of basic necessities, opportunities, and the chance to reach their

¹⁷ Holy See Mission, *Statement at the Fourth United Nations Conference to Review Progress Made in the Implementation of the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects*, New York, 18–28 June 2024.

full potential.¹⁸ The Holy See actively engaged in the preparatory discussions for the Summit of the Future, and continually engages in discussions on this issue, emphasizing the moral and practical necessity of investing in sustainable solutions to poverty.

Nutrition and food security are closely tied to poverty eradication and are critical focus areas for the Holy See. For instance, the Mission frequently proposes language in resolutions to highlight the importance of maternal and child nutrition, particularly during the first 100 days of life. This period is vital for the health and development of both mother and child. Indeed, ensuring access to nutritious food during this crucial window has long-term benefits, not only for individuals but for communities and nations as a whole.

Within 2C the Holy See also consistently highlights the issue of maternal mortality. While significant progress has been made in reducing maternal deaths over past decades, recent trends indicate stagnation and even regression in some areas. This alarming development underscores the need for renewed attention to healthcare systems, sanitation, and access to essential resources such as clean water and energy. Without these fundamentals, efforts to reduce maternal and child mortality cannot succeed. The Holy See raises these issues persistently, advocating for comprehensive approaches to healthcare that address the root causes of inequity and vulnerability.

Education, a topic of paramount importance for the Holy See, is another central theme in 2C discussions. In line with Sustainable Development Goal 4 (SDG4), which seeks to ensure inclusive and equitable quality education and promote lifelong learning opportunities for all, the Holy See emphasizes that access to education is critical for the holistic development of children, enabling them to contribute meaningfully to their communities and society. Indeed, no child should be excluded from opportunities to learn and grow.

Spanning various issues of 2C, in addition to other committees, is a delicate question of terminology. Within UN discourse there is frequent reference to the “full, equal, and meaningful participation of women, and girls,” be it in decision making, economic activity, etc. While fundamentally supportive of the equality of women and men, the Holy See seeks to give nuance to this language when girls – and indeed boys – are concerned. Full and equal participation is appropriate for

¹⁸ United Nations, *Summit of the Future Outcome Documents: Pact for the Future, Global Digital Compact, and Declaration on Future Generations*, September 2024.

adults but applying the same standard to children risks endorsing their inappropriate involvement in governance or even child labor. Instead, the Holy See advocates for appropriate contributions from children, in line with the Convention on the Rights of the Child,¹⁹ ensuring their voices are heard without compromising their well-being or rights. This distinction is essential in safeguarding children while fostering their development within safe and supportive frameworks.

Third Committee: Social, Humanitarian and Cultural Issues.
Their Impact on Children

The Third Committee (3C) of the United Nations General Assembly focuses on social, humanitarian, and cultural issues, with particular attention to human rights. This committee has played a pivotal role in shaping global norms on rights and freedoms, not least by adopting the Universal Declaration of Human Rights on December 10, 1948, under the guidance of figures such as Eleanor Roosevelt.²⁰ Among its principal agenda items today are the advancement of women, the protection of children, indigenous issues, the rights of migrants and refugees, fundamental freedoms, and social development. For the Holy See, the protection of children stands out as a central priority, warranting dedicated statements and active participation in the negotiation of resolutions under this agenda item.

A recurring 3C resolution addresses the issue of Child, Early, and Forced Marriage (CEFM). This troubling phenomenon raises profound concerns, including the violation of consent, the risk of trafficking, coercion, and abuse. Girls are disproportionately affected by these practices, highlighting the increased risk of exploitation faced by women and girls. In its contributions to these discussions, the Holy See advocates for language that not only condemns forced marriage but also addresses its root causes, such as poverty, certain cultural practices, and the lack of educational opportunities for girls. However, these efforts meet with resistance, hindering substantive progress and underscoring the complexity of addressing entrenched societal norms.

Female genital mutilation (FGM) is another critical issue addressed in 3C. The Holy See supports strong language in resolutions aimed at eliminating this harmful practice, which has devastating physical and psychological consequences for women and girls. The Holy See's engagement, seeking to build consensus in

¹⁹ Cf. *Convention on the Rights of the Child*, Art. 12 (1).

²⁰ See: GLENDON, Mary Ann, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, (New York: Random House Trade Paperbacks, 2001).

negotiations, reflects an unwavering commitment to upholding the dignity and rights of those subjected to this practice.

Human trafficking, particularly of women and girls, is another recurring 3C theme. This issue overlaps with other agenda items, such as CEFM, as trafficking can occur under the guise of marriage. The Holy See also draws attention to the scourge of prostitution, particularly child prostitution, as well as other forms of abuse and exploitation, emphasizing the need to combat these practices through robust international cooperation. As mentioned earlier, Pope Francis has also raised the issue of surrogacy, which is a commodification of children and an exploitation of surrogate mothers. In line with the Pope's guidance, the Holy See Delegation consistently raises awareness of the moral and ethical challenges posed by surrogacy, advocating for policies that uphold human dignity.

Central to the Holy See's advocacy for the protection and well-being of children is the recognition that "the family is the natural and fundamental group unit of society."²¹ The family is the primary community, the foundation of society and the original cell of social life. Furthermore, the family is the primary social safety net, and, in many parts of the world, the only one providing essential support and protection for children. This role is often overlooked or even contested in international discussions, with some preferring to emphasize individual autonomy over familial or communal structures. The Holy See counters this perspective by reaffirming that the family, founded on matrimony, predates the state and forms a vital and indispensable part of the social fabric. By advocating for policies that respect and uphold the family's role, the Holy See seeks to ensure that children receive the care and stability they need to thrive.

A cornerstone of the Holy See's engagement at the UN is the defense of the right to life, from conception to natural death. This fundamental right underpins the entire framework of human rights. Without it, the very edifice of human rights is undermined. Yet, the right to life is frequently disregarded in discussions, particularly in the recurrent debates about sexual and reproductive health and rights, which are widely understood to encompass abortion. The Holy See is unwavering in its advocacy for the right to life. Furthermore, in discussions on this matter, the Holy See also consistently raises the issue of sex-selective abortion. Despite being prohibited in many legal systems, this practice persists on account of societal norms that devalue female lives and is facilitated by technological

²¹ United Nations, *Universal Declaration of Human Rights*, Art. 16 (3).

advancements.²² Hundreds of thousands of girls are lost to this practice annually, a travesty that the Holy See condemns unequivocally.²³ It remains a point of deep concern that few others join in vocally condemning this heinous practice.

The Holy See's advocacy within 3C also extends to the issue of migration, particularly the protection of migrants' rights and the imperative to safeguard their lives. The Holy See draws attention to the tragedies that occur during migration, including loss of life, emphasizing the need for international solidarity and humane responses. On this issue, a key focus is the non-separation of children from their families, a principle reaffirmed in the Global Compact on Migration.²⁴ However, even reaffirming this language, including the most basic and fundamental right, the right to life, has faced significant resistance in recent years. Patience and persistence are required to maintain established positions on these fundamental issues.

A recurring challenge in 3C discussions, and indeed, elsewhere, arises from the terminology that is used: children, adolescents, and youth. These terms are often treated interchangeably, which risks leading to confusion and a lack of precision in resolutions and policies. The Holy See Mission emphasizes the importance of clearly distinguishing between children and adults. For example, the developmental period known as adolescence begins in childhood but transitions into young adulthood at its upper limits. Clarifying these distinctions is essential to ensuring that resolutions accurately reflect the developmental and legal realities of the populations they aim to protect.

The definition of "children" within the context of international discourse often hinges on the Convention on the Rights of the Child (CRC), which unequivocally defines a child as any person under the age of 18. This definition provides a clear benchmark that the Holy See supports and advocates for in its work at the United Nations. However, significant challenges arise when this legal standard is not respected, and policies blur the distinctions between children, adolescents, and young adults. For example, what may be appropriate for a 19-year-old is not necessarily suitable for younger children. This conflation becomes especially

²² United Nations Population Fund, *State of World Population 2020. Defying the practices that harm women and girls and undermine equality*, 30 June 2020: <https://www.unfpa.org/publications/state-world-population-2020> [2 April 2025].

²³ Permanent Observer Mission of the Holy See, *Statement in the 3rd Committee of the General Assembly under Agenda Item 69: Promotion and Protection of the Rights of Children*, 6 October 2023.

²⁴ International Organization for Migration (United Nations), *The Global Compact for Safe, Orderly and Regular Migration*, 19 December 2018.

problematic in debates surrounding education and governance, as well as sensitive, and indeed contentious issues, like sexual and reproductive health, where the age and developmental stage of the child as well as parental involvement are critical factors. The Holy See frequently raises these concerns, emphasizing that language and policies must reflect the specific needs and vulnerabilities of children. This clarity is essential, particularly in safeguarding their well-being and protecting them from inappropriate or premature exposure to topics better suited to older age groups. Such distinctions are not merely semantic but foundational to effective advocacy and policymaking, especially in areas where the stakes are high and the risks of harm significant.

Discussion of education, another theme of great importance for the Holy See, can also be fraught with challenges. While the Holy See strongly supports equitable access to quality education, debate on this issue is frequently dominated by the issue of comprehensive sexuality education. These discussions often circle back to the issue of terminology raised earlier, as what may be deemed appropriate for adolescents or youth is not necessarily suitable for younger children. The Holy See consistently stresses the importance of ensuring that educational content respects the developmental stage and maturity of the audience, advocating for approaches that uphold the dignity and innocence of children. Discussion of human rights extends beyond the bounds of 3C, which leads to overlaps with other UN fora, resulting in the repetition of arguments across multiple platforms. While at times frustrating, because the specific mandates and thematic competences of certain fora are no longer respected, this does underscore the need for consistent and clear advocacy in all arenas. The Holy See's participation in the work of the Third Committee, as everywhere, is guided by a commitment to safeguarding the dignity of all, without exception, ensuring that the language and outcomes of resolutions reflect this fundamental principle.

Sixth Committee: Legal Issues

The Sixth Committee of the United Nations General Assembly focuses on legal matters, providing a platform to address some of the most significant and complex issues of international law. One current focus of its activity is addressing the issue of crimes against humanity, specifically with a view to drafting an international legal instrument. These discussions encompass a range of atrocities, including genocide and the acts of horrific violence that continue to plague various regions of the world. While such crimes affect all populations, children may be particularly affected, suffering not only as victims of violence but also as

unintended witnesses to the erosion of respect for human dignity and international law, which threatens to undermine their future.

The Economic and Social Council (ECOSOC)

In addition to its extensive involvement in the work of the General Assembly, the Holy See also engages with the Economic and Social Council (ECOSOC), which is responsible for advancing the three dimensions of sustainable development: economic, social, and environmental. Through its work in ECOSOC and its subsidiary bodies, the Holy See advocates for integrated approaches to development that prioritize human dignity and the common good.

The Commission on Social Development (CSocD), for instance, emphasizes improving the well-being of individuals within society, enabling them to reach their full potential. This focus moves beyond financial metrics to encompass holistic aspects of human development, such as education and social protection. The Holy See is naturally supportive of a vision that emphasizes the importance of communal solidarity in achieving meaningful progress. Development, as the Holy See often highlights, cannot be reduced to material wealth alone; it requires building communities that acknowledge each individual's inherent dignity and foster his or her potential.

Another key body under ECOSOC is the Commission on Population and Development (CPD), which emerged as a focal point following the Cairo International Conference on Population and Development held in 1994. While originally intended to address sustainable population growth and development, recent discussions within this commission have increasingly shifted toward population control policies. The Holy See frequently raises concerns about this trend, advocating instead for a renewed focus on promoting the well-being and development of populations rather than curtailing their size. Such debates, as one might imagine, often lead to intense and nuanced discussions.

The Commission on the Status of Women (CSW) is another critical platform where the Holy See engages actively. This commission draws significant attention due to its high-profile nature and the intensity of its negotiations. The agreed conclusions, the negotiated outcome document of this Commission, inevitably become a reference point for the UN's work on gender equality and women's rights for the following year. While the Holy See supports initiatives that promote the dignity and equality of women and girls, it consistently advocates for policies that respect the complementarity of the sexes, male and female, and uphold moral principles.

Among its other commissions, ECOSOC also has an Operational Activities for Development segment, which focuses broadly on the UN's role in supporting national priorities and avoiding the imposition of external agendas. The Holy See engages in these discussions, particularly the "Quadrennial Comprehensive Policy Review," seeking to ensure that development efforts respect the sovereignty and cultural contexts of individual nations, aligning with Catholic Social Teaching on subsidiarity.

A United Nations entity that has an outsize impact on children's well-being is UNICEF. Originally established as the United Nations International Children's Emergency Fund, it technically falls under the oversight of ECOSOC. It has evolved over the decades, and is now active in over 190 countries, operating under the guiding principle that every child is entitled to a healthy start in life, access to education, and a safe, secure childhood – foundations that contribute to a productive and prosperous adulthood.

While the Holy See recognizes UNICEF's global efforts, particularly in areas such as education and health, certain aspects of its agenda, particularly its stance on reproductive health and abortion, raise concerns for the Holy See. Additionally, UNICEF has faced criticism for making insufficient progress in reducing maternal and infant mortality, an area where the Holy See has urged more robust action. Despite these differences, an open dialogue exists between the Holy See and UNICEF. For instance, during the COVID-19 pandemic, the Pope's vocal support for vaccination efforts was greatly appreciated by UNICEF.

The Security Council – Children in Armed Conflict

The Holy See's engagement with the Security Council reflects its fundamental commitment to the maintenance of international peace and security. This body holds primary responsibility for identifying and addressing threats to international peace and providing security and political support to countries in conflict. While the Holy See's role is limited, as indeed is that of most States, given the limited membership of the Council, it contributes to discussions by offering moral perspectives on issues such as the protection of civilians, conflict resolution, and post-conflict rebuilding. Children, as some of the most vulnerable victims of conflict, are a constant focus of the Holy See's interventions at the Council.

Unlike the General Assembly, where resolutions carry moral and persuasive authority alone, the decisions of the Security Council are binding on all Member

States, as mandated by the UN Charter.²⁵ This elevated status underscores the Council's responsibility to address the most pressing threats to global stability. Its structure, comprising five permanent members – United States, France, United Kingdom, China, and Russia – and ten elected members serving two-year terms and providing regional representation, reflects the balance of power that shaped the international order after the Second World War. The veto power held by the permanent members adds another layer of complexity to its deliberations, as conflicting positions can lead to competing resolutions and reciprocal vetoes, impeding the ability to respond to serious situations. Indeed, proposals to curtail the veto remain a permanent and contentious issue on the UN agenda.

For the Holy See, the Security Council represents a critical forum to speak out in favor of the protection of those who are vulnerable, including children, within the broader framework of international peace and security. Among the Council's key areas of focus is the "Children and Armed Conflict" (CAAC) agenda, formally established with Resolution 1261 in 1999.²⁶ This landmark resolution signaled a commitment to addressing the devastating impact of armed conflict on children and laid the groundwork for subsequent mechanisms, including the Monitoring and Reporting Mechanism on Grave Violations Against Children in Armed Conflict, introduced six years later.²⁷ Together, these initiatives have provided a structured framework for monitoring, reporting, and responding to violations against children in conflict zones.

The CAAC agenda identifies six grave violations against children: recruitment and use as soldiers, killing and maiming, sexual violence, abduction, attacks on schools and hospitals, and denial of humanitarian access.²⁸ These violations underscore the brutal realities faced by children in war-torn regions. To coordinate the global response, the office of the Special Representative of the Secretary-General for Children and Armed Conflict (SRSG-CAAC) was established, currently led by Ms. Virginia Gamba de Potgieter of Argentina. Her role is vital in raising awareness, gathering information, and presenting comprehensive reports to the General Assembly, the Human Rights Council, and the Security Council itself.

The Holy See closely follows the work of the office of the SRSG-CAAC, recognizing the importance of its delicate mission. Ms. Gamba's small team travels to

²⁵ See: United Nations, *Charter of the United Nations*, Preamble, *supra* note 3, Art. 25.

²⁶ UN Security Council, S/RES/1261, 30 August 1999.

²⁷ UN Security Council, S/RES/1612, 16 July 2005.

²⁸ UN Security Council, S/RES/1261, *supra* note 26, at par. 2.

some of the most dangerous regions of the world, documenting the impact of war on children and advocating for stronger protective measures. Following the publication of the SMSG-CAAC's report in June 2024, the Holy See spoke at the Security Council,²⁹ using the opportunity to highlight the alarming rise in child casualties, the trauma inflicted on young lives, and the prevalence of violations such as child soldier recruitment. The Holy See emphasized the urgent need for unobstructed humanitarian access, the prohibition of indiscriminate weapons, and the full implementation of the CAAC agenda. This advocacy is far from abstract. The Holy See's statement drew directly from the harrowing realities faced by children in conflict zones such as Ukraine, Gaza, the Great Lakes region of Africa, the Democratic Republic of Congo, and South Sudan. These regions exemplify the growing prevalence of violence worldwide. Indeed, it is estimated that, as a percentage of the global population, more people are currently living in zones of violence than at any time since the Second World War.³⁰ Pope Francis has poignantly described this state of affairs as a "Third World War fought piecemeal,"³¹ where countless localized conflicts collectively create a global crisis. The impact of these conflicts is disproportionately borne by children and women, whose vulnerabilities are exacerbated in such settings.

The Convention on the Rights of the Child: A Legal Framework for Child Protection

The Convention on the Rights of the Child (CRC) represents a cornerstone of international efforts to protect children. Over a decade of drafting, the Holy See actively participated in shaping the Convention, ultimately ratifying it almost immediately after its adoption. The Holy See also signed optional protocols addressing trafficking and armed conflict, underscoring its commitment to protecting children in the most vulnerable situations. During the drafting process, the Holy See emphasized certain key principles, including the protection of unborn children, the importance of parental rights and duties for the protection of children and children's rights as well as in directing their moral and religious education, and establishing 18 as the minimum age for military recruitment. The final text of the CRC reflected many of these values, with notable advancements in areas

²⁹ Permanent Observer Mission of the Holy See, *Statement by the Holy See at the UN Security Council Open Debate on Children and Armed Conflict*, 27 June 2024.

³⁰ See: MOHAMMED, Amina J., *Deputy Secretary-General, Statement at the 9250th Meeting of the UN Security Council*, 26 January 2023: <https://press.un.org/en/2023/sc15184.doc.htm> [25 April 2025].

³¹ POPE FRANCIS, *Address to the Members of the Diplomatic Corps accredited to the Holy See*, 8 January 2004.

such as adoption rights, healthcare access, and the recognition of ethnic, religious, and linguistic heritage. The CRC also led to the creation of the Committee on the Rights of the Child, a body of eighteen independent experts tasked with monitoring the implementation of the Convention. While the Holy See respects the Committee's role, it has noted concerns about certain attempts to expand or reinterpret obligations under the CRC.³²

For instance, the Committee recommended the Catholic Church change its definition of the family to ensure that "Canon Law provisions recognize the diversity of family settings and do not discriminate against children on the basis of the type of family they live in."³³ The Committee also urged "the Holy See to review its position on abortion, which places obvious risks on the life and health of pregnant girls, and to amend Canon 1398 [of the 1983 version of Book VI of the Code of Canon Law] relating to abortion with a view to identifying circumstances under which access to abortion services may be permitted."³⁴

Furthermore, according to the Committee, not only should Canon Law be reviewed, but Holy Scripture itself should be read in light of the Convention. In fact, the Holy See was asked to ensure "that an interpretation of the Scriptures as not condoning corporal punishment is reflected in the teaching and [...] incorporated into all theological education and training."³⁵ Obviously, the Holy See finds all these requests extremely troubling. Not only do they not reflect the text of the Convention as negotiated and agreed upon by the States Parties, but they also constitute a violation of the fundamental human right of religious freedom of the Catholic faithful.

Indeed, by demanding changes in the interpretation of Scripture, in matters pertaining to Christian faith and morals, in Canon Law and ecclesial governance, the Committee has intruded into matters protected by the right to freedom of religion.³⁶

³² Cf. Holy See, *Comments of the Holy See to the Observations of the Committee*: https://www.vatican.va/roman_curia/secretariat_state/2014/documents/rc-seg-st-20140205_concluding-observations-rights-child_en.html [2 April 2025].

³³ Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child on the Second Periodic Report of the Holy See*, 25 February 2014, par. 49: <https://digitallibrary.un.org/record/778845?ln=en> [2 April 2025].

³⁴ *Idem*, par. 55.

³⁵ *Idem*, par. 40 (d).

³⁶ Cf. Holy See, *Comments of the Holy See*, par. 18.

Moreover, the Holy See had also to face the lack of understanding on the part of the Committee members of the nature of the Holy See and its relationship with the broader Catholic Church. It is the Holy See who has an international legal personality and is a State Party to the Convention, and not the Catholic Church as a whole. As mentioned before, the Holy See does not have jurisdiction and police powers over a billion Catholics around the world. The Holy See fulfills its international obligations primarily within the territory of the Vatican City State, over which it exercises full territorial sovereignty. Beyond this geographic territory, the Holy See can only disseminate the principles recognized in the Convention to all people of good will, especially to the various local Catholic Churches and institutions operating in different States in accordance with national laws. However, the Holy See has neither the capacity nor the legal obligation to impose the implementation of the Convention on the local Catholic Churches and institutions present on the territory of other States, whose activities comply with national laws. In fact, any attempt on the part of the Holy See to enforce the Convention on the territory of other States would constitute a violation of the principles of non-interference in the internal affairs of States.³⁷

Despite all these concerns, the Holy See continues to hope that the differences in views concerning the application of the Convention might be resolved, so that it might become again a valuable instrument for the promotion of the wellbeing of children.

Conclusions: Areas of Present and Future Concern

As the deadline for the implementation of the 2030 Agenda for Sustainable Development approaches, we find ourselves behind schedule on almost every metric for a variety of reasons – ranging from the lingering effects of the COVID-19 Pandemic to the persistence of conflict. Hidden among the Sustainable Development Goals is target 16.2, with the stated aim to “end abuse, exploitation, trafficking, and all forms of violence and torture against children.” Considering the limited progress that has been made towards achieving this, as well as the continued suffering of so many of the youngest and most vulnerable in many parts of the world, the international community faces an uphill battle.

Existing challenges are compounded by emerging areas of concern. Among these is the issue of the digital safety and online protection of children. Acutely aware of these challenges, the Holy See actively participated in recent years in the

³⁷ *Idem*, par. 15.

negotiations for a new cybercrime convention. These discussions revealed significant points of contention and division, particularly regarding the very definition of cybercrime, and whether the term should cover crimes exclusively committed online or also those facilitated in some way by digital technology.

A particularly troubling aspect of these negotiations, however, was the proposed inclusion of a loophole allowing simulated child pornography. The Holy See, alongside several delegations, strongly opposed this provision, emphasizing the dangers it posed. Advances in technology have made simulated imagery so realistic that it risks feeding harmful appetites, potentially leading to further exploitation and abuse of children. Despite repeated calls for its removal during the final rounds of negotiations, the loophole remained, marking a significant concern for the Holy See and other advocates for child protection.

Maintaining focus and coherence within the United Nations system, with its multitude of fora and overlapping agendas, presents a significant challenge. For the Holy See, the consistency of its positions, rooted in Catholic moral teaching and social doctrine, provides a steady foundation in this complex environment. These teachings, codified since Leo XIII's *Rerum Novarum*, ensure that the Holy See's policies remain constant, even with the change of Papacies and the individual shift of emphasis to reflect current challenges. Pope Francis, as already noted, has drawn attention to issues such as migration and surrogacy, not to mention the approach of an "integral ecology."

The commitment to child protection, in its broadest sense, stands at the heart of the Church's mission and is a cornerstone of the Holy See's engagement at the United Nations. From addressing violence and rights violations against children, be it in conflict zones or any other setting, to advocating for equitable access to education and healthcare, the Holy See brings a distinctive moral and practical perspective to the global stage.

Notwithstanding, and perhaps even because of its status as a Non-member Observer State, the Holy See's contributions carry significant weight, shaped by a unique combination of moral authority, practical expertise, and a steadfast focus on the most vulnerable, particularly children. Its work within the UN highlights the importance of not only addressing immediate challenges but also fostering long-term solutions that uphold the dignity of every human being.

The challenges of this mission are considerable, requiring daily dedication and a strategic focus, but the Holy See's enduring presence at the UN underscores its commitment to being a voice for the voiceless in the pursuit of justice and peace.

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Short Bio

Monsignor Dr. Robert D. Murphy is a diplomat at the Permanent Observer Mission of the Holy See Mission to the United Nations in New York. After his priestly formation and studies in Modern Languages, Law, Philosophy, Theology, and Canon Law, Msgr. Murphy entered the diplomatic service of the Holy See in 2007. His assignments have included positions in Colombia, Argentina, Germany, the Vatican, India, and, since 2022, as Deputy Permanent Observer of the Holy See to the United Nations in New York.

Child Rights Education: Its Role and Prevalence Across the World

Garrett T. Pace

Introduction

The right to education is one of many rights enshrined in the United Nations Convention on the Rights of the Child (CRC).¹ Article 28 of the CRC describes the right of *access* to education, stating that primary education should be “compulsory and available free to all” and that secondary education should be developed and made available to all. Building upon these principles, Article 29 of the CRC describes the *aims* of education, indicating that it should help children develop “abilities to their fullest potential” and instill “respect for human rights and fundamental freedoms.”

A foundational aspect of developing respect for human rights is gaining an understanding of them. The scope of this process is briefly described in Article 42 of the CRC which states that “States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.” Thus, states parties (i.e., nations that have signed and ratified the CRC) are expected to educate both adults and children about the CRC and its content. This is the essence of child rights education.

In this article, I explore child rights education in several ways. First, I explain what child rights education is. Second, I consider the pedagogical methods used to implement child rights education. Third, I describe policies that promote child rights education. Fourth, I assess how common child rights education is across the world. Finally, I discuss the impact child rights education may have on children and communities.

What is Child Rights Education?

The Committee on the Rights of the Child – a United Nations group of 18 experts who monitor countries’ implementation of the CRC – has elaborated on what the CRC says about child rights education. In its first General Comment – a formal

¹ UN General Assembly, *Convention on the Rights of the Child* (1989): <https://www.ohchr.org/Documents/ProfessionalInterest/crc.pdf> [7 December 2024].

means by which the Committee provides more detail about the CRC's meaning and requirements – the Committee writes:

“Article 29 (1) can also be seen as a foundation stone for the various programmes of human rights education called for by the World Conference on Human Rights, held in Vienna in 1993, and promoted by international agencies. Nevertheless, the rights of the child have not always been given the prominence they require in the context of such activities. Human rights education should provide information on the content of human rights treaties. But children should also learn about human rights by seeing human rights standards implemented in practice, whether at home, in school, or within the community. Human rights education should be a comprehensive, life-long process and start with the reflection of human rights values in the daily life and experiences of children.”²

Thus, child rights education includes: (a) teaching children about the CRC and other human rights instruments and treaties that apply to children (e.g., the Universal Declaration of Human Rights) and (b) ensuring that children receive an education in an environment where they experience their rights. Paragraph 2 of General Comment No. 1 further emphasizes the second aspect of child rights education, stating that education should “be child-centred, child-friendly and empowering, and [Article 29 of the CRC] highlights the need for educational processes to be based upon the very principles it enunciates.”³

A third aspect of child rights education is: (c) teaching adults about the CRC and children's rights (Article 42). These adults include caregivers and professionals who work with or for children (e.g., teachers, policymakers), though the intention is to make all adults aware of children's rights.⁴ Next, I discuss the pedagogical implementation of child rights education.

How is Child Rights Education Implemented Pedagogically?

Children are taught about the CRC in various ways. Some schools offer a dedicated human rights subject which focuses specifically on child rights or human

² UN Committee on the Rights of the Child, *General Comment No. 1: The Aims of Education*, 2001, Article 15:
<https://www.refworld.org/docid/4538834d2.html> [7 December 2024].

³ UN Committee on the Rights of the Child, *General Comment No. 1: The Aims of Education*, Article 2.

⁴ UNICEF, *Child Rights Education Toolkit: Rooting Child Rights in Early Childhood Education, Primary and Secondary Schools*, 2014:
<https://www.unicef.org/media/77146/file/UNICEF-CRE-Toolkit-with-appendices.pdf>
[08 April 2025].

rights more broadly, while in others, child rights may be integrated into the social studies curriculum.⁵ Schools that implement child rights education often have posters in classrooms and hallways that describe the articles of the CRC in words and illustrations.⁶ Children may also be given age-appropriate reading materials describing their rights, sometimes by the country's Ombudsperson – an independent government official responsible for protecting children and educating them about their rights.⁷ Additionally, children may watch videos with cartoons or puppets explaining their rights. Or they may create and display artwork that depicts their rights.⁸ CRC principles can also be integrated into the general curriculum. For example, during language instruction, children's rights violations depicted in a book may be identified and discussed by the teacher and students.⁹

More generally, within a school setting, child rights education includes an acknowledgement and respect for human rights by teachers, administrators, and students alike.¹⁰ This contributes to a school environment that is safe and inclusive. For example, when there is a conflict between a teacher and a student, the student has the right to have their perspective heard and taken seriously.¹¹ Additionally, students should not be subjected to violent discipline, such as corporal punishment. Child rights education extends beyond the classroom. Adults can learn about children's rights through information campaigns, mandatory or

⁵ JEROME, Lee, et al., *Teaching and Learning about Child Rights: A Study of Implementation in 26 Countries*, Queen's University & UNICEF, 2015:

<https://www.unicef.org/media/63086/file/UNICEF-Teaching-and-learning-about-child-rights.pdf> [08 April 2025].

⁶ Children's and Young People's Commissioner Scotland, *UNCRC Symbols Poster*, 2016: <https://web.archive.org/web/20200522093855/https://www.cypcs.org.uk/resources/uncrc-symbols-poster/> [7 December 2024].

⁷ Sweden Ombudsperson, Mina rättigheter, 2021: <https://minaratigheter.se/> [7 December 2024]; GRUDE FLEKKØY, Målfrid, *A Voice for Children: Speaking Out as Their Ombudsman*, (London: J. Kingsley Publishers, 1991); GRAN, Brian / ALIBERTI, Dawn, The Office of the Children's Ombudsperson: Children's Rights and Social-Policy Innovation, in: *International Journal of the Sociology of Law* 31.2 (2003) 89–106; UN Committee on the Rights of the Child, *General Comment No. 2. The Role of Independent National Human Rights Institutions in the Promotion and Protection of the Rights of the Child*, 2002, CRC/GC/2002/2.

⁸ UNICEF Malaysia, *Hello Children - Learn about Children's Rights!*, dir. 2014: <https://www.youtube.com/watch?v=dGzbmf8NEto> [7 December 2024].

⁹ COVELL, Katherine, *Children's Rights and Rights-Respecting Schools*, Presented at the Distinguished Visitor Lecture Series, 2012: <https://www.youtube.com/watch?v=jOHsTKlqZcw> [7 December 2024].

¹⁰ UNICEF, *Child Rights Education Toolkit: Rooting Child Rights in Early Childhood Education, Primary and Secondary Schools*, 2014.

¹¹ COVELL, Katherine, *Children's Rights and Rights-Respecting Schools*, 2012.

optional professional development trainings, and events at their children's schools.¹² Caregivers and family members of children may be exposed to children's learning materials about the CRC and learn about it through conversations with their children. Indeed, there are many ways in which adults and children can learn about the CRC, and a number of policies promote this process.

Policies that Promote Child Rights Education

Policies that promote child rights education within a country can be implemented at the international, national, community, school, and classroom levels.

At the international level, the Committee on the Rights of the Child encourages countries to comply with the CRC's requirement to educate children and adults about the CRC. An example of this is the Committee's General Comment No. 1, as previously mentioned. In line with this encouragement, the Committee monitors countries' compliance through regular reports countries are expected to complete regarding their progress in implementing the CRC. These reports are usually due two years after a country ratifies the CRC, and every five years thereafter.¹³ The Committee responds to these country reports with recommendations for how a country can better adhere to the CRC.¹⁴ These recommendations are found in the Committee's "concluding observations." For example, in 2001, in its concluding observations, the Committee encouraged Lesotho to provide child rights training to all relevant professionals who work with children and "raise awareness of the Convention among children, parents, the media and the public at large, including in rural areas."¹⁵ Such recommendations are commonly found in concluding observations for countries.¹⁶

¹² DESAI, Murli / GOEL, Sheetal, *Child Rights Education for Inclusion and Protection: Primary Prevention, Rights-Based Direct Practice with Children*, (Singapore: Springer, 2018).

¹³ Committee on the Rights of the Child, *Treaty-Specific Guidelines Regarding the Form and Content of Periodic Reports to Be Submitted by States Parties under Article 44, Paragraph 1 (b), of the Convention on the Rights of the Child*, 2015, CRC/C/58/Rev.3.

¹⁴ Committee on the Rights of the Child, *Treaty-Specific Guidelines Regarding the Form and Content of Periodic Reports to Be Submitted by States Parties under Article 44, Paragraph 1 (b), of the Convention on the Rights of the Child*, 2015.

¹⁵ Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child, Lesotho*, 2001, CRC/C/15/Add.147.

¹⁶ Committee on the Rights of the Child, *Concluding Observations on the Fifth Periodic Report of Uzbekistan*, 2022, CRC/C/UZB/CO/5; Committee on the Rights of the Child, *Concluding Observations on the Combined Third and Fourth Periodic Report of Canada, Adopted by the Committee at Its Sixty-First Session* (17 September – 5 October 2012), 2012, CRC/C/CAN/CO/3-4.

Also at the international level, the United Nations Children's Fund (UNICEF) provides resources and training for a rights-based education. UNICEF has published an extensive manual describing how to implement child rights education in primary and secondary education.¹⁷ UNICEF also produces educational materials, such as the posters and videos mentioned previously, which facilitate the dissemination of information about the CRC.

National-level policies include having a child rights education curriculum, government monitoring of its implementation, and educator training. In 2015, researchers at Queensland University in Australia and UNICEF surveyed child rights experts in 26 high-income countries, asking about child rights education policies in their respective countries.¹⁸ The experts who participated in the survey primarily included higher education professionals, UNICEF staff, ombudspersons, and professionals in non-governmental organizations (NGOs). Of the 26 countries, 11 required a curriculum that teaches all children about child rights, five had this requirement in some parts of the country or to some extent, and 10 had no requirement (or there was disagreement among respondents about whether there was a requirement). That said, only five countries had any degree of government monitoring of the quality of child rights education. Only three countries included training about child rights education and child rights more generally as part of their initial training.

As noted above, some countries have formal curricula or programs of child rights education at the national level. Curricula and programs can also be found at the community and school levels. An early program was called *Rights, Respect, and Responsibility* (RRR). This program was developed and piloted in several schools in Canada¹⁹ and was more broadly implemented in parts of Hampshire County, England, in 2004.²⁰ RRR emphasized to children that not only do they have rights, but in order for rights to be enjoyed, everyone has a responsibility to respect each other's rights. Similarly, in 2006, partially inspired by RRR, a UNICEF UK initiative was launched in the United Kingdom called the *Rights Respecting School*

¹⁷ UNICEF, *Child Rights Education Toolkit: Rooting Child Rights in Early Childhood Education, Primary and Secondary Schools*, 2014.

¹⁸ JEROME, Lee, et al., *Teaching and Learning about Child Rights: A Study of Implementation in 26 Countries*.

¹⁹ COVELL, Katherine / HOWE, R. Brian, The Impact of Children's Rights Education: A Canadian Study, in: *International Journal of Children's Rights* 7.2 (1999) 171–184; COVELL, Katherine / HOWE, R. Brian, Moral Education through the 3 Rs: Rights, Respect and Responsibility, in: *Journal of Moral Education* 30.1 (2001) 29–41.

²⁰ COVELL, Katherine / HOWE, R. Brian / K. MCNEIL, Justin, Implementing Children's Human Rights Education in Schools, in: *Improving Schools* 13.2 (2010) 117–132.

award program (RRS).²¹ RRS recognizes schools which demonstrate that child rights education has been incorporated into their operations. RRS has three strands of outcomes: learning *about* rights (understanding the CRC), learning *through* rights (the school operates in a way that respects rights), and learning *for* rights (empowering students to be global citizens who are involved in the community). There are three stages of the RRS award: bronze, silver, and gold. These stages correspond to the progress the school has made in the program. Achieving bronze is a 3- to 6-month process that requires school administrators to notify the entire school community that the school is working on the RRS award, to become familiar with the CRC, create a student-led steering group responsible for the rights-respecting work in the school, and create an action plan for silver.²² To attain silver, schools must implement their plan, hold regular steering group meetings, ensure children's rights are discussed during staff meetings, measure progress, and have UNICEF staff conduct a virtual site visit.²³ After three years of being a silver school, to attain gold, schools continue and expand their plans to integrate children's rights and provide evidence that most people in the school are learning *about*, *through*, and *for* rights.²⁴

In addition to the more formal policies mentioned above, ever since the CRC was adopted, there have been schools and teachers who have chosen to incorporate the CRC into their curriculum and teaching philosophy.²⁵ This continues today. Yet, it remains unclear how commonly this occurs, or in which contexts.

Global Estimates

How common is child rights education? In 26 high-income countries virtually all child rights education experts – who participated in the UNICEF survey

²¹ UNICEF UK, *The United Nations Convention on the Rights of the Child - UNICEF UK. The Rights Respecting School Award*, 2021:

<https://www.unicef.org.uk/rights-respecting-schools/the-rrsa/introducing-the-crc/> [2 December 2024].

²² UNICEF UK, *What Is Bronze: Rights Committed? - Rights Respecting Schools Award*, 2021: <https://web.archive.org/web/20230516150409/https://www.unicef.org.uk/rights-respecting-schools/getting-started/bronze/what-is-bronze/> [7 May 2024].

²³ UNICEF UK, *What Is Silver: Rights Aware? Rights Respecting Schools Award*, 2021: <https://web.archive.org/web/20230516152517/https://www.unicef.org.uk/rights-respecting-schools/getting-started/silver/what-is-silver/> [7 May 2024].

²⁴ UNICEF UK, *What Is Gold: Rights Respecting? Rights Respecting Schools Award*, 2021: <https://web.archive.org/web/20230516150409/https://www.unicef.org.uk/rights-respecting-schools/getting-started/gold/what-is-gold/> [7 May 2024].

²⁵ DECOENE, John / DE COCK, Rudy, *The Children's Rights Project in the Primary School 'De Vrijdagmarkt' in Bruges*, in: VERHELLEN, Eugene, *Monitoring Children's Rights*, (Leiden: Martinus Nijhoff Publishers, 1996) 627–636.

previously mentioned – believed that children are taught about their rights in school in their country at least to a “limited extent,” though only 16 percent of respondents thought this occurred to a “significant extent” or “fully.”²⁶

Another indicator is the number of schools that participate in the RRS program. The United Kingdom has the most Rights Respecting Schools with over 5,000 schools receiving the award. Over 1.7 million children—approximately 20 percent of the total child population—attend these schools.²⁷ At least 15 countries have participated in the RRS program including Germany, Slovakia, Spain, and Canada, but none have scaled the program to the level found in the United Kingdom.²⁸ For example, Germany had 200 Rights Respecting Schools in 2021.²⁹

Survey data of children provide another indicator of how common child rights education is. To estimate the prevalence of child rights education more broadly, I use data from the International Survey of Children’s Well-Being (ISCWeB).³⁰ These data are also referred to as “Children’s Worlds.” ISCWeB is a cross-sectional school-based survey focused on children around the ages of 8, 10, and 12. The survey includes closed-ended questions assessing children’s self-reported well-being and their perspectives about their family, school, and neighborhood. The survey varies by age group (e.g., many of the questions for age 8 have fewer response categories than for ages 10 and 12). The survey is administered in the children’s own language on paper or a computer. The data I use are primarily from wave 3 of the survey which was collected between 2016 and 2019. Several countries (and age groups) did not have data for wave 3; I use data from wave 2 to fill in the gaps whenever possible. Wave 2 data were collected between 2013

²⁶ JEROME, Lee, et al., *Teaching and Learning about Child Rights: A Study of Implementation in 26 Countries*, 2015.

²⁷ Office for National Statistics UK, *Schools, Pupils and Their Characteristics. Academic Year 2021/22*, 9 June 2022:

<https://explore-education-statistics.service.gov.uk/find-statistics/school-pupils-and-their-characteristics/2021-22> [7 December 2024].

²⁸ UNICEF, *Child Rights Education Toolkit: Rooting Child Rights in Early Childhood Education, Primary and Secondary Schools*, 2014; HAUPTMEIER, Carsten, *Children’s Rights in School Life*, 2021: <https://www.deutschland.de/en/topic/knowledge/unicef-rights-respecting-schools-almost-200-schools-in-germany> [7 December 2024].

²⁹ HAUPTMEIER, Carsten, *Children’s Rights in School Life*, 2021.

³⁰ GROSS-MANOS, Daphna / KOSHER, Hanita / BEN-ARIEH, Asher, Research with Children: Lessons Learned from the International Survey of Children’s Wellbeing, in: *Child Indicators Research* 14 (2021) 2097–2118; REES, Gwyther / SAVAHL, Shazly / LEE, Bong Joo / CASAS, Ferran, eds., *Children’s Views on Their Lives and Well-Being in 35 Countries: A Report on the Children’s Worlds Project, 2016-19*, Jerusalem, Israel: Children’s Worlds Project (ISCWeB): <https://iscweb.org/wp-content/uploads/2020/07/Childrens-Worlds-Comparative-Report-2020.pdf>, 99 [08 April 2025].

and 2014. Both waves used random sampling techniques, though the specific sampling strategies varied from country to country. Some countries sampled schools across the country while others focused on specific regions or cities.

Table 1 shows that the children in the sample live in 37 countries. Four of these countries are in Eastern, Northern, or Southern Africa, three in South America, three in Eastern Asia, three in Southeastern Asia, four in Southern Asia, two in Western Asia, four in Eastern Europe, five in Northern Europe, six in Southern Europe, and four in Western Europe. When a country's survey was not administered nationwide, it includes a parenthetical detail in Table 1 about where the survey was administered. For example, Vietnam's survey is limited to the northern region. All countries have data for the age 10 group, four countries do not have data for age 12, and 10 countries do not have data for age 8. When a country does not have data for a given age group, it is due to the country either not administering surveys to that age group or not asking the survey question about child rights education to that age group.

In wave 3, children in each age group responded to the question, "I know about the UN Convention on the Rights of the Child." The response options were *No*, *Not sure*, and *Yes*. In wave 2, the question was "I know about the children's rights convention" and the response options were the same as in wave 3. For each country and age group, I used ISCWeB survey weights to calculate the weighted proportion of children who responded "yes" to the survey question. The denominator for this calculation included all children in that country age group that responded to the question with any of the three response options.

Table 1 shows the estimated proportion of children who know about the UN Convention on the Rights of the Child. For example, in Ethiopia, 25% of children in the age 8 group (i.e., .25 in the table) indicated that they know about the CRC. This is similar to the mean of 26% across all countries in the age 8 group. Among the age 10 and 12 groups, the means are 32% and 37%, respectively. The median among the age 8, 10, and 12 groups is 21%, 30%, and 33%, respectively. Among the age 8 and 10 groups, Hungary has the lowest prevalence (age 8: 9%; age 10: 10%) while Colombia (Antioquia) has the highest prevalence (age 8: 64%; age 10: 65%). Among the age 12 group, South Korea has the lowest prevalence (14%) while Romania has the highest (69%).

Table 1. Children who know about the CRC, by country and age group.³¹

Region	Country	Age 8	Age 10	Age 12
Eastern Africa	Ethiopia	.25	.29	.31
Northern Africa	Algeria (Western)	.26	.24	.34
Southern Africa	Namibia (Khomas)		.27	.24
	South Africa	.13	.36	.35
South America	Brazil (Cities)	.25	.23	.21
	Chile (Cities)	.31	.31	.31
	Colombia (Antioquia)	.64	.65	.59
Eastern Asia	Hong Kong SAR		.14	.20
	South Korea	.10	.13	.14
	Taiwan	.24	.25	.30
Southeastern Asia	Malaysia	.17	.11	
	Vietnam (North)	.19	.23	.62
Southern Asia	Bangladesh (Cities)	.33	.24	.33
	India (Kolkata)	.17	.17	.21
	Nepal	.19	.37	.36
	Sri Lanka (Central)		.43	.32
Western Asia	Israel	.29	.45	.44
	Turkey (Istanbul)	.46	.52	.52
Eastern Europe	Hungary	.09	.10	.16
	Poland	.44	.43	.43
	Romania	.27	.62	.69
	Russia (Tyumen)		.30	.45
Northern Europe	Estonia	.17	.19	.34
	Finland	.21	.38	.45
	Norway	.60	.53	.65
	UK (England)	.21	.30	.31
	UK (Wales)		.42	.24
Southern Europe	Albania		.43	.53
	Croatia	.40	.53	.56
	Greece (Epirus)		.51	
	Italy (Liguria)	.20	.38	.27
	Malta	.20	.24	.29
	Spain (Catalonia)		.38	.41
Western Europe	Belgium (Flemish)	.17	.25	.31
	France (Cities)		.22	
	Germany (3 states)	.20	.19	.24
	Switzerland		.18	

³¹ Notes: Data are from the International Survey of Children's Well-Being. Estimates are from wave 3 (2016-2019) except the following which are based on wave 2 (2013-2014): Ethiopia, South Africa (age 8), Colombia, Nepal, Turkey, Norway (age 8), and the UK (England) (age 8 and 12). Data were collected nationwide unless noted otherwise in parentheses.

Taken together, these estimates suggest that child rights education is present in all these countries. Many children in schools across the world say they know about the CRC. As children age, they are more likely to say they know about the CRC. This suggests that children are learning about CRC-based child rights.

This learning is most likely to occur in schools, though learning is also possible through family members (e.g., caregivers, older siblings) and information campaigns. Regardless of how child rights education occurs, it is important to consider what happens as a result.

Impact of Child Rights Education

What happens when child rights education occurs? According to the “theory of change” for RRS,³² we might expect the following short-term outcomes:

1. Children will know their rights.
2. Children will know whom to talk to when their rights are violated.
3. Relationships in schools will be based on dignity and inclusion.
4. Children will take ownership of their learning and get involved in their school community.
5. Teachers will enjoy teaching and feel valued.

Then, we may see the following medium-term outcomes:

1. Families and communities will know about children’s rights.
2. Children will enjoy all their rights at school.
3. There will be less bullying in schools.
4. Children will enjoy learning in school.
5. Children will know their views will be taken seriously.

Finally, in the long-term:

1. Children will develop a long-term commitment to social justice.
2. Children will feel valued and heard.
3. Children will feel safe at school.
4. Children will become active citizens in local and global communities.

Evaluation research has found evidence for these outcomes in Rights Respecting Schools in the United Kingdom. In 2019, tens of thousands of students and thousands of school staff participated in a UNICEF UK survey.³³ Recall that the RRS

³² UNICEF UK, *RRSA Impact: The Evidence, 2019*, 2020: https://www.unicef.org.uk/rights-respecting-schools/wp-content/uploads/sites/4/2020/11/RRSA_Evidence-Report_Nov-2020v2.pdf [9 December 2024].

³³ UNICEF UK, *RRSA Impact: The Evidence, 2019*: https://www.unicef.org.uk/rights-respecting-schools/wp-content/uploads/sites/4/2020/11/RRSA_Evidence-Report_Nov-2020v2.pdf [08 April 2025].

award has three levels: bronze, silver, and gold. Below, I will share statistics for several survey questions for each RRS award level. First, I will give examples of short-term outcomes. Students reported whether they agreed that they learn about their rights – 55%, 82%, and 86% of students in bronze, silver, and gold schools agreed. Teachers reported whether students treated them with respect – 44%, 54%, and 61% agreed in bronze, silver, and gold schools. Now, I will give examples of medium- and long-term outcomes. Students reported whether their teachers listen to them – 71%, 78%, and 82% agreed in bronze, silver, and gold schools. Students also reported whether they believe they can do things to help people globally – 54%, 68%, and 75% agreed in bronze, silver, and gold schools. Taken together, UNICEF UK's evaluation research suggests that as schools progress from bronze, to silver, then gold, more students and school staff tend to report better outcomes related to children's rights.

An earlier iteration of child rights education – RRR – also found positive outcomes. Evaluation research of 18 schools in Hampshire, England between 2002 and 2012 found that students in RRR schools could describe their rights, students were more cooperative and inclusive, teachers had better morale, academic achievement was higher, there were fewer behavioral challenges, and the achievement gap between students of higher and lower socioeconomic categories was reduced.³⁴

On a smaller scale, a quasi-experiment was conducted in Nova Scotia, Canada. Seven classrooms implemented child rights education during a school year. Compared to children in comparison classrooms without child rights education, children in classrooms with child rights education had a more accurate and broader understanding of their rights, and some teachers reported that child rights education helped improve the classroom environment.³⁵ Another study of four classrooms of 9- to 10-year-old students in the Midwestern United States found that children increased their knowledge of their rights, teachers were accepting of child rights education, and there were modest gains in children's socioemotional skills.³⁶ These two smaller-scale examples demonstrate that a widespread

³⁴ COVELL, Katherine / HOWE, R Brian / MCGILLIVRAY, Anne, Implementing Children's Education Rights in Schools, in: RUCK, Martin D. / PETERSON-BADALI, Michele / FREEMAN, Michael *Handbook of Children's Rights: Global and Multidisciplinary Perspectives*, (New York / London: Routledge, 2017) 296–311.

³⁵ COVELL / HOWE, *The Impact of Children's Rights Education*.

³⁶ NASER, Shereen C., et al., Using Child Rights Education to Infuse a Social Justice Framework into Universal Programming, in: *School Psychology International* 41.1 (2020) 13–36.

program is not essential for child rights education to occur and that positive outcomes can also be achieved at the classroom level.

The outcomes described above are quite positive. However, might there also be negative outcomes? To my knowledge, there have been no systematic reviews of the literature on the outcomes of CRC-based child rights education. An implication of this is that the full scope of actual outcomes may not be quite as uniformly positive as what I have described above.

In my view, the most probable outcome that could be considered negative is unresolved conflict. Parents may have concerns about parents' rights and have cultural or religious objections to the concept of children's rights, potentially leading to lingering tensions between the parent and the school or even prompting the parent to withdraw their child from school. Similarly, educators may strongly disagree about the role and implementation of children's rights in the school. In the case of RRS, what happens when a school makes progress in the RRS program but then exits it?

Exiting the program may be difficult for some students and teachers who valued the program. Moreover, as child rights education is scaled up, the concept of child rights may become politicized, and the policy pendulum may swing away from children's rights. However, pendulums swing. Social progress is often nonlinear.

Conclusion

Although there are many strategies for countries to adhere to the CRC and advance children's rights, I argue that child rights education is among the most important. By transcending borders, child rights education offers a universal framework to ensure that children everywhere are aware of and empowered by their rights. Teaching children and adults about children's rights has the potential to positively impact children's environments and experiences both in and out of school. As people learn *about*, *through*, and *for* rights, we might see children's rights respected more fully, leading to a positive societal shift that prioritizes children in policymaking. Moreover, as teachers, administrators, policymakers, community leaders, caregivers, and children become aware of the CRC and the potential of child rights education, we may see its implementation become more widespread. In an increasingly connected world, where children's rights are often overlooked, the implementation of child rights education is a key step towards a more just and equitable society.

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Short Bio

Dr. Garrett Pace is Assistant Professor of Social Work at the University of Nevada, Las Vegas, USA. He holds a PhD in Social Work and Sociology from the University of Michigan. Prior to his doctoral work he was a researcher for three years at the Center for Research on Child Wellbeing at Princeton University.

Young People's Involvement in Public Decision Making: The Unfolding of the Convention on the Rights of the Child in Germany

Robert Böttner

Introduction

The age of a person plays a role in a number of aspects of the legal order. First and foremost is the legal age, at which a person can conclude contracts and take other legally relevant decisions without the consent of a legal guardian and to which the legal order ties several other consequences. In social and labor law, specific social benefits are connected to age, be it benefits for childcare or pensions for retired persons. Some public or voluntary positions require a minimum age or are available only until a certain age is reached.

As regards the most important relationship between the state (the legal order) and the people, i.e. the establishment of public authority that can take binding decisions for and against the people, age plays a crucial role: *mutatis mutandis*, only people of a certain age are allowed to take part in this act of creating public authority, while age generally does not have a significance for being bound by the decisions taken. In other words: children cannot decide on who will decide for them.

This chapter aims to provide some insight in this constitutional relationship. In a second step, it explores how young people can participate in public decisions by means other than formal elections – and what obligations there are for the state to provide them. While some of the thoughts may apply to the law in general, they are for the most parts bound to the decisions of a specific legal order. Quite naturally, therefore, the chapter will deal with the legal situation in Germany at the federal level and at the level of the State of Thuringia.

Young People and Constitutional Law

As the primary legal authority in the hierarchy of norms, the constitution is of specific significance for the protection of rights of and the conferral of obligations onto the individual. In a first step, therefore, the chapter will explore the status of young people in constitutional law. This includes their position as holder of constitutional rights and their involvement in the establishment of public authority.

Constitutional Rights of Young People

When we read through the German constitution (the *Basic Law*), it would be in vain to look for explicit children's rights. In fact, children are hardly ever mentioned in the text of the Basic Law. Interestingly, age is not among the criteria explicitly cited in Article 3(3) of the Basic Law that outlaws certain types of discrimination.¹ This does not mean, however, that age discrimination is *per se* allowed. As "all persons shall be equal before the law" (Article 3(1) of the Basic Law), any differentiation requires a specific justification.

Children are addressed in Article 6 of the Basic Law. The provision's scope is marriage and family in a wider sense. A 'family' in this context is the 'actual', not necessarily biological community between children and parents, who bear responsibility for them; the decisive factor is the actual bond between the family members, which the state must respect as independent and self-responsible.² In this context, and as section 5 of Article 6 underlines, children shall enjoy the same position in society regardless of whether they are born within or outside marriage. As sections 2 and 3 of Article 6 further stipulate, the care and upbringing of children is the natural right of parents and a duty primarily incumbent upon them. The state shall watch over them in the performance of this duty and may separate children from their families against the will of their parents or guardians only if the parents or guardians fail in their duties or the children are otherwise in danger of serious neglect. It should be mentioned, however, that this right of parents to care and upbringing their children is not an end in itself or a form of representation. Instead, parents are supposed to act as a sort of trustee in the interests of the(ir) children until they are able to do it by themselves.³

¹ Some *Länder* constitutions make a specific reference to age, but for the most parts they are concerned with elderly people and the specific protection that they are accorded by the community. Article 21 of the European Charter of Fundamental Rights (EUCFR) explicitly mentions 'age' as among the characteristics on which discrimination is prohibited, but the Charter applies only to the EU itself and to the Member States insofar as they are implementing Union law (Article 51(1) EUCFR). As regards the Council of Europe's Convention on Human Rights (ECHR), 'age' can be understood as 'other status' that prohibits a different treatment, but Article 14 ECHR is conditional upon "the enjoyment of the rights and freedoms set forth in this Convention."

² BADURA, Peter, in: DÜRIG, Günter / HERZOG, Roman / SCHOLZ, Rupert, eds., *Grundgesetz-Kommentar*, Artikel 6 GG (supplement 86, January 2019) (Munich: C.H. Beck, 2019) para. 60.

³ See in this respect already the German Federal Constitutional Court, Cases 1 BvL 20/63, 31/66 and 5/67, Order of 29 July 1968 = BVerfGE 24, p. 119 ff. at p. 144.

At the subnational level, in the constitutions of some of the *Länder*, we can find other constitutional provisions that specifically deal with children. The constitutional quality of these provisions varies: some of them are declaratory in nature and merely restate what is awarded already by other provisions or by the federal constitution while others produce new rights and obligations as regards young people. For example, Article 19(1) of the Constitution of the State of Thuringia provides that “children and adolescents have the right to healthy mental, physical and psychological development. They must be protected from physical and emotional neglect, maltreatment, abuse and violence.” At first sight, this provision seems to encompass individual children's rights. At closer inspection, however, it reflects the parents' right to raise the child (and the limitations to this right or trusteeship) and the state's (subsidiary) guardianship that is contained already in Article 6 of the federal constitution.⁴ Periodically and especially with regard to the federal level, there are discussions on the inclusion of explicit children's rights in the constitution, i.e. specific constitutional provisions that award subjective rights specifically to legal minors. In 2021 the Federal Government introduced a bill to amend the Basic Law and explicitly include children's rights in the constitution. According to the proposal, Article 6(2) of the Basic Law would be amended by the following text:

“The constitutional rights of children, including their right to develop into independent personalities, must be respected and protected. The best interests of the child must be given due consideration. The constitutional right of children to be heard must be respected. The primary responsibility of the parents remains unaffected.”⁵

In 2022, the UN Committee on the Rights of the Child recommended that Germany strengthen its efforts to incorporate children's rights explicitly into the Basic Law.⁶ Irrespective of the feasibility to adopt these amendments (which need a two-thirds majority in both chambers of Parliament), they would not change the material scope of the existing rights for children.⁷ This is due to the fact that children themselves, as the Federal Constitutional Court explained as early as 1968,

⁴ See: MARTIN-GEHL, Iris, Artikel 19 [Entwicklung von Kindern und Jugendlichen], in: BRENNER, Michael et al., eds., *Verfassung des Freistaats Thüringen*, (Baden-Baden: Nomos, 2023) para. 8 ff.

⁵ See: VON LANDENBERG-ROBERG, Michael, Der Regierungsentwurf zur Verankerung von Kinderrechten im Grundgesetz, in: *Neue Zeitschrift für Familienrecht* (2021) 145 ff.

⁶ Committee on the Rights of the Child, *Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Germany*, CRC/C/DEU/CO/5-6, 13 October 2022, para. 6.

⁷ See: VON LANDENBERG-ROBERG, Michael, *Der Regierungsentwurf zur Verankerung von Kinderrechten im Grundgesetz*, 145 ff. at 146 f.

are holders of the Basic Law's fundamental rights. As the Court noted, the state's guardianship over the upbringing of children "arises first and foremost from the fact that the child, as a holder of fundamental rights, is entitled to the protection of the state. The child is a being with its own human dignity and its own right to develop its personality within the meaning of Article 1(1) and Article 2(1) of the Basic Law."⁸

The Right to Vote and the Establishment of Public Authority

Fundamental rights in their different functions characterize the relationship between the individual and an existing public authority. In most cases, they award a *status negativus* to the individual in the sense that it protects the individual's sphere of freedom from interference by public authorities. This includes rights and freedoms such as free speech, the freedom to assemble or the right to life and physical integrity. In contrast, some fundamental rights, in the sense of a *status positivus*, convey a right to active action by public authorities in favor of the individual. This includes the right to physical integrity which the state must protect against interference by third parties. This group of rights also includes the state's guardianship as regards the upbringing of children, where the state must protect children from negative interference by the parents.

In a third dimension, fundamental rights can contain a participatory element as a *status activus*. In a democratic state, decision-making takes place from the bottom up and is therefore dependent on the participation of citizens. A participatory status is thus contained in the electoral rights of Article 38(1) sentence 1 of the Basic Law. According to this provision, members of the German *Bundestag* (the German Federal Parliament) shall be elected in general, direct, free, equal and secret elections. This provision must be seen in conjunction with Article 20(2) of the Basic Law, providing that all state authority is derived from the people. It shall be exercised by the people through elections and other votes and through specific legislative, executive and judicial bodies. In fact, the Federal Constitutional Court derives from these provisions a 'right to democracy.'⁹

⁸ German Federal Constitutional Court, Cases 1 BvL 20/63, 31/66 and 5/67, Order of 29 July 1968 = BVerfGE 24, 119 ff. at 144.

⁹ German Federal Constitutional Court, Cases 2 BvE 2/08 et al., Judgment of 30 June 2009 = BVerfGE 123, p. 267 ff at para. 177; Cases 2 BvR 2728 through 2731/13, 2 BvE 13/13, Judgment of 21 June 2016 = BVerfGE 142, p. 123 ff. at para. 185; Cases 2 BvR 859, 1651 and 2006/15, 980/16, Judgment of 5 May 2020 = BVerfGE 154, p. 17 ff. at para. 158.

At first glance, one could assume that this 'right to democracy' in the sense of participation in the establishment of public authority and as a form of democratic self-government is based on the idea of a congruence between the holders of democratic political rights and those who are permanently subject to a particular state rule. However, the Federal Constitutional Court has concluded from several provisions of the Basic Law that there is an indissoluble junction between the eligibility to vote (and thus participate in the establishment of public authority) and German citizenship.¹⁰ Foreigners living in Germany, even though they may be subject to rules enacted by German public authority, do not have a say in how this public authority is constituted, regardless of how long they have lived in the country and how well they may be integrated into the (political) community.¹¹

This is, however, not the only restriction to the eligibility to vote. Article 38(2) of the Basic Law provides that "any person who has attained the age of eighteen shall be entitled to vote; any person who has attained the age of majority may be elected." It is important to note that the voting restriction in the Basic Law applies directly only for the elections to the *Bundestag*; the German *Länder* may enact a different voting age for elections at the subnational and local level, and the federal legislation may enact different age limit for the European election. While it is true that we cannot discuss the constitutionality of the restriction in Article 38(2) of the Basic Law since it is provided for in the constitution at federal level itself,¹² it is still worthwhile discussing its rationale and reasonableness, as these constitutional considerations are binding upon the national parliament and the subnational legislators when setting the age level for other than federal elections. What is more, there may also be reasonable arguments for a lowering of the voting age at federal level by means of a constitutional amendment.¹³

¹⁰ See, *inter alia*: Federal Constitutional Court, Case 2 BvF 2, 6/89, Judgment of 31 October 1990 = BVerfGE 83, 37 ff at 52, and 2 BvF 3/89, Judgment of 31 October 1990 = BVerfGE 83, p. 60 ff. at 71. It was only by the constitutional amendment to Article 28 of the Basic Law in the context of the Treaty of Maastricht, which introduced the concept of "Union citizenship," that other EU citizens are entitled to vote and stand as a candidate in local (county and municipal) elections in Germany.

¹¹ A related question that cannot be discussed here is the eligibility to vote for German citizens living abroad. See on this issue the Federal Constitutional Court, Case 2 BvC 1/11, Order of 4 July 2012 = BVerfGE 132, p. 39 ff.

¹² See: Federal Constitutional Court, Case 1 BvL 106/53, Judgment of 18 December 1953 = BVerfGE 3, 225 ff. at 231 f.; Case 2 BvC 4/04, Order of 15 January 2009 = BVerfGE 122, 304 ff. at 309.

¹³ See on this in general: SCHMAHL, Stefanie, Absenkung des aktiven Wahlalters auf 16 Jahre bei Wahlen zum Deutschen Bundestag: Verfassungs- und völkerrechtliche Überlegungen, in: *Deutsches Verwaltungsblatt* (2022) 958 ff.

Age restrictions for general elections must be seen in the light of the generality of elections, one of the electoral principles laid down in Article 38(1) of the Basic Law. Leaving the aspect of citizenship aside, this principle requires that, in principle, every person should be able to exercise his or her right to vote in as equal a manner as possible and thus aims at the far-reaching and comprehensive inclusion of all those subject to the rule of public power.¹⁴ Restrictions to the generality of the election, including any restriction with regard to a minimum age to be eligible to vote, can be justified only by other principles and objectives of constitutional value. One of the reasons for this is that democratic elections are intended to safeguard the character of the election as a process of integration in the formation of the political will of the people. This includes safeguarding the so-called communication function of the election.¹⁵ This is based on the assumption that participation in elections requires specific cognitive abilities in order to understand how the political system is constituted and how a vote affects public power.¹⁶ Under these circumstances, it is justified to set an age limit, at which the legislator can rightfully assume that the voter has reached a certain level of maturity and thus fulfils the cognitive requirements for voting.¹⁷ Certainly, this may include general considerations as regards the development of children, but must also be seen in the specific context of the type of election.

The legislator has a wide margin of appreciation.¹⁸ Thus, as long as it bases its decisions on reasonable assumptions, one cannot infer from constitutional law a specific minimum voting age. In other words, there may be good reasons to call for a lowering of the voting age, but constitutional law does not grant a subjective right to a *specific* (lower) ceiling. In recent years, apart from the federal elections (where the voting age is prescribed in the constitution), the minimum voting age has been lowered to 16 for the European elections, for some state elections (for example in Bremen, Brandenburg, Hamburg, Schleswig-Holstein, and Baden-

¹⁴ See: KLEIN, Hans / SCHWARZ, Kyrill-Alexander, Artikel 38 GG, in: DÜRIG, Günter / HERZOG, Roman / SCHOLZ, Rupert, eds., *Grundgesetz-Kommentar* (94th supplement, January 2021) (Munich: C.H. Beck, 2021) para. 89 f.

¹⁵ See, *inter alia*: Federal Constitutional Court, Case 2 BvC 1, 2/11, Order of 4 July 2012 = BVerfGE 132, 39 ff. at para. 32.

¹⁶ Opposing this view MOIR, Joshua / DRAUTZBURG, Noah, Das Wahlmindestalter in Art. 38 Abs. 2 GG und die Rechtsprechung des Bundesverfassungsgerichts zum Wahlrechtsausschluss, in: *Recht und Politik* (2021) 198 ff. at 204.

¹⁷ See on this: European Court of Human Rights, *Application No. 74025/01, Hirst v. the United Kingdom*, Judgment of 6 October 2005, para. 62.

¹⁸ See: MOIR / DRAUTZBURG, *Das Wahlmindestalter in Art. 38 Abs. 2 GG und die Rechtsprechung des Bundesverfassungsgerichts zum Wahlrechtsausschluss*, at 205 f.

Württemberg) and for local elections (for example in Lower-Saxony, Baden-Württemberg, Brandenburg, Bremen, Mecklenburg-Vorpommern, North Rhine-Westphalia, Saxony-Anhalt, Schleswig-Holstein und Thuringia).

To sum up: The principle of democracy in essence requires a congruence between the people deciding on the establishment of public power and those affected by the decisions taken by public authority. Any restriction to the generality of voters must be justified, which, in the case of age limits, can be based on the assumed maturity necessary to effectively participate in the electoral procedure and the constitution of public power. However, this leaves a certain portion of the population (those below the age-related threshold) unrepresented by that established public power. The next sections will inquire how this gap might be compensated.

Participation of Young People in Administrative Decision-Making

Broadly speaking, public authority can manifest itself in general decisions in the form of laws, in judicial decisions pronounced by courts and in individual decisions in the form of the execution of the law by the administration. The latter is, in its establishment, bound to the elected officials through a chain of legitimation. When the administration takes individual decisions, this legitimation can be backed by participation of the subjects affected by the decision. This is an expression of the constitutional right to be heard enshrined in Article 103(1) of the Basic Law which ties back to the rule of law principle.¹⁹

Most of the administrative decisions are taken at the local level. In recent years, more and more federal states have included provisions in their municipal codes that – in varying degrees of detail – require the interests of young people to be taken into account in municipal affairs. The following section aims to give an overview over the legal situation in Thuringia against the background of the Federal Republic's obligation under international law in particular.

International and European Law Background

The main point of reference at international level for the implementation of child and youth participation at municipal level is the 1989 UN Convention on the Rights of the Child (CRC),²⁰ which the Federal Republic of Germany ratified in

¹⁹ See on this: REMMERT, Barbara, Artikel 103 Abs. 1 GG, in: DÜRIG, Günter / HERZOG, Roman / SCHOLZ, Rupert, eds., *Grundgesetz-Kommentar* (78th Supplement, September 2016) (Munich: C.H. Beck, 2016) para. 20 f.

²⁰ UNTS, vol. 1577, S. 3.

1992. Article 3(1) and Article 12 CRC are of central importance for youth participation under local law. Although the provisions are primarily focused on the rights of the child as an individual, their collective content also applies to groups of young people.²¹

Article 3(3) CRC reads as follows:

“In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.”

Article 12 CRC reads as follows:

- “1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
2. For this purpose the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.”

Formally, the CRC has the status of ordinary federal law (Article 59(2) of the Basic Law). However, in view of the Basic Law’s openness towards international law expressed in the preamble and Articles 23, 24, 25 and 59(2), other statutory law must be interpreted in accordance with these international treaty obligations wherever possible.²² According to Article 20(3) of the Basic Law, this applies not only to the parliamentary legislature, but also and in particular to the executive in the application of ordinary law. Article 3 CRC on the best interests of the child is directly applicable and sufficiently concretized so that it must be observed by all authorities *ex officio*, not only upon request. The same applies to Article 12 CRC.²³

²¹ UN Committee on the Rights of the Child, *General Comment No. 12* (2009), *The Right of the Child to be Heard*, 20 July 2009, CRC/C/GC/12, para. 9 f.; and *General Comment No. 14* (2013) *on the Right of the Child to Have his or her Best Interests Taken as a Primary Consideration* (Art. 3, para. 1), 29 May 2013, CRC/C/GC/14, para. 91. See also: SCHMAHL, Stefanie, *United Nations Convention on the Rights of the Child*, (Baden-Baden: Nomos, 2021) Art. 12 para. 4.

²² See, *inter alia*: Federal Constitutional Court, *Case 2 BvR 1481/04*, Judgment of 14 October 2004 = BVerfGE 111, p. 307 at para. 33.

²³ WAPLER, Friederike, *Umsetzung und Anwendung der Kinderrechtskonvention in Deutschland. Rechtsgutachten im Auftrag des BMFSFJ*, 2017:

Various documents have also been adopted at European level - within the Council of Europe and within the European Union - that deal with the exercise of children's rights and the participation of young people. The European Convention on Human Rights (ECHR) does not explicitly recognise children's rights,²⁴ but the rights and freedoms of the ECHR (such as freedom of expression under Article 10 and freedom of assembly and association under Article 11) also apply to young people.²⁵ The Council of Europe Convention on the Exercise of Children's Rights of 25 January 1996 should also be mentioned,²⁶ which entered in to force for Germany in August 2002. In its Children's Rights Strategy (2022-2027), the Council of Europe also identifies the participation of children ('Giving a voice to every child') as one of the priority areas.²⁷

At the level of EU law, regard must be had also to Article 24 of the Charter of Fundamental Rights (EUCFR):

“1. Children shall have the right to such protection and care as is necessary for their well-being. They may express their views freely. Such views shall be taken into consideration on matters which concern them in accordance with their age and maturity.

2. In all actions relating to children, whether taken by public authorities or private institutions, the child's best interests must be a primary consideration.”

Article 24 EUCFR is explicitly based on the CRC.²⁸ The inclusion of children's and young people's rights in EU law was thus less determined by the constitutional systems of the Member States than by recent developments in international

<https://www.bmfsfj.de/resource/blob/120474/a14378149aa3a881242c5b1a6a2aa941/2017-gutachten-umsetzung-kinderrechtskonvention-data.pdf>, 54 [7 April 2025].

²⁴ BÖHRINGER, Ayşe-Martina, § 45 Schutz des Kindes und Jugendlicher, in: HESSELHAUS, F. Sebastian M. / NOWAK, Carsten, eds., *Handbuch der Europäischen Grundrechte*, (Munich: C.H. Beck, 2020) para. 7.

²⁵ ZAIANE, Linda / SCHILLER, Sebastian, Beteiligung in Gerichts- und Verwaltungserfahren, in: RICHTER, Ingo / KRAPPMANN, Lothar / WAPLER, Friederike, eds., *Kinderrechte. Handbuch des deutschen und internationalen Kinder- und Jugendrechts*, (Baden-Baden: Nomos, 2020) 473 ff. at 487.

²⁶ European Treaty Series No. 160. However, so far only 20 members of the Council of Europe have ratified this convention.

²⁷ Available at: <https://rm.coe.int/council-of-europe-strategy-for-the-rights-of-the-child-2022-2027-child/1680a5ef27> [4 December 2024].

²⁸ Explanations relating to the Charter of Fundamental Rights, in: *Official Journal of the European Union* - OJ C 303 (2007) 17-35 at 25; HÖLSCHIEDT, Sven, Artikel 24, in MEYER, Jürgen / HÖLSCHIEDT, Sven, eds., *Charta der Grundrechte der Europäischen Union*, (Baden-Baden: Nomos, 2019) para. 2 ff.

law, which in turn have an impact on the national constitutional areas.²⁹ According to Article 51(1) EUCFR, the Charter only applies to the institutions, bodies, offices and agencies of the Union on the one hand and to the Member States on the other, insofar as they implement Union law. However, this provision is now interpreted very broadly and the points of contact between national and Union law are so extensive that, in conjunction with the CRC, the EU Charter must ultimately also be used as a reference point.³⁰ It is also worth noting that Article 24 EUCFR also obliges private organizations to adopt measures concerning children.³¹

Finally, EU initiatives should also be considered, such as the EU Youth Strategy³² and the youth dialogue for young people between the ages of 16 and 30 set up to implement it. Under the heading ‘Participation’, the European Commission calls on the Member States to promote dialogue and participatory mechanisms at all levels of decision-making, e.g. through youth councils, and to support young people in preparing for participation, for example through youth work, youth parliaments or simulations. In March 2021, the Commission then adopted a new EU Strategy on the Rights of the Child.³³

One of the six thematic areas deals with the participation of children in political and democratic life (“an EU that empowers children to be active citizens and members of democratic societies”).³⁴ It not only sets out the goal of developing accessible, digitally inclusive and child-friendly versions and formats of key EU instruments and conducting child-specific consultations for relevant future initiatives, but also calls on the Member States to provide and expand adequate resources for new and existing mechanisms for child participation at local, regional and national level.

Overall, youth participation at municipal level is therefore removed from the purely national context. Numerous hard and soft legal regulations at international and European level have an impact on the local and regional level. The

²⁹ BÖHRINGER, § 45 Schutz des Kindes und Jugendlicher, para. 12; see in detail: HÖLSCHIEDT, Artikel 24, para. 6 ff.

³⁰ See on this also: the European Court of Justice, Case C-356/11, O. and S., ECLI:EU:C:2012:776, para. 76.

³¹ BÖHRINGER, § 45 Schutz des Kindes und Jugendlicher, para. 21; more differentiated JARASS, Hans D., *Charta der Grundrechte der Europäischen Union*, (Munich: C.H. Beck, 2021) Artikel 24, para. 7.

³² COM(2018) 269 final of 22 May 2018.

³³ COM(2021) 142 final of 24 March 2021.

³⁴ COM(2021) 142 final, 4 f.

requirements that legislation places on the local level in Germany must be seen in the light of these obligations and commitments.

Participation in Decisions at Local Level

The Thuringian legislature has transposed the requirements of Article 12 CRC in the area of municipal law through the new Section 26a of the Municipal Code (ThürKO) under the heading “Participation of children and young people” in connection with the municipal bodies as part of the municipalities’ constitution.

The provision states:

“The municipalities should involve children and young people in an appropriate manner in planning and projects that affect their interests. The municipality shall develop suitable procedures for this purpose. The municipality’s main statute regulates the details.”³⁵

The explanatory memorandum to the government’s draft bill merely states that the amendment would anchor the co-determination of children and young people in the municipalities in the Thuringian municipal code and thus improve the opportunities for young people to participate in local life.³⁶

The provision’s wording, however, does not provide much clarity on what the local level is expected to do in the implementation of young people’s participation.

“Children and Young People” as the Holders of the Right to Participation

Section 26a ThürKO refers to children and young people whose interests are to be taken into account. This seemingly clear element requires some explanation with regard to a possible delimitation of this group of people as regards age. The wording “children and young people” insinuates that we are talking about people who have not yet reached the age of 18, i.e. legal minors. In fact, the CRC (which does not use the term “young people” or “adolescents”) defines children in Article 1 as people who have not yet reached the age of eighteen (unless the age of majority is reached earlier under the law applicable to the child).

³⁵ Translation by Robert Böttner.

³⁶ Thuringian State Parliament, ed., *Documents of the State Legislature*, No. 7/1188, 17, https://beteiligentransparenzdokumentation.thueringer-landtag.de/fileadmin/Redaktion/Beteiligentransparenzdokumentation/Dokumente/7-1188/1_Drs/DRS701188.pdf [7 April 2025].

Article 12 CRC links participation rights to the child's capability of "forming his or her own views." This insinuates that children of all ages can participate in public decisions; it does require a general level of insight to be involved at all. It is not necessary for the child to have comprehensive knowledge of all aspects of the matter concerning him or her, but that he or she has sufficient knowledge to be able to form his or her own opinion on the matter in an appropriate manner.³⁷ The central aspect is a child's maturity, which in terms of developmental psychology is by no means linked to a specific biological age.³⁸ Thus, there is no minimum age for participation, but instead the form of participation must correspond to the child's maturity and insight. In this respect, younger children may also be involved in decision-making processes if the matter is of particular concern to these young people. However, in case of formalized participation structures, it may be a practical necessity to set a minimum age limit, again based on a reasonable typology by the legislator. For example, a lower age limit of twelve years for formalized participation structures (such as a student or youth parliament) could be appropriate but does not rule out the possibility of involving younger children in certain processes in other ways.

Even with regard to an upper age limit, the age of majority appears to be appropriate only at first glance. While the legal age of majority is a firmly defined point in time, it can be associated with very different realities in young people's lives:

While some start an apprenticeship and enter the labor market at fifteen, others graduate from high school at nineteen and still live in their parents' home until then. Consequently, the Thuringian Youth Ministry's strategy "Participation of young people" speaks of "young people," but without specifying a concrete upper limit (which is therefore not 18 years of age).

Moreover, at a closer look, there is no clear dichotomy in the (German) legal order between minors and adults.³⁹ Consequently, the participation of young people in municipal matters should not be linked to the age of majority. An interest that justifies participation can continue to exist until young people are in their early twenties. It is therefore advisable to set a maximum age of at least 21 years for formalized participation structures.

³⁷ *General Comment No. 12* (2009) Nr. 21. See also: WAPLER, Friederike, Rechtliche Handlungsfähigkeit und Verantwortlichkeit, in: RICHTER / KRAPPMANN / WAPLER, eds., *Kinderrechte*, 101 ff. at 102.

³⁸ See: *General Comment No. 12* (2009) para. 29 f.

³⁹ See in more detail: BÖTTNER, Robert, Rechtliche Determinanten für Kinder- und Jugendbeteiligung auf kommunaler Ebene, in: *Kommunaljurist* (2022) 361 ff. at 364.

From a legal point of view, it is perfectly justifiable to raise the limit and include young people even up to the age of 27.

“Planning and Projects that Affect Their Interests”
as a Reason to Get Involved

Section 26a ThürKO requires that young people must be involved when it comes to plans and projects that affect their interests. Article 3(1) CRC formulates it in equally general terms, calling for participation “in all actions concerning children [or young people].” It does not stipulate that participation should take place only when the interests of young people are *directly* affected. Rather, the participation of young people is to be understood as a cross-cutting issue, as the interests and concerns of young people will be directly or indirectly affected in some way in almost every municipal project.⁴⁰

However, if one were to understand this broadly in the sense that young people must be involved in *any* public decision, this would result in a special position for this social group, which would be very difficult to justify in the democratic process. It has therefore rightly been suggested that the *degree* of participation should be determined by the degree of involvement or affectedness.⁴¹ This can ultimately be relevant for the establishment of formalized participation structures if, for example, one wishes to define in advance the areas in which the participation of young people is mandatory or only optional. For example, the decision on a new playground or skating park directly affects young people and requires a higher level of involvement whereas municipal decisions of a commercial nature would, at best, only indirectly affect young people (as a social group) and thus require only a low level of participation, if any at all.

This has an effect also on possible forms of participation. The Municipal Code stipulates that “appropriate participation” must take place in “suitable procedures.” Likewise, Article 12(1) CRC also speaks of “due weight” to be given to children’s views “in accordance with the age and maturity of the child.” The provisions do not envisage a specific concept of participation. At the same time, there cannot be a *one size fits all* model for all municipalities. Instead, specific concepts must take into account the needs of the specific municipality and its young people

⁴⁰ *General Comment No. 14* (2013) para. 19 f.: “The legal duty applies to all decisions and actions that directly or indirectly affect children. [...] Therefore, ‘concerning’ must be understood in a very broad sense.”

⁴¹ *Ibid.*: “Where a decision will have a major impact on a child or children, a greater level of protection and detailed procedures to consider their best interests is appropriate.”

with a view to the size of the community, its rurality and infrastructure and so on. Moreover, with a view to section 2 of Article 12 CRC, the direct involvement and participation of children should be given priority over indirect involvement, i.e. input should be given by them, not in their stead.

The level and intensity of participation has a broad variety. As a low-threshold offer, there could be regular consultations in the form of specific *office hours* of the administration for young people, where young people can present their concerns and opinions on an *ad hoc* basis. Suitable internal municipal procedures would then have to be put in place to ensure that the input provided there finds its way into the (decision-making) municipal council. Workshops or discussion groups with young people can be organized for specific projects. In a more structured way, municipalities could appoint and employ “youth representatives” or “youth commissioners” as honorary or full-time employees. They could evaluate proposals on their appropriateness for the situation of young people and perform a sort of “youth check.”⁴² Nevertheless, this instrument still has the fundamental flaw that adults make decisions in the children’s stead and not *with* them. Special (pedagogical) training for the commissioners could compensate for this flaw to some extent.⁴³ The *crown jewel* of youth participation, as it is sometimes called, is certainly the establishment of a *youth parliament*, as already exists in a number of (larger) municipalities. This is an elected assembly consisting of young people, who participate in an advisory capacity in municipal decision-making. The age limits described above are particularly relevant for elections to this body. To ensure comprehensive participation, such a body should be granted the right to information and the right to express an opinion as well as the right to speak and submit motions to the municipal council.

It should be clear, however, that these instruments are, in themselves, only individual elements that, when selected and combined, bring about the appropriate participation of young people in the respective community. However, the organization alone is not enough. Established structures may need to be equipped with the necessary human and financial resources in order to actually carry out their work. The establishment of structures that are ultimately not operational is not *suitable* within the meaning of Section 26a ThürKO. Attention should also be paid to organizational issues, including online participation options (such as

⁴² See on youth checks in general: <https://www.jugend-check.de/> [7 April 2025].

⁴³ See on this also: *General Comment No. 12* (2009) para. 35; ZAIANE, Linda / SCHILLER, Sebastian, Beteiligung in Gerichts- und Verwaltungserfahren, in: RICHTER / KRAPPMANN / WAPLER, eds., *Kinderrechte*, 473 ff. at 481.

online surveys and voting, digital meetings of youth committees, etc.), to ensure that the participation structures can fulfil their tasks effectively. This includes networking with existing youth organizations. Participation structures created by the municipality should not claim sole representation or lead to the suppression of civil society involvement where existing structures can be integrated into participation procedures.

Balancing Young People's Interests with Other Interest Groups

Based on the general rule of law principle of the involvement of people affected by a decision, children are but one interest group among many. On the other hand, Article 3 section 1 CRC states that 'in all actions concerning children, whether taken by public or private social welfare institutions, courts, administrative authorities or legislative bodies, the best interests of the child shall be a *primary* consideration.'⁴⁴ We should take a look on how this apparent contradiction may be reconciled. 'Primary' means more than equal, but not as much as decisive.⁴⁵ This status, which goes beyond mere equality, is justified by the dependence and often associated 'voicelessness' of young people.⁴⁶ However, there are also a large number of other distinct social groups with specific interests in public (local) matters.

The most prominent examples are probably people with disabilities within the meaning of Article 1 of the UN Convention on the Rights of Persons with Disabilities, older people within the meaning of the Thuringian Senior Citizens' Participation Act or people who are not German citizens within the meaning of Article 116 of the Basic Law. Moreover, cross-cutting issues such as environmental protection and nature conservation or mobility can also be group-specific interests that must also be included in the decision-making process at municipal level.

In this respect, the apparent *priority* required by the CRC is relativized. Instead, the interests of young people and public interests must be weighed up in each individual case. The 'primacy' of the interests of young people is ultimately aimed at ensuring that their structurally weaker position is compensated for in the

⁴⁴ Emphasis added.

⁴⁵ *General Comment No. 14* (2013) para. 37 f.; WAPLER, Friederike, *Kinderrechte und Kindeswohl*, (Tübingen: Mohr Siebeck, 2015) 245 ff.

⁴⁶ *General Comment No. 14* (2013) para. 37.

sense that their interests are articulated and realized on an equal footing.⁴⁷ The rights and interests of other social groups therefore play an equally important role, provided that this actually ensures that the interests of young people are given equal priority. The best interests of the child must therefore not be the sole guiding principle of every municipal decision. Instead, primacy must be given to young people's interests in order for them to be on a level-playing field with other legitimate interests and depending on the affectedness of the decision taken.

Concluding Remarks

The status of young people in the legal order is ambivalent. They are entitled to fundamental rights protection just as adults are. And just like adults they are bound by the decisions taken by the public authority. On the other hand, however, they are not able to participate in the establishment of that public power until they reach a specific age. This gap could be regarded as inevitable democratic necessity, but luckily the developments at international and national level have tried to bridge this divide at least to some extent. The involvement of young people in specific public decision-making is a surrogate for their lack of general electoral participation. At the same time, youth participation can be an experimental field for the stronger and more efficient involvement of legitimate interests in all sorts of public decisions. This would add another element to the democratic fabric of society and would enable greater involvement beyond the mere act of voting for parliament every four or five years. This could lead to a stronger identification with and legitimation for specific decisions. Nevertheless, one should always keep in mind that public decision-making should aim at balancing all these legitimate interests without arbitrarily giving primacy to one over the other.

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⁴⁷ See: WAPLER, Friederike, *Umsetzung und Anwendung der Kinderrechtskonvention in Deutschland*, 16.

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Short Bio

Dr. Robert Böttner, LL.M., is a former research assistant at the Faculty for Law, Economics and Social Sciences at the University of Erfurt and is currently senior researcher at the University of Halle-Wittenberg, Germany, at the chair for Public Law, European Law and International Economic Law.

Pandemic Lessons for Developing a Culture of Safeguarding Children and Youth

Nuala P. Kenny

Introduction

The COVID-19 pandemic has brought an unprecedented global experience of vulnerability for rich and poor; those with access to advanced health technologies; and those without basic health care.

This new and constantly mutating virus brought uncertainty regarding spread and duration. We were overwhelmed by nightly news images of individuals and communities devastated by illness and death. We were dependent on powerful doctors, scientists, and governments and were bombarded with conflicting opinions of how serious this pandemic really was. This brought a paralyzing loss of trust.

As a pediatrician I am particularly concerned about the specific, life-long consequences of pandemic-related trauma and neglect for children and youth, particularly those who live in poor and marginalized communities. The global vulnerability should enable an empathic response to their unique vulnerability and total dependence for care and protection from harm and a commitment to learn from critically important lessons pandemic provides.

In critical systems thinking, the COVID-19 pandemic is increasingly understood as a syndemic, when a number of factors, including the physical, emotional, social, economic, political, religious, and spiritual, combine to cause greater impact than the infection itself.¹ This perspective deepens our understanding of the factors which combined to suppress protection and increase risk and harm.

In part one of this reflection, we review some key research on the impacts of the COVID-19 pandemic on the physical, mental, and emotional health of children and youth. We assess their unique vulnerability with insights from developmental traumatology on the biological and psychological effects of overwhelming stress.

In part two, we identify the elements of safeguarding practical. We propose some key ethical, political, and cultural challenges to developing a new global culture

¹ HORTON, Richard, Offline: COVID-19 Is Not a Pandemic, in: *The Lancet* 396, no. 10255 (2020) 874.

of safeguarding children and youth and conclude with a prognosis for this new culture.

Pandemic Impact on the Health of Children and Youth

Pandemic exacerbated longstanding health issues including the lack of accessible, affordable health care for all, inadequate mental health and protective services and a global neglect of public health. It revealed systemic issues of poverty, racism, sexism, exploitation, and social marginalization with higher mortality and morbidity rates among the most socially disadvantaged.² Public health advisories to “shelter in place” at home assumed one had a home and that it was a place of safety. The isolation of children with stressed parents confined to small spaces and limited access to parks, play, and school increased the physical and sexual abuse of children. Research has confirmed the profound harms of abuse of children during this crucial time in human development.³ It also reveals a persistent failure to address underlying systemic and cultural factors.⁴

Health care providers and policy makers around the world are particularly concerned with the long-term health consequences of pandemic during this crucial age-sensitive period of children’s physical growth and mental, moral, and social development. In the early stages, serious illness was rare for healthy children but as the infection spread and became more virulent, children were increasingly affected.

The overwhelming of health systems resulted in reductions to crucially important child health services, including preventive care, vaccinations, pre-natal care, and mental health.⁵ The International Society for Social Pediatrics and Child Health Working Group declared the pandemic a child rights crisis.⁶

² MCGOWAN, Victoria J. / BAMBRA, Clare, COVID-19 Mortality and Deprivation: Pandemic, Syndemic, and Endemic Health Inequalities, in: *The Lancet Public Health*, (2022).

³ FINKELHOR David / BROWNE Angela, The Traumatic Impact of Child Sexual Abuse: A Conceptualization, in: *American Journal of Orthopsychiatry* 55, no. 4 (1985) 530–541.

⁴ MACINTOSH, Heather B. / MÉNARD A. Dana, Where Are We Now? A Consolidation of the Research on Long-Term Impact of Child Sexual Abuse, in: *Journal of Child Sexual Abuse* 30.3 (2021) 253–257.

⁵ LAVENTHAL, Naomi T. et al., Professional Obligations of Clinicians and Institutions in Pediatric Care Settings during a Public Health Crisis: A Review, in: *Pediatrics* 6.54 (2020) 10–15.

⁶ KYEREMATENG, Rosina / OGUDA, Lulu / ASEMOTA, Osamagbe, COVID-19 Pandemic: Health Inequities in Children and Youth, in: *Archives of Disease in Childhood* 107.3 (2022) 297–299.

There are more than 100 million homeless families displaced by war, poverty, persecution, and natural disasters more than at any time in human history. They live in unsafe conditions and lack basic necessities. Families living in poverty experienced unemployment, forced work in high risk and minimally paid work, isolation, especially for single-parent women.⁷ There was stress for parents in balancing protecting children from risk with promoting normal activity. Some were “over-vigilant” conveying constant anxiety; others were neglectful and abusive.

Pandemic has increased dramatically the number of orphans. From March 1, 2020, to April 30, 2021, it is estimated that over 100,000 children experienced the COVID-19 deaths of a parent or grandparent caregiver with severe consequences, including grief, chronic physical, and mental health problems, poverty, neglect, abuse, and institutionalization.⁸

Biological and Psychological Effects of Trauma

All these factors colluded to create pandemic as traumatic for children and youth. Trauma studies have recognized that the past is not in the past; the body remembers, and the wounds do not simply go away.⁹ Research into the consequences of adverse and traumatic childhood experiences especially for young children, sexual abused and of long duration tragically confirms this insight.¹⁰

There has been an explosion of research in developmental traumatology which is the systematic investigation of the psychiatric and psychobiological effects of overwhelming stress and trauma on the growing and developing child.¹¹ A summary of key research reveals trauma’s activation the body’s complex and interacting stress systems: the Limbic-Hypothalamic-Pituitary-Adrenal (LPHA) Axis,

⁷ CALDWELL, Johanna et al., ‘Essential’ Services, Risk, and Child Protection in the Time of COVID-19: An Opportunity to Prioritize Chronic Need, in: *Developmental Child Welfare*, 2.3 (2020) 208–223.

⁸ HILLIS, Susan D. et al., Global Minimum Estimates of Children Affected by COVID-19-Associated Orphanhood and Deaths of Caregivers: A Modelling Study, in: *The Lancet*, 398. 10298 (2021) 391–402.

⁹ CARUTH, Cathy, ed., *Listening to Trauma: Conversations with Leaders in the Theory and Treatment of Catastrophic Experience*, (Baltimore: Johns Hopkins University Press, 2014).

¹⁰ HERZOG, Julia I. / SCHMAHL, Christian, Adverse Childhood Experiences and the Consequences on Neurobiological, Psychosocial, and Somatic Conditions Across the Lifespan, in: *Frontiers in Psychiatry* 9.420 (2018) 1–8.

¹¹ DEBELLIS, Michael D. / ZISK, Abigail, The Biologic Effects of Childhood Trauma, in: *Child and Adolescent Psychiatric Clinics of North America* 23.2 (2014) 185–222.

Locus Coeruleus-Norepinephrine/Sympathetic Nervous System (Catecholamine System), Serotonin System, Oxytocin, and immune system.

General health is affected through an increase of short-term and long-term medical issues such as cardiovascular disease, obesity, and gastrointestinal disorders.

Because the brains of infants, children, and youth are still growing and developing crucial neural pathways for cognitive development, they are particularly susceptible to trauma. Maltreatment is related to smaller intracranial and cerebellar mass and lower IQ and academic achievement. Stress disrupts the hippocampus, responsible for learning and memory and prefrontal cortex which works to ameliorate stress and promote resilience. In psychology research, resilience in responding effectively to trauma is a positive adaptation resulting in an ongoing protective capability. Resilience-promoting factors include strong social networks, acknowledging and confronting fears, and an optimistic outlook.¹²

Permanent changes result from childhood trauma which triggers the hypothalamus to secrete cortisol or corticotrophin releasing hormone (CRH). It activates other biological stress symptoms. Priming or sensitization means the system hyper-responds during stress and traumatic reminders of the abuse in PTSD symptoms and hypervigilance, aggression, inhibition of normal eating, increased sexual behavior and depression.

Trauma may be ameliorated for some by support systems and environmentally rich environments. The quality of parental care affects the epigenetic regulation of hippocampal receptors. Gender differences influencing the effects of trauma on the HPA Axis are now under study.

The Locus Coeruleus-Norepinephrine/Sympathetic Nervous System or Catecholamine System responds to the hypothalamus release of cortisol by producing epinephrine, dopamine and norepinephrine. These activate a survival and alertness “fight or flight” hypervigilance.

Early trauma deregulates serotonin which has a known role in regulating emotions, aggression, cognitive function, appetite, and cardiovascular and respiratory processes. It interferes with sleep which is crucially important in physical and emotional development. It also affects the development of myelin which is necessary for neural connectivity. Oxytocin plays a role in stress and in the regulation of social interactions. Adolescence is a period of rapid development of the brain's

¹² LOTZ, Mianna, Vulnerability and Resilience: A Critical Nexus, in: *Theoretical Medicine and Bioethics* 37.1 (2016) 45–59.

socio-affective circuitry which drives a need for affirmation and high sensitivity to negative peer evaluations as in internet bullying and disparaging comments on appearance.¹³ The immune system produces cytokines which promote inflammatory responses to infections and other pathogens. They also increase depression and anxiety in adolescents. Globally, mental disorders are a significant and ignored cause of suffering that interferes with optimal human development. Adolescence has a heightened risk for the onset of mental illness with one in five presenting symptoms.¹⁴

Most pre-pandemic studies on the effects of social media on youth mental health show a link.¹⁵ Pandemic quarantine increased the time young people spent on addictive social media, increasingly violent video games, and images of people who are wealthy, prettier, and popular causing stress which produces adrenaline. Exposure to screen media begins for many North American children before the age of two. By adolescence, they are fully immersed. North American surveys find 13–17 yr. olds online for 45% of the day and almost all use social media platforms. Social media is not inherently harmful, but its effects are influenced by the age and developmental stage of the user. Research is needed to assess the specifics of how, why and for whom social media have positive or negative effects on children and youth.¹⁶ Childhood studies in psychology and sociology have confirmed the importance of the crucial role of emotions and relationships in emotional and psychological development.¹⁷ Through smiles, laughter, and touch, parents provide crucially important connections.¹⁸ In pandemic, infants, toddlers, and pre-school children were required to wear masks and received no cues from smiles for mimicry and reassurance as they interacted with masked faces. Quarantine and social distancing caused the loss of rituals of family and

¹³ SOMERVILLE, Leah H., Special Issue on the Teenage Brain: Sensitivity to Social Evaluation, in: *Current Directions in Psychological Science* 22.2 (2013) 121–127.

¹⁴ National Institute of Mental Health, *Mental Illness: Prevalence of Any Mental Illness*, 2020: available at: <https://www.nimh.nih.gov/health/statistics/mental-illness> [19 August 2024].

¹⁵ BERRYMAN, Chloe / FERGUSON, Christopher J. / NEGY, Charles, Social Media Use and Mental Health Among Young Adults, in: *Psychiatric Quarterly* 89 (2018) 307–314.

¹⁶ NESI, Jacqueline, The Impact of Social Media on Youth Mental Health: Challenges and Opportunities, in: *North Carolina Medical Journal* 81.2 (2020) 116–121.

¹⁷ TOMASELLO, Michael, *Becoming Human: A Theory of Ontogeny*, (Cambridge: Harvard University Press, 2019).

¹⁸ GOPNIK, Alison, *The Philosophical Baby: What Children's Minds Tell Us About Truth, Love and the Meaning of Life*, (New York: Picador, 2001).

childhood that are essential for children's sense of identity, security, and moral development.¹⁹

Pandemic has also disrupted participation in necessary sacred and profane rituals of faith and religion, culture, sports, and entertainment during lockdown, increasing stress. School closures meant the loss of educational achievements and crucial supports including, food programs, nursing and counselling services, and exercise and sports opportunities needed for physical development and stress relief.

The pandemic is a natural study in trauma and profound effects on the most vulnerable, the young. The emerging science of epigenetics demonstrates that how genes are influenced by trauma which can silence its activity making it inaccessible. This adversely affects learning, adaptive behaviors, physical and mental health, and adult productivity.²⁰

Vulnerability

Vulnerability conveys negative connotations of victimhood and helplessness, but it is neither exceptional nor optional in the human condition. It has been characterized as: inherent in our embodied and socially embedded human state; situational related to specific personal factors, such as a history of abuse or marginalization; and pathogenic which is caused or exacerbated by social and political structures, culture, and the environment.

The unique vulnerability of children and youth, who are inherently dependent on others for care and protection, was tragically revealed and exacerbated in the pandemic. This lesson gives rise to strong ethical obligations which should be socially and culturally transformative.²¹

Developing a Culture of Safeguarding

The Covid pandemic revealed the innate vulnerability of infants, children, and youth and profound traumatic harms world-wide. Contemporary research from both developmental traumatology and childhood studies is providing a deeper understanding of the magnitude of the life-long biological, psychological, and

¹⁹ FIESE, Barbara H. et al., A Review of 50 Years of Research on Naturally Occurring Family Routines and Rituals: Cause for Celebration?, in: *Journal of Family Psychology* 16.4 (2002) 381–390.

²⁰ EGGER, Gerda et al., Epigenetics in Human Disease and Prospects for Epigenetic Therapy, in: *Nature* 429 (2004) 457–463.

²¹ KOTTOW, Michael H., Vulnerability: What Kind of Principle is it?, in: *Medicine, Health Care and Philosophy* 7 (2004) 281–287.

moral effects of trauma.²² There is an urgent need to learn from this new and emerging research which should motivate a new global commitment to a radical and robust culture of safeguarding. Safeguarding refers to a network of proactive, interdisciplinary policies, procedures, policies, and practices to protect children and youth from risk and harm. The principles of trustworthiness, transparency, safety, peer support, collaboration, mutuality, empowerment, and attention to culture, history, and gender have been proposed to guide effective safeguarding.²³ It requires wide-spread education regarding the depth of harms to vulnerable children in their crucial formative years.

Essential to the effectiveness of these important practical considerations is development of a *culture* of safeguarding. A culture is understood as a meaningful arrangement of relationships, ways of thinking and valuing needed for a sense of order, consistency, identity, and meaning. These habits of acting and interpreting can become avenues toward authentic living and self-transcending choices or imprison people within prejudices.²⁴ All cultures have fundamental strengths. They also have a ‘dark side’ of subjective attitudes and prejudices, often assimilated unconsciously over a long time. The ways a culture values children and childhood must be understood and taken into account in forging a new culture of safeguarding. Throughout history, many cultures, communities, and families have provided love, care, and protection for children. However, the ‘dark side’ is revealed through traumatic experiences of neglect, sexual abuse and exploitation, human trafficking, military recruitment, and child labor which was intensified by the Industrial Revolution. Tragically, these harms continue worldwide, especially for poor, homeless, and migrant children. They imperil the future of children and that of humankind. In the West, Greco-Roman patriarchal understandings viewed children as property, rarely seen, except to display paternal virility. They were never heard and totally under the father’s authority.²⁵ Up to the Middle Ages, children were understood as small adults. Not till 1546 with the first English book on pediatrics as a specific area of medicine, was the life-long importance of this

²² UNGAR, Michael, ed., *Multisystemic Resilience: Adaptation and Transformation in the Contexts of Change*, (New York: Oxford Academic, 2021).

²³ COLLIN-VÉZINA, Delphine / BREND, Denise / BEEMAN, Irene, When It Counts the Most: Trauma-Informed Care and the COVID-19 Global Pandemic, in: *Developmental Child Welfare* 2.3 (2020) 172–179.

²⁴ ARBUCKLE, Gerald A., *The Pandemic and the People of God: Cultural Impacts and Pastoral Responses*, (New York: Orbis Books, 2021).

²⁵ BUNGE, Marcia J. / FRETHEIM, Terence E. / GAVENTA, Beverly Roberts, eds., *The Child in the Bible*, (Grand Rapids: Eerdmans, 2008).

unique and foundational period of growth and development recognized.²⁶ Contemporary research expands on this insight.

We have seen that poverty and social marginalization increase the vulnerability of children and youth. However, affluence presents its own challenges to the promotion of just and caring human, moral, and spiritual development of the young. Some have pursued this deepest level of meaning in theological research which emphasizes the importance and essential dignity of children and childhood.²⁷ Children and youth will feel the impact of pandemic on health and well-being for years to come.²⁸ The prognosis for a culture of safeguarding requires a conversion of minds and hearts so we might respond sensitively to the effects of trauma and provide care which is informed by research. All organizations and institutions can promote protection, prevention and resilience or foster risk and vulnerability. Political advocacy for investment in child and adolescent health across sectors is essential to support a whole-of-society, culturally transformative approach to prevention, protection and care for children and youth. The tragic lessons from COVID can empower a real revolution of safeguarding, if we accept the challenge.

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²⁶ GOEURT, Jean / PHAYRE, Thomas, *The Regiment of Life*, (London: Edward Allde, 1596).

²⁷ HOUSTON, James M., ed., *An Introduction to Child Theology*, (Eugene: Cascade Books, 2022).

²⁸ UNICEF, *The State of the World’s Children: On My Mind; Promoting, Protecting and Caring for Children’s Mental Health*, 2021; Egger, Gerda et al., Epigenetics in Human Disease and Prospects for Epigenetic Therapy, in: *Nature* 429 (2004) 457–463.

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Short Bio

Nuala Patricia Kenny is a native New Yorker and a Sister of Charity of Halifax, Nova Scotia, Canada. She is a physician, pediatrician, and bioethicist, practicing, teaching, and working at several hospitals in Canada and receiving many honors for her work in child health, medical education and health policy. Past president of both the Canadian Paediatric Society and the Canadian Bioethics Society, she was chair of the Values Committee of the 1997 Prime Minister of Canada's National Forum on Health.

Kids, Teens and Social Media: A Global Problem with Local Solutions

Gwenn S. O’Keeffe

Introduction

Today’s typical day involves many screens, programs and applications (“apps”). It’s rare to meet a person who doesn’t have a cell phone and spends part of the day texting and scrolling on their social media apps. The youngest members of our societies only know our current digital life while many of their parents and grandparents had a childhood and part of adult lives with much fewer, if any, screens. Experts involved with children and child health focus on research and parent education materials on the areas that impact child health the most. So, it’s not a surprise that screen time and social media are now included on today’s growing list of topics. Finding reliable information is daunting by the vast amount of information online for social media and screen time issues involving children. For example, a Google search of “teens and social media” produces approximately 59,900,000 results for the past year. In a single day, 264,000 results are produced. A related search for “teens and screen time” produces 439,000,000 results for all time, 61,200,000 last year and 54,600 in the prior day. Trying to limit the search to research papers on Google Scholar is similarly overwhelming. A search of studies for “teens and social media” yielded 1,040, 000 results all time and 15,600 in the last year.

These numbers illustrate that finding information on these topics is not difficult. What is difficult, however, is determining which result is reliable, credible and accurate. Without a better understanding of the key issues impacting kids and teens with social media apps, misinformation and confusion often result. For our children, helping them understand the basics of social media and how to navigate a world with expanding technologies is how we help them use social media for its benefits and avoid the issues that are unhealthy and, at times, dangerous.

The Social Media Landscape

Kids and Parents Today are Truly Born Digital

One of the richest aspects of our societies is the intermixing of different generations of people. While age may provide life experience and wisdom, the oldest members of society experienced less advanced technology and developments

than the younger members of society. At the same time, those generations were able to experience life in a more connected, face to face way. To understand how today’s youngest generation experiences technology and social media, it helps to understand the range of generations and the key features that defined those generations. Generations are defined by age groups with six generations identified in today’s society:¹

- The Silent Generation: 1925-45 (96-79yo)
- The Baby Boomers: 1946-1964 (77-60yo)
- Generation X: 1965-1980 (59-44yo)
- Generation Y/Millennials: 1981-1996 (43-28yo)
- Generation Z: 1997-2012 (27-12yo)
- Generation Alpha: 2013-2025 (11yo to not yet born)

Each generation’s life experience is shaped by their environment. This includes how they talked, worked, learned, and relaxed. The salient features of each generation include the following:²

Silent Generation (1925-45)

Slang: “proper English”

Notable Moment: WWII

Car: Model Ford T

Music: record player

Learning Style: formal

Gen X (1965-1980)

Slang: dude, rad, wicket

Notable Moment: stock market crash

Car: Holden commodore

Music: Walkman

Learning style: participative

Gen Z (1997-2012)

Slang: GOAT, Fam, Yass Queen

Notable Moment: GFC

Car: tesla model S

Music: Spotify

Learning Style: multi-modal

Baby Boomers (1946-1964)

Slang: Be Cool, Peace, Groovy

Notable Moment: moon landing

Car: Ford Mustang

Music: audio cassette

Learning Style: structured

Gen Y / Millennials (1981-1996)

Slang: long, funky, whassup?

Notable Moment: sept 11

Car: Toyotas Prius

Music: iPod

Learning style: interactive

Gen Alpha (2013-2025)

Slang: lit, rn, idrc

Notable Moment: COVID19

Car: automatic, electric vehicles

Music: smart speaker

Learning style: virtual

¹ DIMOCK, Michael, Defining generations: Where Millennials end and Generation Z begins, in: *Pew Research Center*, 17 January 2019: https://www.pewresearch.org/short-reads/2019/01/17/where-millennials-end-and-generation-z-begins/ft_19-01-17_generations_2019-png/ [6 January 2025].

² MCCRINDLE, Mark, The Generations Defined—McCrindle, in: *McCrindle* (Blog), 5 April 2024: <https://mccrindle.com.au/article/topic/demographics/the-generations-defined/> [6 January 2025].

Each moment in time has a generational divide with learning and adopting new developments, including computers, cell phones and apps. Some generations had to catch up and learn how to use the new technology while babies born into that generation grew up already having that item as a staple in their lives. Today, we have a unique situation compared to the past as every living generation was exposed to cell phones, computers and social media. Today's parents are born into a very technological world, and their children will be born into one even more advanced.

In addition to the availability of technology, generations differ in the amount of screen time and apps used. As a trend, younger generations use screens and apps more frequently than older generations. For screen time use, for example, Gen Z uses cell phones the most, 6 hours. Millennials and Gen X use cell phones 4 hours a day. Baby boomers use cell phones the least amount, approximately 3.5 hours.³

Globally, YouTube, TikTok and Instagram are the top 3 apps used by teenagers. On average, teens spend over 7 hours a day on screens, over 3 hours a day on TV and videos, and 90 minutes a day on social media.⁴

Focusing on Generation Z, our current teenage population, social media use has been increasing yearly. In 2023, 97% of teens used social media which is increased from 92% of teenagers in 2015.⁵

Use of each app differs by generation. One trend that seems consistent is that newer apps are adopted quicker for younger generations than older generations. For example, TikTok entered social media during the pandemic so it's not a surprise that the teens and young adults use it more than their parents and grandparents.

Pre-pandemic, Facebook, Instagram and Snapchat were the top three apps used by teenagers. During the pandemic, YouTube, TikTok and Instagram were the top three apps. Both YouTube and TikTok share a feature that older social media apps did not have videos and the ability to tell stories. As noted below, social media is

³ Harmony Healthcare IT, Phone Screen Time Addiction- New Survey Data & Statistics, in: *Healthcare Data Management Software & Services*, 8 January 2024: <https://www.harmonyhit.com/phone-screen-time-statistics/> [6 January 2025].

⁴ DUARTE, Fabio, Alarming Average Screen Time Statistics (2025), in: *Exploding Topics* (Blog), 24 April 2025: <https://explodingtopics.com/blog/screen-time-stats#average-screen-time-overview> [30 August 2025].

⁵ LABORDE, Susan, Teenage Social Media Usage Statistics in 2023, in: *Techreport*, 30 May 2024: <https://techreport.com/statistics/software-web/teenage-use-of-social-media-statistics/> [6 January 2025].

used by teens for creativity, communication and socialization. Video allows a much more in-depth creation than a simple written or image post.⁶

Today we have multiple generations using apps. The older generations were not born when apps existed. They witnessed the creation and popularity of apps and adopted social media use as adults. On the other hand, society’s younger generations are born into a society where social media is firmly entrenched. Gen Alpha and Gen Z only know a life with social connectedness that is mobile and always present. They have the experience of having parents and grandparents who had some element of life away from screens. The generation after Gen Alpha, though, will be all digital with digital parents.

Parents’ Concerns and the Impact of Social Media

Parents’ concerns about their children’s health changes as society evolves and changes. They tend to focus on current topics they learn from their pediatrician, the media and other parents on social media accounts. This is true for nondigital, digital and health issues. Reviewing the trend of parental concerns provides an understanding of the issues facing families today and the potential importance of those issues in today’s children’s lives.

CS Mott Children’s Hospital’s National Poll on Children’s Health provides us with a snapshot of parents’ concerns and the changes in those concerns over time. Reviewing the most recent polls, it is evident that there are many issues that consistently become a concern for parents and a few issues that reflect the increase in screen use and social media apps.

Here is a summary of the most recent polls: pre-pandemic, during the pandemic and post-pandemic:⁷

2017 Poll, pre-pandemic:

1. Bullying/cyberbullying (61%)
2. Not enough exercise (60%)
3. Unhealthy eating (57%)
4. Drug abuse (56%)
5. Internet safety (55%)
6. Child abuse and neglect (53%)

⁶ VOGELS, Emily A. / GELLES-WATNICK, Risa / MASSARAT, Navid, Teens, Social Media and Technology 2022, in: *Pew Research Center*, 17 April 2024:

<https://www.pewresearch.org/internet/2022/08/10/teens-social-media-and-technology-2022/> [6 January 2025].

⁷ National Poll on Children’s Health, *Top 10 Child Health Concerns*, 21 August 2023: <https://mottpoll.org/tags/top-10-child-health-concerns> [6 January 2025].

7. Suicide (45%)
8. Depression (44%)
9. Teen pregnancy (43%)
10. Stress (43%)

In the survey above, internet safety was #5 and bullying/cyberbullying #1. Social media and screen time were not listed as major concerns for parents in this poll.⁸

2020 First year of the pandemic:

1. Overuse of social media/screen time (72%)
2. Bullying/cyberbullying (62%)
3. Internet safety (62%)
4. Unhealthy eating (59%)
5. Depression/suicide (54%)
6. Lack of physical activity (54%)
7. Stress/anxiety (54%)
8. Smoking/vaping (52%)
9. Drinking or using drugs (50%)
10. COVID (48%)

In this survey, social media/screen time was #1, bullying/cyberbullying dropped to #2 and internet safety rose to #3.⁹

2023 Post-pandemic:

1. Overuse of devices/screen time (67%)
2. Social media (66%)
3. Internet safety (62%)
4. Depression/suicide (57%)
5. Bullying (53%)
6. Stress/anxiety (52%)
7. Unhealthy diet (52%)
8. Costs of healthcare/health insurance (50%)
9. School violence (49%)
10. Smoking/vaping (48%)

In the most recent poll, the top three concerns of parents are due to digital issues: overuse of devices and screen time, social media and internet safety.¹⁰

The trend of these polls not only reflects concerns of parents but mirrors the increased teenager screen time and social media apps use.

⁸ Ibid.

⁹ Ibid.

¹⁰ Ibid.

Social Media: Why and How They Use It

One of the hallmarks of teenagers is their desire to connect. Before the pandemic, teens gravitated to areas where other friends were and had face to face experiences: movie theatres, friends’ houses, malls. With the pandemic and social distancing, that dynamic changed, and interactions shifted to social media sites by necessity. This trend has continued. Today, teens have significantly less face-to-face time with friends than in the past. This trend began as cell phones became more popular as of 2010.¹¹ In 2010 44% teens reported in person friend experiences. In 2022, that number decreased to 32%.¹² Researchers have linked this trend as one reason for the increase in teen depression and loneliness.¹³

The trends in social media site use are a reflection of what apps are available and new, and what attracts teens to engage. When Facebook initially became popular, social connection was the driving force. Today, creativity and visual engagement are more compelling.¹⁴ So, a decade ago Facebook, twitter, snapchat and Instagram were the popular sites used by teens. Today, YouTube, TikTok and Instagram are the three leading sites.¹⁵

Screen Time by Age: Recommendations vs Reality

One of the downsides to social media use is an increase in screen time. Recently, there has been a shift from focusing on the amount of screen time to including other variables. Development and age remain important considerations. However, there is now more emphasis on the content of the screen time as well as the goal for using that app.

The American Academy of Pediatrics has shifted their screen time recommendations, which includes social media use, away from a focus on time and to a focus

¹¹ DE VISÉ, Daniel, Teens Are Spending Less Time Than Ever With Friends, in: *The Hill* (Blog), 7 June 2023: <https://thehill.com/blogs/blog-briefing-room/4037619-teens-are-spending-less-time-than-ever-with-friends/> [6 January 2025].

¹² Ibid.

¹³ SILVERBERG, David, “The Kids Aren’t All Right ... Thanks to Their Phones,” *Alumni Association of the University of Michigan*, 19 November 2021: <https://alumni.umich.edu/michigan-alum/the-kids-arent-all-right/> [6 January 2025].

¹⁴ O’KEEFFE, Gwenn Schurgin, / CLARKE-PEARSON, Kathleen, The Impact of Social Media on Children, Adolescents, and Families, in: *Pediatrics* 127, No. 4 (2011) 800–804.

¹⁵ ANDERSON, Monica / FAVERIO, Michelle / GOTTFRIED, Jeffrey, Teens, Social Media and Technology 2023, in: *Pew Research Center*, 14 April 2024: <https://www.pewresearch.org/internet/2023/12/11/teens-social-media-and-technology-2023/> [6 January 2025].

on five specific areas, “the 5 C’s”: Child, Content, Calm, Crowding out, Communication.¹⁶

The new recommendations reflect the many variables to screen use:

- Child: Each child has different risks and benefits from media use
- Content: Be involved – help kids to learn to use media that has a positive impact on them and not negative
- Calm: emotional regulation, sleep without needing media, empower self-calming skills.
- Communication: teach digital citizenship and media use early in life.

With screens and social media commonly used in schools for learning and homework, the 5 C’s continues to focus on noneducational activities such as watching and making videos, connecting with friends, playing games, taking pictures and posting them, creating stories on TikTok and Instagram. The new strategy, however, allows a parent’s approach to be tailored to each individual child. Regardless of amount of screen time a teenager has in a day, most experts agree screen related activities should be balanced with some time away from screens.¹⁷

Social Media Use Guidelines

All social media apps have terms of services guidelines that include a minimum age. Parents often fail to recognize the potential harm of children under the minimum age of use because screens and social media have become a staple of current life. However, social media is a tool. As a tool, it can be used for positive purposes or negative purposes. Framing social media use in terms of other tools we teach our children to use is helpful. For example, there are laws for ages of obtaining a driver’s license and drinking alcohol that we want our kids to learn and respect. Not doing so can be harmful to the teenager and others. The same holds true for social media app use. Terms of service for most social media sites teens use are 13 and older. This is consistent with the Children’s Online Privacy Protection Act (COPPA) in the United States. Specifically, Facebook and

¹⁶ American Academy of Pediatrics, *The 5 Cs of Media Use*, Updated 27 May 2025: <https://www.aap.org/en/patient-care/media-and-children/center-of-excellence-on-social-media-and-youth-mental-health/5cs-of-media-use/?srsltid=AfmBOoqny-IIF4Q2nLa0OWIRlqSVtCrmBWKjAJMxHlGH065rLGoXz36F> [15 August 2025].

¹⁷ Ibid.

Instagram,¹⁸ TikTok¹⁹ and YouTube²⁰ all have privacy age requirements of 13 and older. The age of thirteen was not arbitrarily chosen as the minimum age of use for social media apps.

Children under 13 are not developmentally mature enough to understand the nuisances of social media use socially. The teenage years are a period of profound growth, socially, emotionally and physically. The skills obtained as teenagers better suit them to use social media and understand the issues that can develop by use. Social media expert and apps are discussing ways to limit children under 13 from using social media. For example, Facebook is exploring ways for younger kids to not sign up.²¹ While desirable, it isn’t technologically easy to accomplish. There is no way to monitor who signs up and whether the stated age is truthful.

Laws and Regulations

As the impact on children using screens and social media comes more into focus, discussions around laws and regulations on social media use for teens become discussed more. A full discussion of social media laws is beyond the scope of this chapter. Laws on social media use and children are complicated. Every country has its own view on the type of protections children need and in what form. Laws have the same issue as technology limits on children under 13 using social media, monitoring and enforcement. However, even if a country has social media laws, protecting children is still the responsibility of each community and parents and parent figures in each child’s life.

One modality often considered is a pure ban on social media use for children under 13. Bans often fail to produce the desired result and use still continues as evident by prior attempts at book and movie bans. The better path is to facilitate better education for parents, teachers and kids along with holding SM sites responsible for better privacy and protections.²²

¹⁸ DIWANJI, Pavni, How Do We Know Someone is Old Enough to Use Our Apps?, 27 July 2021, *Meta*: <https://about.fb.com/news/2021/07/age-verification/> [6 January 2025].

¹⁹ TikTok, Teen Privacy and Safety Settings, *TikTok Help Center*: <https://support.tiktok.com/en/account-and-privacy/account-privacy-settings/privacy-and-safety-settings-for-users-under-age-18> [6 January 2025].

²⁰ YouTube, *Terms of Service*, 5 January 2022: <https://www.youtube.com/static?template=terms> [6 January 2025].

²¹ DIWANJI, *How Do We Know Someone is Old Enough to Use Our Apps?*

²² RUTLEDGE, Pamela B., Social Media Bans Ignore the Need for Digital Literacy and Self-regulation, in: *Psychology Today*, 4 May 2023: <https://www.psychologytoday.com/us/blog/positively-media/202305/why-proposed-social-media-bans-wont-keep-your-kids-safe> [6 January 2025].

It's important to consider the social media companies' role in promoting health and safety. While most state their privacy policies and willingness to protect children, in reality, protecting their growth and first amendment rights often outweighs those desires. Those company goals have been upheld by the US Supreme Court despite many states attempting social media laws.²³

Laws may face issues of enforcement but do have an important value in creating conversation and awareness. As social media is a tool, those aspects of laws are not to be minimized. Similar to other laws aimed to protect children such as smoking and driving ages, social media laws have the same fundamental premises of protecting children.

Pluses and Minuses²⁴

What's difficult to get across in a world where screens and social connection are from our phones and often through text is that those modalities are tools. The social aspect of what everyone does, masks the fact that a cell phone, tablet or computer are all tools. As such, there are guidelines for use and, sometimes, for appropriate ages, as noted above. Below are the common positive and negative impacts of social media on teenagers.

Benefits of Social Media

Social media receives a great deal of media exposure for the negative impact it can have, as noted in the next section. However, not all social media use is detrimental to teen health. As social media is a tool, it can also be used for positive purposes. Examples of positive ways teens use social media include:²⁵

- Socialization and communication
- Enhanced learning opportunities
- Accessing health information
- Improved mental health

²³ American Civil Liberties Union, *Supreme Court Ruling Underscores Importance of Free Speech Online*, 1 July 2024: <https://www.aclu.org/press-releases/supreme-court-ruling-under-scores-importance-of-free-speech-online> [6 January 2025].

²⁴ O'KEEFFE / CLARKE-PEARSON, *The Impact of Social Media*.

²⁵ O'KEEFFE / CLARKE-PEARSON, *The Impact of Social Media*; ANDERSON, Monica / FAVERIO, Michelle / PARK, Eugenie, *How Teens and Parents Approach Screen Time*, in: *Pew Research Center*, 11 March 2024: <https://www.pewresearch.org/internet/2024/03/11/how-teens-and-parents-approach-screen-time/#teens-views-on-screen-time-and-efforts-to-cut-back> [6 January 2025]; ATSKE, Sara, *How Teens and Parents Approach Screen Time*, in: *Pew Research Center*, May 7, 2024: <https://www.pewresearch.org/internet/2024/03/11/how-teens-and-parents-approach-screen-time/#teens-views-on-screen-time-and-efforts-to-cut-back>. [6 January 2025].

- Increase creativity
- Explore interests
- Stress release

Common Negative Impacts of Social Media Use

The downside of social media use includes negative impacts on mental and physical health. The common issues to monitor for and educate youth on include:²⁶

- Cyberbullying and harassment
- Sexting
- Emotional issues and stress (often called Facebook depression)
- Privacy issues
- Health issues: sleep, obesity, eye issues
- Potential for overuse and addiction
- Exposure to adult content (posts, ads, violence in games)
- Decreased focus

While there are clearly benefits for using social media, the negative issues from social media use are the ones we need to understand and help teens minimize those issues from occurring.

Cyberbullying and sexting are commonly taught as children interact more with screens. In the United States, nearly half of the States have laws concerning sexting and bullying.²⁷ Most states, in fact, provide schools with templates to use for those policies.²⁸

Facebook depression refers to sadness and depression that occur due to excessive use of social media. The term became popular when Facebook was the leading app used by everyone. Today, with so many apps, “emotional issues” or “mental health issues” are typically used to refer to the negative emotional impact on teens of excessive social media use. The reasons for potential depression are multifactorial but are influenced by the teenager need to feel accepted. That is easier to accomplish with true face to face interactions. On social media, teenagers often misconstrue likes and posts for how others perceive them.²⁹

²⁶ O’KEEFFE / CLARKE-PEARSON, *The Impact of Social Media*.

²⁷ PATCHIN, Justin W. / HINDUJA, Sameer, Bullying Laws Across America, in: *Cyberbullying Research Center*, 2023: <https://cyberbullying.org/bullying-laws> [6 January 2025].

²⁸ PATCHIN, Justin W. / HINDUJA, Sameer, Bullying Policies Across the United States, in: *Cyberbullying Research Center*, 2023: <https://cyberbullying.org/bullying-policy> [6 January 2025].

²⁹ O’KEEFFE / CLARKE-PEARSON, *The Impact of Social Media*.

Privacy concerns occur in adults and teenagers using social media. Due to the information given to sign up for sites, a digital trail develops which people can use to find someone online. In addition, social media users post pictures, videos and texts. Out of concern for their privacy, many teenagers change their identifying information. One way to help teens understand these issues is education around privacy and the settings they can use to protect their information. It's also important for teens to realize that past posts can be found by future schools and employers and influence admitting and hiring decisions. Protecting their reputation is an issue that can be taught.³⁰

Other negative issues include: reducing time for homework and extracurricular activities; internet addiction; exposure to people much older than they are, especially through gaming, exposure to adult content and images and political information and ads.³¹ These issues, pluses and minuses, are easier for teens to develop as they approach young adult life, in their early 20s. One of the reasons why it is important to respect the age requirements of social media sites is, to protect younger children who are not developmentally mature enough to understand the negatives off these apps.

Health Issues Not Always Considered Orthopedic Issues

Using phones in a repetitive manner can also cause injuries to hands and fingers. A common complaint of people who text frequently is sore thumbs. Called “texting thumb,” these injuries are caused by inflammation of tendons in the thumb and may also include the wrist. Orthopedists typically advise rest, ice, anti-inflammatory medications. If those simple measures are not affected, contacting a physician can help determine the next step for treatment.³²

Mental Health Issues

Multiple studies have determined that teens with excessive screen time and social media use are more likely to have mental health symptoms than teens with less

³⁰ MADDEN, Mary, et al., Teens, Social Media, and Privacy, in: *Pew Research Center*, 14 April 2024: <https://www.pewresearch.org/internet/2013/05/21/teens-social-media-and-privacy/> [6 January 2025].

³¹ WEIR, Kirsten, Social Media Brings Benefits and Risks to Teens. Psychology Can Help Identify a Path Forward, in: *American Psychology Association*, 1 September 2023: <https://www.apa.org/monitor/2023/09/protecting-teens-on-social-media> [6 January 2025].

³² New York Bone and Joint, What is Texting Thumb and How Do You Treat It? in: *The New York Bone & Joint Specialists Blog*, 21 June 2023: <https://nyboneandjoint.com/what-is-texting-thumb-and-how-do-you-treat-it/> [6 January 2025].

screen time and social media use. The chances of a teen developing mental health symptoms, for example anxiety and depression, are multifactorial. Time using social media, the content of social media and the purpose of using social media have all been shown to contribute either positively or negatively to developing mental health symptoms.³³ With social media, most people start mindless scrolling and checking their accounts frequently. This can take a toll on developing minds. Without life experience and understanding social nuances, teens and tweens can start comparing themselves to others on their feed, worrying about the amount of “likes” and taking personally some posts.

Interesting research has come out that also shows these behaviors change the brain’s neural connections. It also showed that the younger the social media user, the more potential impact on the sensitivity to these areas.³⁴ If very young children use social media in their preschool years, MRIs have revealed lower areas of white matter development – the area responsible for language, literacy and cognition.³⁵ More research will be needed to fully understand these changes but it’s clear that social media checking impacts social reactions and sensitivity. The same study revealed that 78% of teens ages 13-17 in the study checked their social media accounts hourly and 48% constantly. The teen years are a period of significant changes in the brain that will eventually lead to an adult brain.³⁶ Studies have shown that brain development occurs not just in the teen years but young adult years.³⁷ While stress can influence these processes negatively, positive experiences will provide optimal brain development from thinking to emotions to learning.³⁸

³³ Mayo Clinic Staff, Teens and Social Media Use: What’s the Impact?, in: *Mayo Clinic* 18 January 2024:

<https://www.mayoclinic.org/healthy-lifestyle/tween-and-teen-health/in-depth/teens-and-social-media-use/art-20474437> [6 January 2025].

³⁴ MAZA, Maria T., et al., Association of Habitual Checking Behaviors on Social Media With Longitudinal Functional Brain Development, in: *Jama Pediatrics*, vol. 177, 2 (2023) 160-167.

³⁵ LAMONTE, Sandee, “MRIs show screen time linked to lower brain development in preschoolers,” in: *CNN*, 4 November 2019: <https://www.cnn.com/2019/11/04/health/screen-time-lower-brain-development-preschoolers-wellness/index.html> [6 January 2025].

³⁶ MARCIANO, Laura / CAMERINI, Anne-Linda / MORESE, Rosalba The Developing Brain in the Digital Era: A Scoping Review of Structural and Functional Correlates of Screen Time in Adolescence, in: *Frontiers in Psychology* 12 (2021): <https://www.frontiersin.org/journals/psychology/articles/10.3389/fpsyg.2021.671817/full> [6 January 2025].

³⁷ National Institute of Mental Health, *The Teen Brain: 7 Things to Know*, <https://www.nimh.nih.gov/health/publications/the-teen-brain-7-things-to-know> [6 January 2025].

³⁸ The Annie E. Casey Foundation, *Adolescent Brain Development*, 24 May 2023: <https://www.aecf.org/topics/adolescent-brain-development> [6 January 2025].

Obesity

There has been an increase in the percentage of obese teenagers in the United States. While the causes are multifactorial, social media and cell phone use is one of those factors.³⁹

Staying up at night on phones increases nighttime eating. Playing games and other activities during the day promotes sedentary living and decreases exercise. The American Academy of Pediatrics notes that overusing social media decreases the number of fruits and vegetables and increased feelings of hunger which promote snacking and overeating.⁴⁰ In addition, food advertising is another known factor to childhood obesity.⁴¹

Loss of Sleep

Similar to the obesity issue, social media use at night is one of the causes of decreased sleep in teenagers.⁴² Sleep deprivation is also a factor in childhood obesity.⁴³ Sleep deprivation decreases an ability to function well during the day and is one factor for teen depression.⁴⁴

Other Health Issues

Eye Issues, lack of sleep and decreased exercise are other issues frequent social media use can cause. While a full explanation of these issues is beyond the scope of this paper, awareness and education can considerably help teens avoid these issues and manage them should they occur.⁴⁵

³⁹ ME CHA, Eun, et al., Effect of Media Use on Adolescent Body Weight, in: *Preventing Chronic Disease* 15 (2018): https://www.cdc.gov/pcd/issues/2018/18_0206.htm [6 January 2025].

⁴⁰ ROBINSON, Thomas N, et al., Screen Media Exposure and Obesity in Children and Adolescents, in: *Pediatrics* 140 (2017): <https://pmc.ncbi.nlm.nih.gov/articles/PMC5769928/> [6 January 2025].

⁴¹ Ibid.

⁴² ME CHA, *Effect of Media Use*.

⁴³ ROBINSON, *Screen Media Exposure*.

⁴⁴ PIRDEHGHAN, Azar, et al., Social Media Use and Sleep Disturbance among Adolescents: A Cross-Sectional Study, in: *Iranian Journal of Psychiatry*, vol. 16,2 (2021): <https://pmc.ncbi.nlm.nih.gov/articles/PMC8233562/> [6 January 2025]; CELMER, Lynn. Are You TikTok Tired? 93% of Gen Z Admit to Staying up Past Their Bedtime Due to Social Media, in: *American Academy of Sleep Medicine – Association for Sleep Clinicians and Researchers*, 29 July 2024: <https://aasm.org/are-you-tiktok-tired-93-of-gen-z-admit-to-staying-up-past-their-bedtime-due-to-social-media/> [6 January 2025].

⁴⁵ American Academy of Pediatrics, *Give Your Child's Eyes a Screen-Time Break: Here's Why*, 29 February 2024:

Distracted Driving and Walking

With cell phones and social media so prevalent, accidents involving distracted driving is on the rise, especially in the teenage population. Distracted driving is driving while doing any other activity except keeping our eyes on the road.⁴⁶ Talking on cellphones, using cell phone while driving and texting while driving are some examples that can distract a driver and cause an accident or fatality.⁴⁷ Other activities that can distract drivers are eating and drinking, changing the radio station, reading a text or email.⁴⁸ These accidents can impact the passengers in the car as well as people on the streets, walking, riding bikes, for example.⁴⁹

Teenage drivers are involved in more accidents than adult drivers. According to the National Highway and Safety Administration, teenage and young adult drivers were more at risk for accidents than adult drivers. Accidents can involve driver and passengers, or pedestrians.

In the United States, the 15-20 age group had more distracted driving accidents than drivers over 20 years of age.⁵⁰ The statistics speak for themselves. In 2022, 3308 people were killed in accidents caused from distraction. Of those, teens 15-19 years of age accounted for 6% of those fatalities were in teens.⁵¹ Seven percent of distracted related fatalities were caused by teens 15-19. When considering actual traffic crashes, 48% of all people killed were due to teen distracted driving.⁵² Similar to distracted driving, phone use while walking also results in fatalities and injuries. This group includes all forms of cell phone use: talking, texting, using apps. In 2019, texting while walking accounted for 11,000 injuries and 5000 deaths. When walking and texting, or walking and talking on the phone, people are often unaware of objects in their path, cars in their path, and hazards such as road work.⁵³

<https://www.healthychildren.org/English/health-issues/conditions/eyes/Pages/What-Too-Much-Screen-Time-Does-to-Your-Childs-Eyes.aspx> [6 January 2025].

⁴⁶ US Center for Disease Control and Prevention, *Distracted Driving*, 16 May 2024:

<https://www.cdc.gov/distracted-driving/about/index.html> [6 January 2025].

⁴⁷ Ibid.

⁴⁸ National Highway Traffic Safety Administration, *Distracted Driving*:

<https://www.nhtsa.gov/risky-driving/distracted-driving> [6 January 2025].

⁴⁹ US Center, *Distracted Driving*.

⁵⁰ Ibid.

⁵¹ National Highway, *Distracted Driving*.

⁵² Ibid.

⁵³ AGRILLO, Megan, Distracted: Texting While Walking, in: *International Council for Media Literacy*, 2 May 2023: <https://ic4ml.org/blogs/distracted-texting-while-walking/> [6 January 2025].

Solutions vary by location and laws of each country. Examples of solutions are awareness campaigns. School education programs. Ads targeting parents and teen drivers. However, given the high level of teen accidents and fatalities from distraction, those programs alone may not be enough.

Dangerous Social Media Challenges

The allure of social media can be dangerous and even fatal. Social media challenges are attractive to teens because their brains are wired to be impulsive, and they have not yet developed all the skills to assess the risks. Teens know about these challenges on social media and by watching videos on sites like YouTube and TikTok.⁵⁴ The challenges that are the most concerning are:⁵⁵

1. One chip challenge
2. Black out challenge
3. Benadryl challenge
4. Laundry pod challenge

Parents can help educate teens by monitoring social media use which may include friending their kids on the sites they use. Being involved with kids and talking about their friend groups can help, too.⁵⁶ Risk taking is part of growing up and teen development. Parents and educators have an important role in helping teens develop the skills to problem solve and assess how risky a situation is. Why do teens engage in this behavior if they know they are dangerous? The role of social media is in the positive feedback teens get from posts and “likes.”⁵⁷

Social Media Use in Special Need Populations

It’s important to note that children with special needs experience the same benefits and risks as children without special needs but may be more at risk for the negative impact of social media.⁵⁸

⁵⁴ BAUCOM, Jackie, *Dangerous and Harmful TikTok Trends to Talk About With Your Kids*, in: *Gabb Now*, 15 May 2024: <https://gabb.com/blog/tiktok-trends/> [6 January 2025].

⁵⁵ American Academy of Pediatrics, *Dangerous Social Media Challenges: Understanding Their Appeal to Kids*, 11 September 2023: <https://www.healthychildren.org/English/family-life/Media/Pages/Dangerous-Internet-Challenges.aspx> [6 January 2025].

⁵⁶ Ibid.

⁵⁷ Clinic Cleveland, *Why Social Media Challenges Can Be a Recipe for Disaster — When They’re Real*, 10 July 2024: <https://health.clevelandclinic.org/dangers-of-social-media-challenges> [6 January 2025].

⁵⁸ HEROLD, Benjamin, *Social Media a Double-Edged Sword for Students With Disabilities, Study Finds*, in: *Education Week*, 9 July 2022: <https://www.edweek.org/technology/social-media-a-double-edged-sword-for-students-with-disabilities-study-finds/2019/07> [6 January 2025].

A report from the Ruderman Family Foundation found that children with disabilities had the following increased risks:⁵⁹

- twice as likely to be victims of cyberbullying
- increased risk for depression, 45% reported for children with disabilities compared to 31% without

This report emphasizes the need to make sure all children are considered in social media education and regulations.

The Role of Unplugged Screen Time and Social Media Use Finding Unplugged Moments in a Plugged-in World

It’s clear that all generations have more screen time than in the past. Is balance possible? It is. It isn’t enough to randomly have laws or regulations over technology. Kids need to be taught at home and in school how to use it for positive moments in their lives.

Coupled with the online rules of the road, kids need to learn why unplugged life is not just healthy but ideal, at least some of the time.

For our youngest children, we need to unplug for them. As they get older, we can introduce the reasons and science behind unplugging. Some ways we can help our kids unplug is to unplug ourselves and within our family moments. Some ways people have encouraged:⁶⁰

1. Cell phone stacking game
2. No cell phones at dinner or when at a restaurant
3. Offline activities such as clubs, music, sports, trips to museums.

One important area that has been steadily emerging is getting back to nature. While there are apps and technology people use to find animals, hiking trails and stay in touch for safety, the adventure outside away from screens is calming and reinvigorating for everyone.⁶¹

⁵⁹ Ruderman Family Foundation, *Ruderman White Paper Reveals: Students With Disabilities Are Almost Twice as Likely to Be Victims of Cyberbullying*, 25 June 2019:

https://rudermanfoundation.org/white_papers/ruderman-white-paper-reveals-students-with-disabilities-are-almost-twice-as-likely-to-be-victims-of-cyberbullying/ [6 January 2025].

⁶⁰ Urban Dictionary, *Phone Stack*, 19 March 2013:

<https://www.urbandictionary.com/define.php?term=Phone%20Stack> [6 January 2025].

⁶¹ ALLAIN, Melissa, *Balancing Screen Time and Sunshine: Navigating the Impact of Technology on Outdoor Engagement*, in: *Prism Dynamic Medical Supply Solutions*, 3 June 2024: <https://www.prism-medical.com/balancing-screen-time-and-sunshine-navigating-the-impact-of-technology-on-outdoor-engagement/> [6 January 2025].

How Parents Can Model Social Media for Kids

Teens spend less time with families due to their development and need for independence. Modeling responsible behavior is an important task for parents and begins as soon as kids are born.⁶² They are around their parents the most when young. If kids see parents driving and talking on their cell phones, they'll internalize that that behavior is acceptable. Similarly, using the cell phone when walking, grocery shopping and at the family dinner table. With parents working more hours than in the past,⁶³ it isn't always easy to focus on modeling but important to remember.

Studies have consistently shown that involved parents have more digitally conscious teens. Mental health issues in teens are higher when parents are not involved with monitoring and fostering relationships.⁶⁴ So, parents do matter even in a screen filled, disconnected world. With parents and children on screens and social media, it isn't a surprise that parents don't feel as engaged with children as in the past. This varies with age with younger parents reporting more screen use and distracted parenting than older parents, over 50.⁶⁵

Parents' involvement helps kids learn and offers them a way to talk about social media and how to use it safely. Styles differ in how parents achieve this.⁶⁶ Some will use phone monitoring apps⁶⁷ and others will use family media plans and discussion.⁶⁸ For this to succeed, parents have to be actively involved with their

⁶² MARTER, Joyce, 6 Ways to Model Responsible Social Media Use to Your Kids. U.S. Surgeon General Issues A Warning About Social Media Effects on Adolescents, in: *Psychology Today*, 14 June 2023:

<https://www.psychologytoday.com/intl/blog/mental-wealth/202305/6-ways-to-model-responsible-social-media-use-to-your-kids>. [6 January 2025].

⁶³ US Department of Labor, Employment Characteristics of Families – 2023, in: *Bureau of Labor Statistics*, 24 April 2024: <https://www.bls.gov/news.release/pdf/famee.pdf> [6 January 2025].

⁶⁴ DEANGELIS, Tori, Teens Are Spending Nearly 5 Hours Daily on Social Media. Here Are the Mental Health Outcomes, in: *American Psychological Association*, 1 April 2024: <https://www.apa.org/monitor/2024/04/teen-social-use-mental-health> [6 January 2025].

⁶⁵ AUXIER, Brooke, et al., Parenting Children in the Age of Screens, in: *Pew Research Center*, 28 July 2020: <https://www.pewresearch.org/internet/2020/07/28/parenting-children-in-the-age-of-screens/> [6 January 2025].

⁶⁶ Kids Health, Monitoring Your Child's Media Use (for Parents), Medically Reviewed by Elana Pearl Ben-Joseph, in: *Nemours Kids Health*, August 2022: <https://kidshealth.org/en/parents/monitor-media.html> [6 January 2025].

⁶⁷ PINOLA, Melanie, How to Use the Parental Controls on a Smartphone, in: *Consumer Reports*, 15 March 2018: <https://www.consumerreports.org/electronics-computers/cell-phones/how-to-use-parental-controls-on-a-smartphone-a4120021016/> [6 January 2025].

⁶⁸ American Academy of Pediatrics, *Family Media Plan*:

children. Due to their own excessive screen use, many parents feel distracted and not as involved with their children as they desire.⁶⁹ Until the concept of detaching from screens becomes more accepted to discuss and embrace, connected countries need more education and advocacy around the need for less screens and the benefits to everyone in the family world.

Busy is not Always Better

Teens usually thrive on social connection and activities that promote positive views of themselves and their skills. At the same time, busy comes at a cost, the loss of free time. Free time has been shrinking for children globally. Our society shifted from kids who played outside to kids who participated in organized activities. The over scheduled child has been a topic of research focus for at least 20 years. What’s important for us to focus on is that before the over scheduled child, kids had a balance of activities and play. With technology and new ways for kids to be “busy,” free play has become reduced even more. Helping our kids carve out free time starting young isn’t academic. It fosters development, positive sense of self, higher academic achievement, less stress and opportunities for self-exploration and fun. Teens today are not comfortable not being over scheduled. We can help them become more comfortable by creating opportunities for those moments at home, in communities and schools. In an over simplified manner, the first step does involve social media and technology, the value of unplugging and screen free time.

The focus on screen time has been on limiting social media and trying to find multiple ways of putting in buffers for children, by laws and other restrictions, as noted above. One important way to improve the health and well-being of our children is something fundamental to development but found less in our children’s lives than in prior generations, free time play. We can’t turn back time, but we can borrow from prior generations and bring back aspects that helped people thrive. One of those areas is play.⁷⁰ Cultural changes and parental fears and expectations have moved children inside more. A 2022 poll of 3000 adults revealed that 80% of boomers reported playing outside compared to 27% of generation alpha. Combine this trend with the increased screen time and it’s no wonder our

<https://www.healthychildren.org/English/fmp/Pages/MediaPlan.aspx#/> [6 January 2025].

⁶⁹ AUXIER, *Parenting Children*.

⁷⁰ Save the Children, *Only One In Four Children Play Out Regularly On Their Street Compared To Almost Three-Quarters Of Their Grandparents Generation*, 4 August 2022: <https://www.savethechildren.org.uk/news/media-centre/press-releases/children-today-62-percent-less-likely-to-play-outside-than-their> [6 January 2025].

tweens and teens are struggling with their emotions and friendships. Regardless of the age, play has been shown by multiple studies and reports to promote positive mental health.⁷¹

Conclusion

The social media and screen use landscape is dense, but these are, in their basic forms, tools. Tools take time to learn. When used properly, they can enhance our lives. If used incorrectly, our experiences have the potential for harm. The tools involved with social media and screen-based activities go well beyond turning a device on and signing up or an account. Children need to learn that these tools can be used by them as they get older and achieve the developmental growth to understand how to use them, and what to do if trouble occurs. Instead of placing restriction on social media and screen use, teaching children the skills to use screens and social media in school and home just as we do in other areas of life. We teach children to ride bikes before they learn to drive. They become exposed to driving and social activities like drinking by being with their parents and other adults as passengers and observers. Children won't feel they are missing out if our culture embodies the teaching and reinforcement of digital skills in each generation and before children are born. We teach children many rules and guidelines for navigating the many aspects of life. Adding social media and screen time rules can be included comfortably with those other areas we teach our children if we model and teach it that way. Each year, the second week of May, is Screen Free Week. Initially a local endeavor in the United States, it's now encouraged around the world.⁷² A digital tool educated enough people that a cause to disconnect caught on. That's the story we want our kids to understand and know. If the tool, social media and screens, is used for good, our true connections with our communities will be enriched.

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⁷¹ Ibid.

⁷² Screen-Free Week, *Screen-Free Week 2023: You did it! Screen-Free*, 11 May 2023: <https://screenfree.org/screen-free-week-2023-you-did-it/> [6 January 2025].

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<https://www.healthychildren.org/English/fmp/Pages/MediaPlan.aspx#/> [6 January 2025].

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Short Bio

Dr. Gwenn O’Keeffe is a pediatrician, family mediator and coach. Dr. O’Keeffe received her medical degree from the Tufts University School of Medicine (Boston, USA) and completed her pediatrics internship and residency at the New England Medical Center – Boston Floating Hospital for Infants and Children. She obtained her law degree at the Massachusetts School of Law with a focus on family mediation and conflict resolution.

‘Artificial Intelligence’ and Ethics of the Rights of the Child

Peter G. Kirchsclaeger

‘Artificial Intelligence’ and the Rights of the Child

‘Artificial intelligence (AI)’ and generative ‘AI’ have profound positive and negative effects from an ethical perspective on children of today, children of tomorrow, and on children of the future as ‘AI’ affects, among others, human thinking and interaction, sciences and culture, education, information, and communication. Using the rights of the child as an ethical frame of reference allows us to precisely identify the ethical upsides and downsides of ‘AI’.

Before some examples illustrate this positive and negative side of ‘AI’, a fundamental guideline is emphasized, because too often in the academic discourse on this topic the following mistake is made: “A violation of the rights of the child with or through ‘AI’ cannot be outweighed by the positive ethical potential of AI in terms of the rights of the child. As the rights of the child are at stake, every single violation of the rights of the child is ethically unacceptable.”¹ For example, the rights of the child are fostered – in this case especially the right to education – when ‘AI’ and generative ‘AI’ are supporting the learning, development, and communication of children.² At the same time, violations of children’s rights to privacy and data-protection are occurring because of these activities, and also with “smart toys”³ where the data of children are generated and collected.

The rights of the child are further under attack due to ‘AI’⁴ and generative ‘AI’ when there is an enormous increase of already existing and emerging sexually

¹ See: KIRSCHSCHLAEGER, Peter G., Artificial Intelligence – an Analysis from the Rights of the Child Perspective, in: *Berkeley Journal of International Law* 27.01 (2025): <https://www.berkeleyjournalofinternationallaw.com/post/artificial-intelligence-an-analysis-from-the-rights-of-the-child-perspective> [19 May 2025].

² See: AKHTAR, Rehman, et al., Artificial Intelligence Impact on Legal, Education and General Rights of Children, in: *Journal of Peace, Development & Communication* 07.01 (2023) 19–26.

³ See: FOSCH-VILLARONGA, Eduard, et al., Toy Story or Children Story? Putting Children and Their Rights at the Forefront of the Artificial Intelligence Revolution, in: *AI & society* 38 (2023) 133–152.

⁴ See: CHARISI, Vasiliki, et al., *Artificial Intelligence and the Rights of the Child: Towards an Integrated Agenda for Research and Policy*, (Luxembourg: EU Joint Research Centre, 2022): <https://publications.jrc.ec.europa.eu/repository/handle/JRC127564> [19 May 2025].

exploitative practices against children in the digital environment⁵ with a massive negative impact on children's right to physical and mental integrity. Moreover, the negative impact of 'AI' and generative 'AI' on the mental health of children⁶ is a violation of the children's right to physical and mental integrity.

Beyond that, creating the obsession in children of watching as many videos as possible, by targeting them based on machine learning algorithms (e.g., on YouTube, YouTube Kids, ...) together with political⁸ and economic manipulation of children online,⁹ represent violations of the freedom and autonomy of children.

The lack of online security protecting children from age-inappropriate content which is just a few clicks away from or part of automatic advertisements interrupting the transmissions¹⁰ is a violation of the children's right to security. Furthermore, algorithms and data are neither objective, neutral, nor fair.¹¹ Algorithms and data know biases resulting in discrimination and exclusion as well as biases resulting in the decisions and actions by 'AI' violating the children's right to non-discrimination. In addition, the exploding digital divide¹² and the severe ecological exploitation by this technological progress so far¹³ makes children suffer.

⁵ See: OHCHR, *Call for input: Existing and Emerging Sexually Exploitative Practices against Children in the Digital Environment*, 2024:

<https://www.ohchr.org/en/calls-for-input/2024/call-input-existing-and-emerging-sexually-exploitative-practices-against> [19 May 2025].

⁶ See: SALLEH, Anna / QADAR, Sana, "Artificial Intelligence has Psychological Impacts our Brains Might not be Ready for, Expert Warns," in: *ABC News*, 30 April 2024:

<https://www.abc.net.au/news/health/2024-05-01/artificial-intelligence-ai-psychology-mental-health/103753940> [19 May 2025].

⁷ See: O'BRIEN, Matt, "Consumer Groups Say YouTube Violates Children's Online Privacy," in: *Yahoo News*, 04 October 2018: <https://rb.gy/w4s4po> [19 May 2025].

⁸ See: KIRSCHSCHLAEGER, Peter G., *Digital Transformation and Ethics. Ethical Considerations on the Robotization and Automation of Society and the Economy and the Use of Artificial Intelligence*, (Baden-Baden: Nomos, 2021).

⁹ See: LINN, Susan, *Consuming Kids. The Hostile Takeover of Childhood*, (New Press 2004).

¹⁰ See: JAIN, Atul, Artificial Intelligence and Child Rights: An Analysis, in: *International Journal Of Legal Developments And Allied Issues* 8 (2022) 122–129.

¹¹ See: KIRSCHSCHLAEGER, Peter G., *Digital Transformation and Ethics*, 2021.

¹² See: UNICEF, *Policy Guidance on AI for Children*, 2021: <https://www.unicef.org/innocenti/reports/policy-guidance-ai-children> [19 May 2025].

¹³ See: NAUGHTON, John, "Why AI is a Disaster for the Climate," in: *The Guardian*, 23 December 2023: <https://www.theguardian.com/commentisfree/2023/dec/23/ai-chat-gpt-environmental-impact-energy-carbon-intensive-technology> [19 May 2025].

Finally, the impact of ‘AI’ on human labor causing a massive reduction of paid professional tasks¹⁴ affects the rights of the child indirectly as they experience the negative socio-economic consequences as well as directly because only a minority of them will ever fulfill a paid professional task. So far, the rights of the child are neither sufficiently respected, protected, implemented, nor realized in the field of ‘AI’.¹⁵ UN Secretary General António Guterres pointed out in the UN Security Council on July 18, 2023: “Generative AI has enormous potential for good and evil at scale.[...] Without action to address these risks, we are derelict in our responsibilities to present and future generations.”¹⁶

AI? Data-Based Systems (DS)

Confronted with the question of the definition of ‘artificial intelligence,’ one becomes aware of its conceptual blurriness¹⁷ which should be overcome from an ethical perspective.¹⁸ ‘Artificial intelligence’ can be defined as “machines that are able to ‘think’ in a human-like manner and possess higher intellectual abilities and professional skills, including the capability of correcting themselves from their own mistakes.”¹⁹ The term ‘artificial’ in ‘artificial intelligence’ highlights that “intelligence [is] displayed or simulated by technological means.”²⁰

From an ethical standpoint, the above-mentioned starting point is criticized because intelligence does not just consist in the solution of a cognitive task but also

¹⁴ See: KIRCHSCHLAEGER, Peter G., *Ethics and the Digital Transformation of Human Work. The Society-, Entrepreneurship-, Research-Time Model (SERT)* (Cham: Palgrave Macmillan, 2025).

¹⁵ See: LIEVENS, Eva, Growing Up with Digital Technologies. How the Precautionary Principle Might Contribute to Addressing Potential Serious Harm to Children’s Rights, in: *Nordic Journal of Human Rights* 39 (2021) 128–145.

¹⁶ GUTERRES, Antonio, *Secretary-General’s Remarks to the Security Council on Artificial Intelligence* (2023): <https://www.un.org/sg/en/content/sg/speeches/2023-07-18/secretary-generals-remarks-the-security-council-artificial-intelligence> [19 May 2025].

¹⁷ See: J. WEIZENBAUM, Joseph, Not Without Us, in: *ACM SIGCAS Computers and Society* 16 (1986) 2–7. See also: OHLY, Lukas, *Ethik der Robotik und der Künstlichen Intelligenz*, (Frankfurt: Peter Lang Verlag, 2019).

¹⁸ See: KIRCHSCHLAEGER, Peter G., Artificial Intelligence and the Complexity of Ethics, in: *Asian Horizons* 14 (2020) 587–600.

¹⁹ TZAFESTAS, Spyros G., *Roboethics: A Navigating Overview* (Intelligent Systems, Control and Automation: Science and Engineering, vol. 79) (London: Springer, 2015); See: JANSEN, Philip, et al., *SIENNA D4.1: State-of-the-art Review: Artificial Intelligence and Robotics*, 2019.

²⁰ COECKELBERGH, Mark, *AI Ethics*, (MIT Press Essential Knowledge Series) (Cambridge: The MIT Press, 2020).

in the way it is pursued.²¹ In view of the nature of ‘artificial intelligence,’ doubts arise from an ethical perspective whether the term is even adequate, because ‘artificial intelligence’ strives to imitate human intelligence, but this is limited to a certain area of intelligence (e.g., certain cognitive capacities).²² Furthermore, it is to be assumed that ‘artificial intelligence’ can at best become like human intelligence in certain areas of intelligence but can never become the same. Among others, in the domain of emotional and social intelligence, machines are only able to simulate emotions, personal interaction as well as relationships and lack authenticity. For instance, an ‘AI’-learning assistant can be trained to cry when the pupil is crying because it is not able to resolve the exercise, but no one would argue that the ‘AI’ feels real emotions and cries due to them. On the contrary, one could train the exact same ‘AI’-learning assistant to slap the pupil’s face when the pupil is crying, and the robot would perform this function in the same perfect way. The lack of authenticity of ‘AI’ in human-‘AI’-interaction is problematic for respecting the dignity of all humans. As it is relevant to the respect of human dignity, authenticity must be part of the equation in the use of ‘AI’.

Beyond that, in the domain of moral capability, one cannot ascribe machines with moral capability because they are presupposed to follow ethical rules given by humans. Technologies are primarily made for their suitability and may set rules as a self-learning system, for example, to increase their efficiency, but these rules do not contain any ethical qualities. E.g., the ‘AI’-learning assistant could set the rules for itself, but it is not aware of the ethical quality. It could give itself the rule to slap the pupil’s face without being able to recognize ethical rules for itself, which would allow the machine to perceive the illegitimacy of its rules and actions. A human teacher instead possesses the potential to recognize for himself or herself binding ethical rules, which empower him or her to see that harming pupils is illegitimate. Machines lack this autonomy. Autonomy encompasses recognizing and setting ethical norms for oneself and basing one’s own actions on them. Humans can set the rules for an ‘AI’-learning assistant, whether good or bad. Machines fail on the principle of generalizability.

²¹ See: MISSELHORN, Catrin, *Maschinen mit Moral?: Grundfragen der Maschinenethik*, Reclams Universal-Bibliothek, vol. 19583, (Ditzingen: Reclam Verlag, 2018).

²² See: DREYFUS, Hubert L., *What Computers Can’t Do: The Limits of Artificial Intelligence*, Harper Colophon Books, vol. 613, (Cambridge: The MIT Press, 1972); DREYFUS, Hubert L. / DREYFUS, Stuart E. *Mind Over Machine: The Power of Human Intuition and Expertise in the Era of the Computer*, (New York: Free Press, 1986).

This principle has its roots in Immanuel Kant's universalization principle that ethical rules can only be ethical rules if we want them to be universal law.²³ Based on this, the fulfillment of the principle of generalizability presupposes presenting rational and plausible arguments – 'good reasons.' 'Good reasons' means that it must be conceivable that all humans, given their effective freedom and autonomy as well as their full equality, would agree upon these reasons – within a model of thought and not within a real worldwide referendum – on ethical grounds.²⁴ While a human can know that he or she does something ethically right or wrong, machines cannot identify the ethical quality.

Finally, sometimes ethics must go beyond principles, norms, and rules to be sensitive to the *rule-transcending uniqueness of the concrete*.²⁵ This accounts for the truth that in a concrete encounter with concrete people in a concrete situation, rules can reach their limit because the concrete, in its uniqueness, outranks the rule. "The general, concrete ethical, the positive legal and many other norms that are generally applicable, although indispensable, are not sufficient to guarantee the basic humanity in the face of diversity [...] it is inevitable that we have to cross norms in certain situations in order to act humanely, but this does not mean that we deny the need for norms in general or refute that they are generally applicable."²⁶ Through the increasing complexity of everyday reality – e.g., when guiding principles diverge or collide – humans are challenged to find ethical insights into the ethical assessment of a concrete encounter with concrete humans in a concrete situation.

These ethical considerations in a more differentiated and better manner would be expecting too much of machines due to their lack of moral capability. Transferring ethics completely to mathematics, programming, or training becomes difficult or even impossible. Therefore, technologies cannot perform as moral subjects or moral agents, but humans carry the ethical responsibility of machines. Humans must lay down ethical principles and ethical and legal norms; set a framework, goals, and limits for technologies; and define the use of machines in addition to

²³ See: KANT, Immanuel, *Kritik der praktischen Vernunft. Grundlegung zur Metaphysik der Sitten*, in: WEISCHEDEL, Wilhelm, ed., *Werkausgabe*, (Berlin: Suhrkamp Verlag, 1974) VII, 69.

²⁴ See: KIRCHSCHLAEGGER, Peter G., *Ethical Decision-Making*, (Baden-Baden: Nomos, 2023).

²⁵ Ibid.

²⁶ VIRT, Günter, *Damit Menschsein Zukunft hat*, in: MARSCHÜTZ, Gerhard / PRÜLLER-JAGENTEUFEL, Gunter / VIRT, Günter, eds., *Theologische Ethik im Einsatz für eine humane Gesellschaft*, (Würzburg: Echter, 2007) 42–43. Translated by the author.

examining, analyzing, evaluating, and assessing technology-based innovation from an ethical perspective.

The term “data-based systems (DS)”²⁷ would be more appropriate than ‘artificial intelligence’ because this term describes what actually constitutes so-called ‘artificial intelligence’: generation, collection, and evaluation of data; data-based perception (sensory, linguistic); data-based predictions; data-based decisions. In addition, the term ‘data-based systems’ allows for highlighting the main strengths and weaknesses of the present technological achievements in this field. The mastery of an enormous quantity of data represents the key asset of DS.

Pointing to its core characteristic, namely being based on data and relying exclusively on data in all its processes, its own development, and its actions – more precisely, its reactions to data – lifts the veil of the inappropriate attribution of the myth of ‘intelligence,’ covering substantial ethical problems and challenges of DS. This allows more accuracy, adequacy, and precision in the critical reflection on DS. For instance, the untraceability, unpredictability, and inexplicability of the algorithmic processes resulting in data-based evaluation, data-based predictions and data-based decisions (“black-box-problem”²⁸), its wide vulnerability to systemic errors, its deep exposure for confusing causality with correlation (e.g., high consumption of ice-creams by children in a summer-month and high number of children car-accidents due to more mobility during vacation in the same summer-month correlate but there is not any causal relationship between the two statistics, meaning ice-cream-consumption does not cause car-accidents),²⁹ and its high probability of biased and discriminatory algorithms and data leading to biased and discriminatory data-based evaluations, predictions, and decisions embrace its major disadvantages.³⁰

²⁷ See: KIRSCHSCHLAEGER, Peter G., *Digital Transformation and Ethics*.

²⁸ See: KNIGHT, Will, The Dark Secret at the Heart of AI, in: *MIT Technology Review*, 11 April 2017: <https://www.technologyreview.com/2017/04/11/5113/the-dark-secret-at-the-heart-of-ai/> [19 May 2025]; See: BATHAEE, Yavar, The Artificial Intelligence Black Box and the Failure of Intent and Causation, in: *Harvard Journal of Law & Technology* 31(2) (2018) 889-938; KNIGHT, Will, The Financial World Wants to Open AI’s Black Boxes, in: *MIT Technology Review*, 13 April 2017: <https://www.technologyreview.com/2017/04/13/152590/the-financial-world-wants-to-open-ais-black-boxes/> [19 May 2025]; CASTELVECCHI, Davide, Can We Open the Black Box of AI?, in: *Nature* 538 (2016) 20–23.

²⁹ See: IVERSEN Gudmund R. / GERGEN, Mary, *Statistics: The Conceptual Approach*, (Berlin: Springer, 1997).

³⁰ See: COECKELBERGH, Mark, *AI ethics*, (MIT Press Essential Knowledge Series) (Cambridge: The MIT Press, 2020); See: UNESCO, *Recommendation on the Ethics of Artificial Intelligence*, Paris, 2021: <https://unesdoc.unesco.org/ark:/48223/pf0000381137>

“Algorithms are opinions embedded in codes. They are not objective.”³¹ They are not neutral. They serve specific goals and purposes. Finally, this terminological sharpening does not exclude the possibility of relying on and learning from the existing research and discourse on so-called ‘AI’ (including, e.g., ‘knowledge-based systems’) and its technological and normative dimensions. Because DS lack moral capability, humans have the exclusive responsibility to identify ethical opportunities and ethical risks of DS, precisely to allow children of today and children of tomorrow to flourish with their human dignity respected on a planet with a sustainable future. The following reasons underpin that DS lack moral capability.

Conscience³²

A first challenge to moral capability of DS – to ‘ethical’ DS – is based on the concept of conscience, which is central for humans and their morality. Conscience unites what is objectively required and what has been subjectively experienced in a specific and concrete situation, in a specific context, during a unique encounter with unique people. “Conscience is an active faculty that discovers and discerns the good within the complexity of each situation.”³³ Conscience creates an authority within a person, which has an impact on an action *a priori*, but also *a posteriori*. Conscience does not act itself.³⁴ Conscience expresses a trust in the human individual. The human individual is expected to have this inner voice in moral questions, to be able to recognize it, listen to it, and then act responsibly. It is respected and upheld that the dignity of conscience belongs to the human individual. It cannot be said that technologies have a conscience. Because the potentials that technologies possess in relation to ethical decisions and actions are nowhere close to the human conscience. They lack various levels of morality or duty, as well as the existence merged in the conscience in varying qualities,

[19 May 2025].

³¹ See: DEMUTH, Yves, Die unheimliche Macht der Algorithmen, in: *Beobachter*, 26 April 2018: https://www.beobachter.ch/gesellschaft/multimedia/die-unheimliche-macht-der-algorithmen-169811?srsId=AfmBOopRQi-zeASQJPvA0f2yto7TQqD1aFwqoyz-bLS4GDxGukc1Svh_t [19 May 2025].

³² See: KIRCHSCHLAEGGER, Peter G., Gewissen aus moraltheologischer Sicht, in: *Zeitschrift für katholische Theologie* 139 (2017) 152–177.

³³ HOGAN, Linda, Conscience in the Documents of Vatican II, in: CURRAN, Charles E. ed., *Conscience, Readings in Moral Theology*, (New York: Paulist Press, 2004) 86–87.

³⁴ See: WOLBERT, Werner, *Gewissen und Verantwortung: Gesammelte Studien*, Studien zur theologischen Ethik, vol. 118, (Freiburg / Vienna: Academic Press Fribourg / Verlag Herder, 2008) 170.

intensities and marked by individual development or social influence.³⁵ If conscience is understood as being essential for morality, the lack of conscience is a first argument against 'ethical' DS.

Freedom

A second question mark regarding 'ethical' DS arises from freedom. Freedom is a *conditio sine qua non* for morality, because only freedom opens up the possibility to decide for or against the good or the right, respectively. Freedom means to be able to act according to one's own interests, preferences, wishes, and plans. It can encompass the freedom to want what one wants and the freedom to want what one doesn't want. The latter means that freedom can also mean to want the 'ought,' i.e. the ethically demanded, even if this might not correspond to one's own wishes, needs, preferences, or interests. This opens up the social horizon of freedom. Beyond that, freedom is the origin of science, research, and technology. This aspect must be emphasized in a time when some voices deny the existence of freedom at all.³⁶ That freedom, which is now denied, has made the developments of science, in the name of which it is now denied, possible. Indeed, there would never have been a science without the human mind's inherent ability to distinguish between false and true and to prefer the true to the false. False and true make no sense if not for a free mind capable of striving for one and rejecting the other.

Without these essential prerequisites, any explanation remains merely a vociferous, meaningless act. For this reason, it can be said with justification that science is the most glorious monument that freedom has erected for itself, and that

³⁵ See: SCHMITT, Hanspeter, *Sozialität und Gewissen: Anthropologische und theologisch-ethische Sondierung der klassischen Gewissenslehre*, Studien der Moralthologie, Bd. 40 (Zurich: LIT Verlag, 2008).

³⁶ See for this discourse: HESS, Christian, et al., eds., *Hirnforschung und Menschenbild: Beiträge zur interdisziplinären Verständigung* (Fribourg: Academic Press Fribourg, 2007); FINK, Helmut / ROSENZWEIG, Rainer, eds., *Freier Wille - frommer Wunsch?: Gehirn und Willensfreiheit*, (Paderborn: Mentis, 2006); See: FLEISCHER, Margot, *Menschliche Freiheit - ein vielfältiges Phänomen: Perspektiven von Aristoteles, Augustin, Kant, Fichte, Sartre und Jonas*, (Baden-Baden: Nomos, 2012); See: BLOCH, Walter, *Willensfreiheit: Neue Argumente in einem alten Streit*, (Hodos - Wege bildungsbezogener Ethikforschung in Philosophie und Theologie, vol. 11) (Frankfurt: Peter Lang, 2011); BAUER, Emmanuel J., ed., *Freiheit in Philosophischer, Neurowissenschaftlicher und Psychotherapeutischer Perspektive* (Boston: Fink, 2007); See: ACHTNER, Wolfgang, *Willensfreiheit in Theologie und Neurowissenschaften: Ein historisch-systematischer Wegweiser*, (Darmstadt: WBG, 2010); See: GUCKES, Barbara, *Ist Freiheit eine Illusion?: Eine metaphysische Untersuchung*, Zugl.: Bielefeld, Univ., Habil.-Schr., 2002, *Ethica*, [Bd. 6], (Paderborn: Brill, 2003).

scientific research is completely unthinkable without freedom.³⁷ Machines lack freedom. Technologies are designed, developed, and built by humans, meaning they are produced heteronomously. Therefore, the training of ethical principles and norms are also guided by humans. In a last consequence, machines would always be controlled from the outside. Metaphorically speaking, machines – even self-learning machines – will go back to a first line of code that always comes from humans. The lack of freedom is a second argument against the moral capability of DS.

Responsibility

The freedom to want what one does not want makes responsibility stand out.³⁸ Responsibility succeeds in understanding that one’s own freedom is connected to the freedom of all other humans and to the respect of the human dignity of all humans. Responsibility enables freedom to go beyond one’s own needs and interests to discover the horizon for the freedom of all other humans and for social tasks and objectives. “Responsibility opens up a freedom that is individualistic and concentrated on one’s own needs and integrates it in a social framework, common tasks and objectives.”³⁹ Responsibility is also a *conditio sine qua non* for morality. In order to carry or be given responsibility – i.e. to be able to be a subject of responsibility – freedom and rationality are necessary. The query arises whether machines can assume responsibility. The answer would have to be negative, because machines cannot be a subject of responsibility due to the fact that they lack freedom – a third argument against ‘ethical’ DS.

Autonomy

A fourth fundamental doubt concerning ‘ethical’ DS arises from the autonomy proclaimed by humans. Humans are carriers of dignity, and therefore, may not be instrumentalized, because they, as rational beings, recognize common moral rules and principles for themselves, determine them for themselves and base their actions on them.⁴⁰ Human dignity is based on the ability of the human to set rules of reason for himself/herself. This means that moral rules and principles that the

³⁷ HERSCH, Jeanne, *Im Schnittpunkt der Zeit: Essays*, (Zürich: Benziger, 1992) 60–61. Translated by the author.

³⁸ See: KIRSCHSCHLAEGGER, Peter G., Verantwortung aus christlich-sozialethischer Perspektive, *ETHICA* 22 (2014) 29–54.

³⁹ HOLDEREGGER, Adrian, Art. Verantwortung, in: WILS, Jean-Pierre / HÜBENTHAL, Christoph, eds., *Lexikon der Ethik*, (Paderborn: Schöningh, 2006) 394–403, 41. Translated by the author.

⁴⁰ See: KANT, *Kritik der praktischen Vernunft. Grundlegung zur Metaphysik der Sitten*, VII, 74, 69.

human being formulates in his/her autonomy must meet the following requirements of a critical, rational morality, which will guarantee their general applicability: the fulfillment of the principle of generalizability through the presentation of rational and plausible arguments – namely ‘good reasons.’ ‘Good reasons’ means that it must be conceivable that all human beings, in their effective freedom and autonomy as well as in their full equality would agree to these reasons – within a model of thought and not within a real global referendum – on ethical grounds.⁴¹

Does the description of human autonomy, which can be expressed by humans, correspond to the potential of technologies to follow moral rules, to make moral decisions accordingly, and to carry out corresponding actions? There is a gap between technologies and ethics regarding the notion of ‘autonomy.’⁴² While humans recognize general moral rules and principles for themselves, set them for themselves and base their actions on them, this is not possible for technologies. For example, humans are able to identify the rights of the child as ethical compass for their decisions and actions, machines cannot identify ethical principles and norms providing normative guidance to them.

Technologies are primarily made for their suitability and may set rules as a self-learning system, for example to increase their efficiency. But these rules do not contain any ethical quality. Machines fail on the above-mentioned principle of generalizability. This negation is a fourth argument against ‘ethical’ DS.

Data-Based Systems (DS) with Ethics

The above critique leads to the main consequence that humans are responsible for making ethical decisions,⁴³ for laying down ethical principles, ethical and legal norms, setting a framework, goals and limits of DS, as well as defining their use besides examining, analyzing, evaluating, and assessing technology-based innovation from an ethical perspective. It is up to humans to program and train DS with ethical principles and norms – even though technologies do not recognize the ethical quality of them. DS might cause good and evil, but they do it without

⁴¹ See: KIRCHSCHLAEGER, Peter G., *Ethical Decision-Making*.

⁴² See: KO, Insok, Can Artificial Intelligence be an Autonomous Entity? in: *Korean Journal of Philosophy* 133 (2017) 163–187.

⁴³ See: JOHNSON, Deborah G. Computer Systems: Moral Entities but not Moral Agents, in: *Ethics and Information Technology* 8 (2006) 195–204; See: YAMPOLSKIY, Roman V., Artificial Intelligence Safety Engineering: Why Machine Ethics Is a Wrong Approach, in: MÜLLER, Vincent C., ed., *Philosophy and Theory of Artificial Intelligence*, (Studies in Applied Philosophy, Epistemology and Rational Ethics) (Berlin / Heidelberg: Springer, 2013) 389–396.

recognizing, knowing about or being aware of the ethical quality of it. The exclusive ability of humans to recognize the ethically legitimate, to decide accordingly, and to act upon it comprises also the possibility to decide not even to create, design, produce, disseminate, or to use technologies as objects correspondingly the possibility to decide to abolish or to destroy technologies.

Existing Global Governance Initiatives

Several declarations, recommendations, principles, and guidelines have contributed to a debate about the international governance of DS – the first generation of governance initiatives: 'the sermons.'⁴⁴ Different initiatives by states and civil society on national,⁴⁵ regional⁴⁶ (e.g., Council of Europe, Guidelines to respect

⁴⁴ For this aspect and the following see: KIRCHSCHLAEGER, Peter G., An International Data-Based Systems Agency IDA: Striving for a Peaceful, Sustainable, and Human Rights-Based Future, in: *Philosophies* 9 (2024) 73.

⁴⁵ See, among others, Agency for Digital Government, *The Danish National Strategy for Artificial Intelligence*: <https://en.digst.dk/strategy/the-danish-national-strategy-for-artificial-intelligence/> [19 May 2025]; Japanese Society for Artificial Intelligence (JSAI), *The Japanese Society for Artificial Intelligence Ethical Guidelines*: <https://www.ai-gakkai.or.jp/ai-elsi/wp-content/uploads/sites/19/2017/05/JSAI-Ethical-Guidelines-1.pdf> [19 May 2025]; House of Commons of the United Kingdom. Science and Technology Committee, *Algorithms in Decision-Making: Report No. 4*, UK:

<https://publications.parliament.uk/pa/cm201719/cmselect/cmsctech/351/351.pdf> [19 May 2025]; Swiss Federal Council, *Leitlinien Künstliche Intelligenz für den Bund. Orientierungsrahmen für den Umgang mit künstlicher Intelligenz in der Bundesverwaltung*:

https://www.sbf.admin.ch/dam/sbf/de/dokumente/2020/11/leitlinie_ki.pdf.download.pdf

[19 May 2025]; Australian Human Rights Commission, *Discussion Paper: Human Rights and Technology*: <https://humanrights.gov.au/our-work/technology-and-human-rights/publications/discussion-paper-human-rights-and-technology> [19 May 2025]; See: Future of Life Institute, *Asilomar AI Principles*: <https://futureoflife.org/open-letter/ai-principles/> [19 May 2025]; Partnership on AI, *Our Tenets*: <https://partnershiponai.org/about/#tenets> [19 May 2025]; Austrian Council on Robotics and Artificial Intelligence, *Die Zukunft Österreichs mit Robotik und Künstlicher Intelligenz*, 2018; Amnesty International, *The Toronto Declaration: Protecting the Right to Equality in Machine Learning*: <https://www.torontodeclaration.org/declaration-text/english/> [19 May 2025]; Beijing Academy of Artificial Intelligence (BAAI), *Beijing Artificial Intelligence Principles*: <https://ai-ethics-and-governance.institute/beijing-artificial-intelligence-principles/> [19 May 2025].

⁴⁶ See: European Commission. European Group on Ethics in Science and New Technologies, *Ethics of information and communication technologies*, Publications Office (2012):

<https://op.europa.eu/en/publication-detail/-/publication/c35a8ab5-a21d-41ff-b654-8cd6d41f6794> [19 May 2025]; See: European Commission. European Group on Ethics in Science and New Technologies, *Ethics of Security and Surveillance Technologies: Brussels, 20 May 2014*, Publications Office:

<https://op.europa.eu/en/publication-detail/-/publication/6f1b3ce0-2810-4926-b185-54fc3225c969> [19 May 2025]; European Commission. Directorate General for Research and Innovation and European Commission. European Group on Ethics in Science and New Technologies, *Statement on Artificial Intelligence, Robotics and 'Autonomous' Systems: Brussels, 9 March 2018*, Publications Office:

protect and fulfil the rights of the child in the digital environment),⁴⁷ and international level – e.g., the *Bletchley Declaration 2023*,⁴⁸ the *AI4People Summit Declaration*,⁴⁹ the *G7 International Guiding Principles on AI*,⁵⁰ the *Recommendation on the Ethics of Artificial Intelligence* by UNESCO,⁵¹ the *Statement on Inclusive and Sustainable Artificial Intelligence for People and the Planet*,⁵² the OECD Principles on Artificial Intelligence,⁵³ the G20-Principles of AI,⁵⁴ *Declaration of Principles* by the World Summit on the Information Society in Geneva 2003⁵⁵ know the main challenge of the step from theory to practice. They remain at maximum ‘soft law’ “which is a tool often used to either avoid or anticipate formal legislation.”⁵⁶

<https://op.europa.eu/en/publication-detail/-/publication/dfebe62e-4ce9-11e8-be1d-01aa75ed71a1> [19 May 2025]. European Commission. High-Level Expert Group on AI, *Ethics Guidelines for Trustworthy AI*: <https://digital-strategy.ec.europa.eu/en/library/ethics-guidelines-trustworthy-ai> [19 May 2025].

⁴⁷ Council of Europe, *Guidelines to Respect Protect and Fulfil the Rights of the Child in the Digital Environment: Recommendation CM/Rec (2018) 7 of the Committee of Ministers*, 2018: <https://edoc.coe.int/en/children-and-the-internet/7921-guidelines-to-respect-protect-and-fulfil-the-rights-of-the-child-in-the-digital-environment-recommendation-cmrec20187-of-the-committee-of-ministers.html> [19 May 2025].

⁴⁸ See: AI Safety Summit, *The Bletchley Declaration by Countries Attending the AI Safety Summit, 1-2 November 2023*, GOV.UK, 01 November 2023: <https://www.gov.uk/government/publications/ai-safety-summit-2023-the-bletchley-declaration/the-bletchley-declaration-by-countries-attending-the-ai-safety-summit-1-2-november-2023> [19 May 2025].

⁴⁹ FLORIDI, Luciano, et al., *AI4People’s Ethical Framework for a Good AI Society: Opportunities, Risks, Principles, and Recommendations*: <https://ai4people.org/research-impact/> [19 May 2025].

⁵⁰ European Commission, *G7 Leaders’ Statement on the Hiroshima AI Process*, 2023: <https://digital-strategy.ec.europa.eu/en/library/g7-leaders-statement-hiroshima-ai-process> [19 May 2025].

⁵¹ UNESCO, *Recommendation on the Ethics of Artificial Intelligence*, 2021: <https://unesdoc.unesco.org/ark:/48223/pf0000381137> [19 May 2025].

⁵² Élysée, *Statement on Inclusive and Sustainable Artificial Intelligence for People and the Planet*, 11 February 2025: <https://www.elysee.fr/en/emmanuel-macron/2025/02/11/statement-on-inclusive-and-sustainable-artificial-intelligence-for-people-and-the-planet>. [19 May 2025].

⁵³ See: OECD, *Recommendation of the Council on Artificial Intelligence*, OECD Legal Instruments, 2024: <https://legalinstruments.oecd.org/en/instruments/oecd-legal-0449> [19 May 2025].

⁵⁴ See: G20, *G20 Ministerial Statement on Trade and Digital Economy*, 09 June 2019: <https://wp.oecd.ai/app/uploads/2021/06/G20-AI-Principles.pdf> [15 May 2025].

⁵⁵ See: World Summit on the Information Society (WSIS), *Declaration of Principles: Building the Information Society: a global challenge in the new Millennium*, 2003: <https://www.itu.int/net/wsis/docs/geneva/official/dop.html> [19 May 2025].

⁵⁶ NEVEJANS, Nathalie, *European Civil Law Rules in Robotics: Study for the JURI Committee*, (Strasbourg: European Union, 2016) 26.

Beyond that, the European Parliament and Council reached political agreement on the European Union's Artificial Intelligence Act ('EU AI Act').⁵⁷ The EU AI Act aims to represent a comprehensive legal framework for the regulation of DS across the EU, ensuring the safety of and respect of fundamental rights by DS as well as encouraging investment and innovation in the field of DS.

Other legal initiatives – forming together with the EU AI Act the second generation of governance initiatives: 'the locals' – are also pursued in China and in the USA on the federal level, and several governments on the state level released new regulations, leading to the categorization of these activities as *American Market-Driven Regulatory Model*, *Chinese State-Driven Regulatory Model*, and *European Rights-Driven Regulatory Model*.⁵⁸

Finally, the debate about global governance in DS also knows the third generation of governance initiatives: "the international players" – consisting of the proposals of two main models: the model of the Intergovernmental Panel on Climate Change (IPCC)⁵⁹ and the model of the International Civil Aviation Organization (ICAO).⁶⁰

The model of the Intergovernmental Panel on Climate Change (IPCC) consists of a panel of experts. The IPCC was established in 1988 by the United Nations, with member countries from around the world. It provides governments with scientific information they can use to develop climate policies. The panel of experts in the domain of DS would provide policymakers and governments with information, scenarios, and models for their decision-making.

The model of the International Civil Aviation Organization (ICAO)⁶¹ consists of a binding global framework and its implementation. The ICAO, as a United Nations agency, has its basis in the Convention on International Civil Aviation. The ICAO is the global forum of states for international civil aviation. It develops

⁵⁷ See: European Parliament, *Artificial Intelligence Act: Deal on Comprehensive Rules for Trustworthy AI*, 2023.

⁵⁸ See: BRADFORD, Anu, *Digital Empires: The Global Battle to Regulate Technology*, (Oxford: Oxford University Press, 2023) 35–145.

⁵⁹ See: KASPERSEN, Anja / WALLACH, Wendell, *Envisioning Modalities for AI Governance: A Response from AIEI to the UN Tech Envoy*, 2023.

⁶⁰ See: Baker & McKenzie, *International: Can a Global Framework Regulate AI Ethics?* <https://insightplus.bakermckenzie.com/bm/investigations-compliance-ethics/international-can-a-global-framework-regulate-ai-ethics> [19 May 2025]; See: World Economic Forum (WEF), *How Can the Aviation Industry Make AI Safer?*: <https://www.weforum.org/agenda/2022/08/how-can-aviation-industry-make-ai-safer/> [19 May 2025].

⁶¹ See: Baker & McKenzie, *International: Can a Global Framework Regulate AI Ethics?*

policies and standards, provides compliance audits, studies, analyses, and assistance to states and stakeholders, and contributes to the global alignment of air regulations.

While ‘the sermons’ lack implementation during the working week, and ‘the locals’ possess a national or regional focus, while DS represents a global phenomenon, ‘the international players’ locate the governance of DS on an international level and approach it adequately in an institutional manner in order to create a positive impact in reality and on the ground. At the same time, it needs to be considered that the IPCC model will not reach the desired effect on the ground because it possesses neither legal authority nor legal enforcement tools. This weakness of the IPCC model becomes clear listening to the UN High Commissioner for Human Rights, Volker Türk:

“Victims and experts [...] have raised the alarm bell for quite some time, but policy makers and developers of AI have not acted enough – or fast enough – on those concerns. We need urgent action by governments and by companies. And at the international level, the United Nations can play a central role in convening key stakeholders and advising on progress. There is absolutely no time to waste. The world waited too long on climate change. We cannot afford to repeat that same mistake.”⁶²

Regarding the ICAO model, doubts arise if one can compare a self-contained industry like aviation to a cross-cutting technology like DS. The latter causes manifold and multifaceted legal and ethical issues.⁶³

At the same time, humanity and the planet are struggling with the enormous ethical and legal problems digital transformation and the use of DS pose – especially for children. Among others, a *first* global threat represents the growing global inequalities and poverty attacking and undermining the wellbeing of children because of a dramatically widening ‘digital divide’ consisting of and leading to violations of human rights and rights of the child.

The negative impact of DS on the climate and the environment will increase – a *second* global threat comprising violations of human rights and rights of the child

⁶² See: TÜRK, Volker, *Artificial Intelligence Must be Grounded in Human Rights, says High Commissioner: Statement Delivered by Volker Türk, UN High Commissioner for Human Rights As Delivered at High Level Side Event of the 53rd Session of the Human Rights Council* (2023): <https://www.ohchr.org/en/statements-and-speeches/2023/07/artificial-intelligence-must-be-grounded-human-rights-says-high> [19 May 2025].

⁶³ See: Baker & McKenzie, *International: Can a Global Framework Regulate AI Ethics?*

by stealing children their necessary conditions for physical survival and for a life with dignity today and in the future.

A *third* global threat for children is the constant violation of rights of the child to privacy and data protection. Whenever possible, data is stolen from children and sold to the highest bidder. The continuous disrespect for privacy and data protection forms a massive attack on the freedom of all children.

Thanks to this vast amount of data about humans, DS know humans better than humans know themselves. This opens the door to economic and political manipulation as well as disinformation – a *fourth* global threat for children. Several democratic decisions have already been manipulated so far with the help of DS. Take the 2016 presidential election in the USA: It has been proven that *Facebook* (now: *Meta*) sold on user data records. The same thing happened with Brexit.⁶⁴ That means that dictators and totalitarian regimes can influence elections and votes in democracies. This manipulation results in policies favoring special interests instead of the wellbeing of all children.

Manipulation and disinformation lead to the destabilization of democratic countries. The rapidly developing technical possibilities for disinformation and manipulation of people through large language models such as *ChatGPT* open new horizons in this regard. It can be assumed that, for example, *ChatGPT* will further intensify the phenomenon of fake news, which is already so devastating for democracies, with ‘deep fakes.’ At the same time, quality journalism as a pillar of democracy will come under even greater economic and political pressure.

This is because media channels can be filled with texts from *ChatGPT* at a low cost. Both phenomena threaten children because political decisions and actions will serve special interests instead of the best interest of all children. Moreover, economic manipulation affects children as consumers. DS know exactly – to use a metaphor – which piano keys it must hit to make the music play, in other words, to make humans shop the way it wants humans to.

A *fifth* global threat represents the security risks for the mental health of children and young people, representing violations of human rights due to the impact of

⁶⁴ See: ANDRZEJEWSKI, Cécile, ‘Team Jorge:’ In the Heart of a Global Disinformation Machine - Forbidden Stories, in: *Forbidden Stories*, 15 February 2023: <https://forbidden-stories.org/team-jorge-disinformation/> [19 May 2025].

social media⁶⁵ as well as for physical health and for the lives of all of us because of the existential consequences of DS-based cyber-attacks and of military applications of DS for global peace and security. Facing these five global threats, the limitations of the so-far three generations of governance initiatives become obvious if one approaches this risky reality with the following test questions for the already existing ‘sermons,’ ‘locals,’ and ‘international actors:’

1. Do multinational technology companies need to change anything regarding their rights of the child-violating business practices because of these proposals?
2. Can rights of the child-violating state actions or business practices be concretely stopped because of these proposals?
3. Can states or multinational technology companies be held accountable for their rights of the child-violations based on these proposals?

The already existing ‘sermons,’ ‘locals,’ and ‘international actors’ receive negative responses in all three cases. Therefore, it is necessary to think about ways to combine the strengths of ‘the sermons,’ ‘the locals,’ and ‘the international actors’ and to avoid their weaknesses in order to address these global threats in an impactful and global way while still benefiting from the ethical opportunities of DS. Allowing children and all humans and the planet to flourish sustainably and guaranteeing globally that human dignity is respected not only offline but also online, and in the digital sphere as well as in the domain of DS, the below described concrete measures are proposed.

Rights of the Child-Based Data-Based Systems (RCBDS)

Rights of the child-based data-based systems (RCBDS)⁶⁶ are meant to ensure that rights of the child serve as the basis of DS. In other words, RCBDS seek to ensure that rights of the child are respected, protected, implemented, and realized within the entire life cycle of DS and the complete value-chain process of DS (in the excavation of natural resources necessary for DS, the design, the development,

⁶⁵ See: KIRCHSCHLAEGER Peter G., Protecting Children from Anti-Social Media, in: *Project Syndicate*, 2024: <https://www.project-syndicate.org/commentary/australia-ban-on-children-using-social-media-should-be-emulated-by-peter-g-kirchsclaeger-2024-12> [19 May 2025].

⁶⁶ See: KIRCHSCHLAEGER, Peter G., *Digital Transformation and Ethics*, 2021; KIRCHSCHLAEGER, Peter G., Securing a Peaceful, Sustainable, and Humane Future Through an International Data-Based Systems Agency (IDA) at the UN, in: *Data & Policy* 6/e7 (2024): <https://www.cambridge.org/core/journals/data-and-policy/article/securing-a-peaceful-sustainable-and-humane-future-through-an-international-database-systems-agency-ida-at-the-un/507AB00A714D1588AED67D96D9B3163D> [19 May 2025].

the production, the distribution, the use, or the non-use of DS because of rights of the child-concerns).

In addition, RCBDS consist in the realization of the principle of non-discrimination in the domain of DS ensuring that all children benefit, and no child is excluded from the ethical upsides of DS respectively that any child becomes a victim of the ethical downsides. For example, biases in the data of DS as well as in the algorithms of DS represent a concrete threat to article 2 of the Convention of the Rights of the Child of 1989:

“States parties shall respect and ensure the rights set forth in the present convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's parents or legal guardian, race, color, sex, language, religion, political or other opinion, national, ethnic or social origin, poverty, disability, birth or other status.”

RCBDS encompasses non-discrimination in the digital sphere and the field of DS. Beyond that, while excavating natural resources necessary for DS, while designing, developing, producing, distributing, using and non-using of DS because of rights of the child-concerns, RCBDS puts the best interests of the child at the center of every phase of the lifecycle of DS as the core guiding principle. This guiding principle considers that children – while being exposed to or interacting with DS – possess a particular vulnerability and depend on support in order to enjoy their rights of the child in the sphere of DS. For example, addictive social media (which should be more adequately labelled as “anti-social media”⁶⁷) should be addressed with the best interests of the child in mind. The WHO has called for “immediate and sustained action to help adolescents turn the tide on potentially damaging social-media use.”⁶⁸ RCBDS would listen to the children and young people themselves when they are sounding the alarm. E.g., in November 2024, the Youth Parliament of the Canton of Lucerne, Switzerland, petitioned the Cantonal Parliament of Lucerne to strengthen protections of social-media users – not least ‘addiction prevention’ – through “targeted awareness-raising among parents and the public.”⁶⁹

⁶⁷ See: KIRCHSCHLAEGER Peter G., Protecting Children from Anti-Social Media, in: *Project Syndicate*.

⁶⁸ See: WHO, *Teens, Screens and Mental Health. New WHO Report Indicates Need for Healthier Online Habits Among Adolescents*, 2024: <https://www.who.int/europe/news/item/25-09-2024-teens--screens-and-mental-health> [19 May 2025].

⁶⁹ Canton of Lucerne, *Jugendparlament fordert stärkeren Schutz in sozialen Medien*: https://news.lu.ch/html_mail.jsp?id=0&email=news.lu.ch&mail-ref=000kdly0000ti000000000000d3cdfcx (2024) [19 May 2025].

Have children ever before petitioned adults to protect them from addictive habits? When rules on access to tobacco were debated, did young people step up to demand that their parents be informed of the risks of letting their children smoke? The fact that social media is sparking such requests shows just how acute the harm is. RCBDS takes this reality seriously and acts according to article 3.1 of the Convention of the Rights of the Child of 1989: “In all actions concerning children whether undertaken by public or private social welfare institution, courts of law, administrative authorities or legislative bodies, the best interest of the child shall be a primary consideration.”

In addition, RCBDS embodies the right to survival and development of all children in the entire lifecycle of DS – the excavation of natural resources necessary for DS (e.g., ending child labor,...), the design (e.g., stopping to craft addictive structures within DS, ...), the development (e.g., avoiding to build addictive products, ...), the production (e.g., ending child labor, ...), the distribution (e.g., stopping economic manipulation of children as consumers), the use (e.g., ending violations of rights of the child with or by DS), or the non-use of DS because of rights of the child-concerns. Finally, RCBDS also embraces the necessity to increase children’s participation in the opinion-forming and decision-making processes⁷⁰ flowing into DS or leading to the design of DS, to the development of DS, to the use of DS or the non-use or ban of DS. E.g., RCBDS envisages that children participate in the discourse about a global regulatory framework for DS.

International Data-Based Systems Agency (IDA) at the UN

In order to promote RCBDS, an International Data-Based Systems Agency (IDA)⁷¹ must urgently be established at the UN⁷² as a global platform for technical cooperation in the field of DS, fostering human rights including rights of the child, safety, security, and peaceful uses of DS. IDA would serve as well as a global supervisory and monitoring institution, and regulatory authority in the area of DS responsible for access to market approval.

⁷⁰ See: Council of Europe. Children Rights Division, *It's Our World: Children's Views on How to Protect their Rights in the Digital Environment: Report on Child Consultation* (2017): <https://edoc.coe.int/en/children-and-the-internet/8013-it-s-our-world-children-s-views-on-how-to-protect-their-rights-in-the-digital-environment.html> [19 May 2025].

⁷¹ See: KIRCHSCHLAEGER, Peter G., *Digital Transformation and Ethics*, 2021; KIRCHSCHLAEGER, Peter G., *Securing a Peaceful, Sustainable, and Humane Future Through an International Data-Based Systems Agency (IDA) at the UN*, 2024.

⁷² See: KIRCHSCHLAEGER, Peter G., AI Needs UN Oversight, in: *Project Syndicate*, 2024: <https://www.project-syndicate.org/commentary/ai-needs-un-oversight-watchdog-agency-by-peter-g-kirchschlaeger-2024-04> [19 May 2025].

IDA at the UN would guarantee that rights of the child are respected in the entire life cycle of DS. Thanks to the access to market approval-process, rights of the child-violating products would not be able to enter the market. Thanks to the monitoring of IDA, violations of the rights of the child would be identified and stopped. (DS themselves could support this supervision and enforcement of rights of the child.) Thanks to the fostering of technical cooperation in the field of DS by IDA, DS promoting the realization of rights of the child would be achieved faster by humanity. Given the areas of convergence between DS and nuclear technologies, the International Atomic Energy Agency (IAEA) model would seem the most appropriate one for responsible global AI governance as this model represents an UN-agency with ‘teeth.’

The establishment of an IDA is feasible because humanity has already shown that we are able to avoid ‘blindly’ pursuing and implementing things that are technical possible, but that we are also able to exercise caution when the welfare of humanity and the planet are at stake. For example, humans researched the field of nuclear technology but then humans substantially and massively limited research and development in the field of nuclear technology, in order to prevent even worse consequences. This suppression was successful mainly due to an international regime, concrete enforcement mechanisms, and thanks to the International Atomic Energy Agency (IAEA) at the UN.

Positive Global Momentum

There is a growing international and interdisciplinary network of experts calling for the establishment of RCBDS and IDA.⁷³ *The Elders*, an independent group of world leaders founded by Nelson Mandela, have endorsed the recommendations for human rights-based DS (HRBDS) including RCBDS and for the establishment of a global agency like IDA to monitor them.⁷⁴

“A new global architecture is needed to manage these powerful technologies within robust safety protocols, drawing on the model of the Nuclear Non-Proliferation Treaty and the International Atomic Energy Agency. These guardrails must ensure AI is used in ways consistent with international law and human rights treaties. AI’s benefits must also be shared with poorer countries. No existing international agency has the mandate and expertise to do all this. The Elders now encourage a country or group

⁷³ See: IDA, *Idaonline*: <https://idaonline.ch/> [19 May 2025].

⁷⁴ See: The Elders, *The Elders Urge Global Cooperation to Manage Risks and Share Benefits of AI*: <https://theelders.org/news/elders-urge-global-co-operation-manage-risks-and-share-benefits-ai> [19 May 2025].

of countries to request as a matter of priority, via the UN General Assembly, that the International Law Commission draft an international treaty establishing a new international AI safety agency.”⁷⁵

The idea of a human rights-based and legally binding regulatory framework including rights of the child as well as the establishment of an institution enforcing the global regulation enjoys the support of Pope Francis.⁷⁶ UN Secretary General António Guterres also supports the creation of an international AI watchdog body like the International Atomic Energy Agency (IAEA): “I would be favorable to the idea that we could have an artificial intelligence agency [...] inspired by what the international agency of atomic energy is today.”⁷⁷ He has called for a new UN body like an “International Data-Based Systems Agency ‘IDA’” to tackle threats posed by artificial intelligence including rights of the child-violations in the UN Security Council on July 18, 2023.⁷⁸

UN High Commissioner for Human Rights Volker Türk has demanded at the UN Human Rights Council “urgent action” and proposed human-rights-based HRBDS including RCBDS and a coordinated global response towards an institutional solution like the creation of an “International Data-Based Systems Agency ‘IDA’” in his statement about AI and human rights on July 12, 2023.⁷⁹ The UN Human Rights Council unanimously adopted, on July 14, 2023, its latest resolution on “New and emerging digital technologies and human rights”⁸⁰ which included for the first time an explicit reference to AI, and the promotion and protection of human rights.

The Resolution emphasizes that new and emerging technologies with an impact on human rights “may lack adequate regulation,” highlighted the “need for effective measures to prevent, mitigate and remedy adverse human rights impacts of such technologies” and stressed the need to respect, protect and promote human rights “throughout the lifecycle of artificial intelligence systems.” It called for

⁷⁵ Ibid.

⁷⁶ See: POPE FRANCIS, *LVII World Day of Peace 2024 - Artificial Intelligence and Peace*, 2024: <https://www.vatican.va/content/francesco/en/messages/peace/documents/20231208-messaggio-57giornatamondiale-pace2024.html> [19 May 2025].

⁷⁷ See: NICHOLS, Michelle, “UN Chief Backs Idea of Global AI Watchdog like Nuclear Agency,” in: *Reuters Media*, 12 June 2023: <https://www.reuters.com/technology/un-chief-backs-idea-global-ai-watchdog-like-nuclear-agency-2023-06-12/> [19 May 2025].

⁷⁸ See: GUTERRES, Antonio, *Secretary-General's Remarks to the Security Council on Artificial Intelligence*, 2024.

⁷⁹ See: TÜRK, Volker, *Artificial Intelligence Must be Grounded in Human Rights*, 2023.

⁸⁰ See: UN Human Rights Council, *Resolution Adopted by the Human Rights Council on 14 July 2023: 53/29. New and Emerging Digital Technologies and Human Rights*, 2023.

frameworks for impact assessments related to human rights, for due diligence to assess, prevent and mitigate adverse human rights impact, and to ensure effective remedies, human oversight, and accountability.

On March 21, 2024, the UN General Assembly unanimously adopted a resolution “Seizing the opportunities of safe, secure and trustworthy artificial intelligence systems for sustainable development”⁸¹ on the promotion of “safe, secure and trustworthy” “artificial intelligence (AI)” systems that will also benefit sustainable development for all. It emphasizes: “The same rights that people have offline must also be protected online, including throughout the life cycle of artificial intelligence systems.”

On September 22, 2024, the UN General Assembly adopted the “Pact for the Future” including a “Global Digital Compact” and a “Declaration on Future Generations.”⁸² These are steps in the right direction for a future where all humans, especially all children, can live a life with human dignity and the planet enjoys sustainability. Also, some voices from multinational technology-companies – among others, Sam Altman (Founder of *OpenAI*) at the World Economic Forum WEF 2024 – have called for IDA.⁸³

Conclusion

The future of children and of all of us begins today. It is in our hands to ensure that the rights of the child are respected, protected, implemented, and realized by promoting RCBDS and by establishing IDA at the UN as soon as possible. In order to allow children of today and children of the future to flourish on a planet with a sustainable future, it is necessary to identify ethical opportunities and ethical risks of DS precisely and at an early stage in order to be able to benefit sustainably from the ethical opportunities of DS and to master or avoid the ethical risks of DS. Ethical guidance enables us to choose among AI-based possibilities, the ones that further human and ecological flourishing, and to build a humane and sustainable future. RCBDS provides this necessary ethical guidance putting

⁸¹ See: UN General Assembly, *Seizing the Opportunities of Safe, Secure and Trustworthy Artificial Intelligence Systems for Sustainable Development*, 2024, 3.

⁸² See: United Nations, *Summit of the Future* (2024): <https://www.un.org/en/summit-of-the-future> [19 May 2025].

⁸³ See: SANTELLI, Filippo, “Sam Altman: ‘In pochi anni l’IA sarà inarrestabile, serve un’agenzia come per l’energia atomica,’” in: *La Repubblica*, 18 January 2024: https://www.repubblica.it/economia/2024/01/18/news/sam_altman_in_pochi_anni_lia_sara_inarrestabile_serve_unagenzia_come_per_lenergia_atmica-421905376/ [19 May 2025].

rights of the child at the heart of DS. This consequent focus of DS on the rights of the child will not happen on its own.

The establishment of an International Data-Based Systems Agency (IDA) at the UN is urgently needed for the necessary change of the field of DS aligned to the rights of the child.

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Short Bio

Prof. Dr. Peter G. Kirchschlaeger, Full Professor of Theological Ethics and Director of the Institute of Social Ethics ISE at the Faculty of Theology at the University of Lucerne since 2017, Research Fellow at the University of the Free State, Bloemfontein (South Africa), Visiting Professor at the Chair for Neuronal Learning and Intelligent Systems at ETH Zurich and at the ETH AI Center as well as Visiting Fellow at the Global Ethic Institute at the University of Tübingen (Germany). Former Visiting Fellow at Yale University (USA). Founder and Director of the *Lucerne Summer University: Ethics in a Global Context LSUE* under the patronage of UNESCO, Founder and Director of the *Lucerne Graduate School in Ethics LGSE* and Study-Director of the Master Degree Program *Ethics* of the University of Lucerne. President of the Swiss Federal Ethics Committee on Non-Human Biotechnology.

Honoring the Full Humanity of Children: Lessons from Robust Theologies of Childhood for Child Protection and Wellbeing

Marcia J. Bunge

Introduction

Over the past 100 years, many strides have been made in academic and political life regarding child advocacy and child-focused research. For example, in 1924, Eglantyne Jebb (1876–1928), founder of Save the Children, wrote the first Declaration on the Rights of the Child, stating that humanity “owes the child the best that it has to give.” In 1979, Sweden became the first nation in the world to ban the physical punishment of children in all settings, and now sixty-five countries have followed suit.¹ Ten years later in 1989, the United Nations ratified the Convention on the Rights of the Child (CRC) – a declaration of shared responsibilities to children that has been ratified by all countries in the world except the United States. Furthermore, a host of governmental, not-for-profit organizations, social service agencies, and faith-based organizations are serving the needs of children around the world and working together in evidence-based and creative ways to help children thrive. Secular and religious organizations are also working together to address the sex-trafficking of children and practices of child marriage. In addition, over the past 25 years, scholars in the sciences and the humanities are devoting more attention to children and childhood, and like women’s studies before it, childhood studies is now a burgeoning area of intellectual inquiry across disciplines.

Despite these strides, children worldwide face a host of ongoing and newly emerging challenges.² In countries rich and poor, many experience poverty, malnutrition, maltreatment, and a lack of adequate education and health care. One in six children experience violence. Many children and families struggle to meet even their basic needs. Children living amid crises, whether domestic violence, political conflicts, or environmental disasters, face insurmountable challenges.

¹ See: the progress report on the End Corporal Punishment website: <https://endcorporalpunishment.org/> [14 December 2024].

² For a brief introduction to strides and challenges, see: FREEMAN Michael, *Children’s Rights Past, Present, and Future: Some Introductory Comments* Michael Freeman, in: FREEMAN Michael, ed., *The Future of Children’s Rights*, (Leiden: Brill, 2014) 3–15.

Furthermore, although the risks of physically punishing children are well-documented, UNICEF estimates “about 6 in 10 children worldwide (almost 1 billion) between the ages of 2 and 14 are subjected to physical (corporal) punishment by their caregivers on a regular basis.”³ The highest rate of children who experience physical discipline (75%) are those between the ages of 2 and 4.⁴ In addition, children rich and poor are exposed and often exploited by ever-evolving forms of social media and corporate marketing, and rates of childhood depression, anxiety, and loneliness are increasing worldwide. Although nations aim to protect children, politicians and national budgets often focus more on the needs of adults, failing to realize that caring for children has economic as well as humanitarian benefits for communities.

How might we build on the strides over the last 100 years and current research in childhood studies to more consistently and effectively advance efforts on behalf of children? Every person on the planet once was or currently is a child, and whether we are child advocates, scholars, health care specialists, lawyers, parents, caregivers, faith leaders, politicians, or concerned citizens, how might we more consistently treat children as people and honor their full humanity?

One primary insight from my own child-related research that can strengthen our commitments to children and resonates with child-related scholarship and child advocacy efforts is the importance of paying serious attention to underlying assumptions about children. Attitudes toward and conceptions of children vary widely. Whether we examine the history of childhood, the treatment of children in schools, the activities of child-focused organizations, political policies, social media, advertising to children, or relationships to children in our own families or communities, we find diverse and often even conflicting notions of children. Furthermore, how we view the nature, needs, and strengths of children informs how we treat them and how we understand our obligations to them.

Thus, two of the most fruitful questions scholars across disciplines and child-advocates around the world can ask in any area of research, social or political context, and even in our own lives are:

1. What are the conceptions of or underlying assumptions about children? (How do we view them? Who are they?)

³ UNICEF, *Hidden in Plain Sight: A Statistical Analysis of Violence against Children*, New York 2014, 165–166: <https://data.unicef.org/resources/hidden-in-plain-sight-a-statistical-analysis-of-violence-against-children/> [14 December 2024].

⁴ UNICEF, *A Familiar Face: Violence in the Lives of Children and Adolescents*, New York, 2017: <https://data.unicef.org/resources/a-familiar-face/> [14 December 2024].

2. What are understood to be proper adult commitments or responsibilities to them? (What do we owe them?)

Whether explicitly stated or not, adults hold assumptions and attitudes about children that affect the way they treat them. Examining and naming these assumptions can shed light on adult commitments to and behaviors toward children in the past and today. These questions can also help parents, caregivers, concerned citizens, child advocates, and policy makers better understand obstacles to child protection and thereby develop more creative ways to help all children thrive.

Once we raise these simple questions, we discover that many conceptions of children are narrow and adult-centered, and we realize the need for more robust conceptions of children that honor their full humanity. Just as common conceptions of women as “weak” or “irrational” were challenged by female activists and the growing field of women’s studies years ago, today contributions from scholars across the academy—from the hard sciences to the arts and humanities—and children themselves challenge us to expand our notion of children and take their concerns and voices more seriously.

The primary claim of this study is that we can more effectively help all children thrive by cultivating robust, child-attentive conceptions of children that honor their full humanity. Such conceptions are multi-dimensional and take seriously:

1. Their strengths as well as their vulnerabilities.
2. Their agency and positive contributions as well as their need for guidance and protection; and
3. Their development, needs, and unique intersectional identities as well as their dignity, equality, and integrity.

Multifaceted views of children that honor their full humanity also strengthen our commitments and relationships to them. They provide a strong foundation for more proactively listening to, respecting, and helping children thrive. Strong commitments to children and strong conceptions of children that honor their full humanity go hand in hand. Whatever our context or interactions with children, more robust conceptions of children can lead to stronger commitments to them – whether in our families, surrounding culture, educational institutions, social service agencies, religious communities, businesses, medical facilities, media outlets, or political policies.

This study illustrates the significance of this claim by providing one example of a robust conception of children and how it can strengthen commitments to them among members of the various branches of the world’s largest religious tradition

today: Christianity. The study outlines a robust Christian understanding of childhood—a “theology of childhood”—that seeks to honor the full humanity of children (Part One) and illustrates some of the positive implications of this theology for strengthening Christian commitments to children and child advocacy (Part Two). The last part of the study (Conclusion) draws implications and raises questions that can help all readers, regardless of their religious or secular worldviews, academic disciplines, professions, or nationalities, reflect on how they might cultivate stronger conceptions of children in their contexts and thereby strengthen commitments to them.

Thus, although the study focuses on a robust Christian understanding of children, it can serve as a springboard for readers from diverse backgrounds to reexamine assumptions about children in their own contexts, challenge narrow views, and cultivate more robust understandings of children that honor their full humanity and help them thrive.

A Robust, Biblically Based Theology of Childhood

Theologies of childhood help articulate robust conceptions of children and commitments to them. Like other theologies, they build on multiple sources, including the Bible, Christian traditions and spiritual practices, the best ideas of theologians and church leaders, insights from the arts and sciences, and the experience of individuals and communities.

Throughout my research, I have found that although Christians in the past and today have often viewed children in narrow and even destructive ways, the Bible expresses six insightful and central perspectives on children and our obligations to them; and by holding these six perspectives in tension (rather than in isolation), we can broaden our conception of children and strengthen our commitments to them in families and all areas of the church.⁵ These six perspectives are not exhaustive, and there is much more to discover in the Bible and the Christian

⁵ I have written extensively about these six central perspectives in several articles about robust theologies of childhood, and you can learn more there. See, for example: BUNGE, Marcia J., A More Vibrant Theology of Children, in: *Christian Reflection: A Series in Faith and Ethics* (2003) 11–19; The Child, Religion, and the Academy: Developing Robust Theological and Religious Understandings of Children and Childhood, in: *Journal of Religion* 86.4 (2006) 549–578; and, Conceptions of and Commitments to Children: Biblical Wisdom for Families, Congregations, and the Worldwide Church, in: CSINOS, David M. ed., *Faith Forward (Volume Three): Launching a Revolution through Ministry with Children, Youth, and Families*, (Keweenaw: Wood Lake Publishing, 2018) 94–112.

tradition regarding children.⁶ Yet these perspectives provide an overview of foundational Christian commitments to and conceptions of children.

First Perspective: Children as Gifts of God

The Bible depicts children as gifts of God and sources of joy who ultimately come from God and belong to God. Thus, adults are to delight in and be grateful for children.

Many passages in the Bible speak of children as gifts of God, signs of God's blessing, or sources of delight and joy. For example, Sarah rejoiced at the birth of her son, Isaac (Genesis 21:6–7). In the gospel of Luke, Zechariah and Elizabeth are told their child will bring them “joy and gladness” (Luke 1:14). In the gospel of John, Jesus talks about the “joy” of giving birth and “bringing a human being into the world” (John 16:21). Viewing children as gifts of God challenges common assumptions of children today and in the past as property of parents or economic burdens to the community.⁷

Building on such passages and their own experience, Christian theologians in the past and today have written about the value, joy, and blessing of children. For example, Martin Luther, the 16th century Reformer, had three sons and three daughters, and they raised four orphans. He speaks about children as “treasures from heaven,” “blessings from God,” and “great gifts.” Luther loved and enjoyed his own children and wrote movingly about his daughter Magdalena when she died at age 13.⁸ The 19th Century Lutheran pastor, philosopher, and “happy Dane,” N.S.F. Grundtvig, wrote beautiful poems and hymns about children and taking delight in them.⁹

⁶ For more on biblical and theological perspectives on children, see: BUNGE, Marcia J. ed., *The Child in Christian Thought*, (Grand Rapids: Eerdmans, 2001); BUNGE, Marcia J. / FRETHEIM, Terence E. / GAVENTA, Beverly Roberts, eds., *The Child in the Bible*, (Grand Rapids: Eerdmans, 2008); and the burgeoning work on theologies of childhood by theologians across the globe and branches of Christianity.

⁷ All biblical passages quoted in this study are taken from the New Revised Standard Version (NRSV).

⁸ For more, specifically on Luther's perspectives of children, see: STROHL Jane E., *The Child in Luther's Theology: 'For What Purpose Do We Older Folks Exist, Other than to Care for... the Young'*, in: *The Child in Christian Thought*, 134–159.

⁹ BUNGE, Marcia J., ‘A plain and cheerful, active life on earth’: Children, Education, and Faith in the Works of N.F.S. Grundtvig (1783–1872, Denmark), in: BUNGE, Marcia J., AASGAARD, Reidar, ROOS, Merethe, eds., *Nordic Childhoods 1750–1960: From Folk Beliefs to Pippi Longstocking*, (New York: Routledge, 2018) 111–130. See also: BROADBRIDGE, Edward, ed., *Living Well-Springs: The Hymns, Songs, and Poems of N.F.S. Grundtvig*, (Aarhus: Aarhus University Press, 2015).

Second Perspective: Children as Complete Human Beings Made in the Image of God

The Bible affirms that children are whole and complete human beings who are made in the image of God. Thus, adults are to treat children with dignity and respect. This duty is grounded in the biblical notion that all children, like all adults, are whole and complete human beings who are made in the image of God and possess God-given equality. The basis of this claim is Genesis 1:27, which states that God made humankind, male and female, in “the image of God.” All children (like all adults) – regardless of race, gender, age, socio-economic status, sexual orientation, or any other difference – are made in God’s image, have intrinsic value, and are equally worthy of dignity and respect.

Although we might consider it self-evident that infants and children are human beings, in many places and times (including various contexts today), many children are not considered fully human. Children have been perceived and mistreated as ignorant, parental property, or economic burdens. They have been exploited as gullible consumers, sex objects, or child soldiers. Yet from the beginning of the church, theologians have emphasized the full equality and intrinsic value of all persons, including infants and children. In the third century, for example, Cyprian wrote that all people, even infants, are “alike and equal since they have been made once by God.” All share a “divine and spiritual equality.”¹⁰

Third Perspective: Children as Vulnerable

Many biblical passages and Christian theologians recognize that children are vulnerable. Thus, adults are to provide for, protect, and seek justice not just for their own children but for all children. The Christian tradition recognizes that children are among the most voiceless and vulnerable people on the planet, and they are often victims of injustice. The commitment to provide for, protect, love, and seek justice for children and the most vulnerable in our midst – widows, orphans, strangers, the poor, and the marginalized – is grounded in key biblical passages. Deuteronomy states, for example: “For the LORD your God is not partial and takes no bribe” and “executes justice for the orphan and the widow” (Deuteronomy 10:17–19). The book of Isaiah begins with the plea, “Cease to do evil, learn to do good; seek justice, rescue the oppressed, defend the orphan, plead for the

¹⁰ CYPRIAN, Letter 64.3; in: BERNARD DONNA, Rose, trans., *Letters*, (Washington: Catholic University of America, 1964) 217–218. Although Cyprian is making strong claims for the spiritual and divine equality of children, he does not draw implications for their social equality.

widow” (Isaiah 1:16–17). Woven throughout the text is a powerful vision of all children experiencing peace, well-being, and wholeness—*shalom*.¹¹

Christian obligations to children in need are also grounded in Jesus’ command to “Love the Lord your God with all your heart, and with all your soul, and with all your strength, and with all your mind; and your neighbor as yourself” (Luke 10:27). The neighbor includes all people, regardless of age or other distinctions, and all have equal worth. As we see in the gospels, Jesus extends love of neighbor to everyone, including enemies, and shows compassion directly to children. He welcomes them, receives them, touches them, and heals them. He takes them up in his arms and blesses them.

As Søren Kierkegaard (1833–1855), the Danish philosopher and Lutheran theologian, clarified: “One’s neighbor is one’s equal [...] and to love one’s neighbor means equality [...] [Every person] is your neighbor on the basis of equality with you before God,” and “absolutely” every individual has this equality and “has it absolutely.”¹²

Fourth Perspective: Children as Developing Beings and Sources of Joy

The Bible views children as developing beings who need guidance. Adults are to instruct children and bring them up in the faith, helping them to love God and their neighbors as themselves. The Christian tradition recognizes that adults have a responsibility not only to attend to children’s physical needs but also their moral and spiritual development. Several biblical texts address these responsibilities, such as the famous lines in Deuteronomy 6:5–7:

“You shall love the Lord you God with all your heart, and with all your soul, and with all your might. Keep these words that I am commanding you today in your heart. Recite them to your children and talk about them when you are at home and when you are away, when you lie down and when you rise.”

In other words, adults are to teach children and talk about faith and love of God and neighbor! In line with this biblical command, the 16th century reformer, Martin Luther claims in his *Large Catechism*, “If we want capable and qualified

¹¹ Isaiah declares, “Great shall be the prosperity [*shalom*] of your children” (54:13). For more on Isaiah’s vision, see: LAPSLEY, Jacqueline E., ‘Look! The Children and I Are as Signs and Portents in Israel’: Children in Isaiah, in: *The Child in the Bible*, (Grand Rapids: Eerdmans, 2008) 82–102.

¹² KIERKEGAARD, Søren, *Works of Love*, HONG Howard V. / HONG Edna H., eds. / trans., (New York: Harper Torchbook, 1962) 72.

people for both the civil and the spiritual realms, we really must spare no effort, time, and expense in teaching and educating our children to serve God and the world.”¹³

Over the centuries, Christian communities around the world have taken seriously the moral and spiritual formation of children. Many emphasize that faith formation is a cooperative task between home, congregation, and the wider church. Thus, faith leaders past and present have written guides and catechisms for parents and pastors to help them teach children about the core beliefs and spiritual practices of the Christian faith. Christians also carry out various practices for nurturing the spiritual lives of children. Some of the more common spiritual practices among Christians across branches of Christianity are reading and discussing the Bible, praying, worshipping together, singing, participating in communion, remembering their baptism (whether as infants or adults), and caring for others. Christians have sought to care for others and actively live out the command to “love your neighbor as yourself” in various ways, such as feeding the hungry, helping the poor, or promoting social, economic, and environmental justice.

Fifth Perspective: Children as Social Agents

The Bible conveys children are more than learners; they are also active and imaginative social agents with growing moral capacities and responsibilities who, as they develop, sometimes commit wrongs against others and even themselves. Thus, adults are to model for children compassion and accountability and cultivate with them practices of mutual confession, forgiveness, and renewal. In the Christian tradition, wrongdoing is often referred to as “sin,” which means “missing the mark.” For Christians, sin or “missing the mark” refers not only to individual acts of wrongdoing against oneself or others but also to larger systems of injustice. The view of human beings as sinful is based on observations of human wrongdoing and on interpretations of several biblical texts, such as when Paul writes that all people are “under the power of sin,” and “there is no one who is righteous, not even one” (Romans 3: 9–10; cf. 5:12).

As we see around us, children are sinned against both by individuals and unjust social systems. On the one hand, children can be hurt and even abused by their parents and other adults. On the other hand, children are also harmed by larger unjust social systems, such as when countries fail to provide adequate health care, nutrition, or education for children and their families, especially the poor. At the

¹³ LUTHER, Martin, *The Large Catechism of Dr. Martin Luther, 1529*, in: STJERNA, Kirsi, ed., *The Annotated Luther, Study Edition*, (Minneapolis: Fortress Press, 2016) 326.

same time, as they grow and develop, children also begin bearing some degree of responsibility for their own actions. For these reasons, Christian adults are to talk openly with children about loving relationships, wrongdoing, and injustices. When adults also admit their own wrongdoing, they teach children much about compassion and accountability.

Of course, viewing children exclusively as sinful has often warped Christian approaches to children and led in some cases to child abuse and even death. However, the notion that children, as they grow, can take some responsibility for their actions corrects an equally simplistic and dangerous view of children as primarily pure and innocent. Such a view leaves no room for appreciating a child's own growing moral agency or levels of accountability or talking to children about social and individual wrongdoing.

Sixth Perspective: Children as Models of Faith and Spirit-filled

The Bible also claims that children are often models of faith for adults, spirit-filled, and endowed with unique strengths, gifts, and talents to contribute to the common good now and in the future. Thus, adults have a responsibility to listen to and learn from children; to honor their current relationship with God, contributions, and vocations; and to provide all children with an excellent education. The Bible depicts children and young people in striking and even radical ways as Spirit-filled, models for adults, and positive agents of change. For example, Samuel was called as a boy to be a prophet (1 Samuel 2–4). The young David prevailed over Goliath, the Philistine, with a sling and with a stone (1 Samuel 17). Furthermore, in all three synoptic gospels, Jesus identifies himself with children and lifts them up as paradigms of receiving the reign of God, saying “Truly I tell you, whoever does not receive the kingdom of God as a little child will never enter it” (Mark 10:13–16; cf. Luke 18:15–17; Matthew 19:13–15).

The Bible and Christian theology also recognize that God's Spirit moves where it will and can touch people of any age, including children. For example, the book of Acts declares, God's Spirit will be poured out “upon all flesh, and your sons and your daughters shall prophesy, and your young men shall see visions” (Acts 2:17; cf. Joel 2:28–32).¹⁴ Biblical passages also depict children and infants praising God (Psalms 8:2; Matthew 21:15). In Luke, the angel Gabriel tells Zechariah that his wife Elizabeth will bear a son, and “even before his birth he will be filled

¹⁴ For more on the work of the Holy Spirit, including in the lives of children, see: YONG, Amos, *Children and the Spirit in Luke and Acts*, in: BUNGE, Marcia J., ed., *Child Theology: Diverse Methods and Global Perspectives*, (Maryknoll: Orbis Books, 2021) 108–128.

with the Holy Spirit” (1:15). As Catholic theologian Karl Rahner reminds the Christian community, children are a “sacred trust,” and God’s expansive grace touches every aspect of the universe and their lives.¹⁵

Holding All Six Perspectives Together and in Tension

A strong, biblically based theology of childhood holds all six perspectives in tension rather than isolation and provides a rich view of children and adult-child relationships. Such robust theologies of childhood that hold together these six and other biblical perspectives help Christians see children paradoxically as:

1. fully human and made in the image of God yet also still developing and in need of instruction and guidance.
2. gifts of God and sources of joy yet also social agents capable of selfish actions.
3. vulnerable and in need of protection yet also strong, insightful, and models of faith and endowed with gifts to serve others.

With robust theologies of childhood, Christians across the world move away from mono-focal, adult-centered to multi-focal, child-inclusive lenses, and they thereby strengthen their commitments to and relationships with children.

However, whenever Christians neglect any of the six biblical themes and focus on one or two alone, then their conceptions of children can easily become lopsided, narrow, and distorted. These narrow conceptions of children can easily lead to treating children in inadequate and harmful ways. We can give many examples of such dangers in the church today and in the past.

For example, if Christians:

1. view children as primarily as gifts of God and sources of joy, then they might delight in children but neglect to nurture and guide them.
2. believe children are primarily sinful and in need of instruction, then they might do much to educate children but neglect learning from and delighting in them. In some cases, viewing children primarily as sinful has led adults to physically punish, harm, abuse, and even murder children.
3. view children primarily as victims, they might neglect hearing children’s own voices and recognizing their own strengths and agency.
4. perceive mainly as social agents and participants, then they might recognize their gifts and strengths but neglect to protect and guide them.

¹⁵ RAHNER, Karl, Gedanken zu einer Theologie der Kindheit, in: BOURKE, David, trans., *Schriften zur Theologie* 8, (Einsiedeln: Darton, 1966) 313–329; as RAHNER, Karl, Ideas for a Theology of Childhood, in: *Theological Investigations* VIII, (London: Herder and Herder, 1971) 33–50.

5. focus primarily on nurturing only their “own” children, then they might overlook the responsibility of reaching out to all children in need.

In these ways and more, when adults neglect seeing children as fully human, their vision can easily become “adult centered.” This is a problem not only for Christian but also other communities. Whenever adults focus on their own needs, desires, and reputations, they can easily neglect the needs, strengths, and humanity of children. Such adult-centered attitudes and sensibilities can also lead adults to abuse and neglect children. As we see in the news and the history of the treatment of orphans or the children of minority groups or indigenous peoples, adults have even murdered children and buried them in mass or unmarked graves. Sadly, there are too many examples of such dangers, suffering, and abuse not only in Christian communities but in every corner of the globe.

Christians and others can avoid such dangers and keep their “adult-centered” perspectives in check by cultivating robust conceptions of children that cultivate a “child-attentive” and multi-dimensional view of children that honors their full humanity. By doing so they expand their commitments to children and more proactively and effectively help all children thrive.

Implications of Robust Theologies of Childhood

We can see the power of a robust conception of children by examining some of the ways strong theologies of children can and have strengthened Christian commitments to children. Here are just four examples for Christian communities. Although they build on common activities of the Christian church worldwide, these examples can prompt readers from diverse secular or religious worldviews to consider how robust conceptions of children might strengthen their capacity in their communities to protect and nurture children as well as to honor their voices and contributions.

First Example: Protecting Children and Preventing Maltreatment within Christian Communities

Well-publicized cases of child sexual abuse cases not only in the Roman Catholic Church but also across secular and religious organizations that work with children and youth (whether in schools, after-school programs, or sport facilities) have shed light on the need to prevent and respond to child abuse and neglect. Thus, some Christian communities are putting in place child protection policies for congregations and church-related organizations that work with children and youth.

Although strides have been made, a strong theology of childhood calls and empowers Christians to protect children more effectively and proactively in a host of ways. An initial step is to ensure all congregations not only have child protection policies in place but also enforce them. Yet churches cannot stop here. Minimally, adults must listen more carefully to children and recognize the multiple layers of harm (physical, emotional, mental, spiritual) that children who are neglected and abused suffer. This would help address the tendency of some church leaders to either minimize the damage of child abuse, claiming children are resilient and can “bounce back” from trauma, or silence children’s testimonies to protect the reputation of adults and institutions.

In addition, because most cases of abuse and neglect occur in the home, the church needs to broaden its approach to child protection by building congregational awareness of this harsh reality and by responding to it. Church leaders can do so by breaking the silence about domestic abuse, teaching and preaching about child abuse and neglect, and offering material and spiritual support for families and caregivers. In these and other ways, Christian communities show respect for children’s needs and voices and can more effectively and boldly respond to and prevent child maltreatment. Churches worldwide are also called to teach about the growing evidence of the dangers of physically punishing children for children’s well-being; explain the clear incompatibility of the corporal punishment of children with Jesus’s teaching and example and central biblical principles; and help caregivers cultivate positive forms of discipline and guidance that honor children’s full humanity.¹⁶

Second Example: Nurturing Children’s Spiritual Lives and Cultivating Resilience

Christian communities around the world also seek to nurture the spiritual lives of children, parents, and caregivers. Churches world-wide offer a host of faith formation programs and resources. Christians recognize that attending to faith formation and welcoming children into a faith community can strengthen their

¹⁶ For more on the dangers of the corporal punishment of children and rethinking Christian understandings of discipline, see: MICHAELSON, Valerie / DURRANT, Joan E., eds., *Decolonizing Discipline: Children, Corporal Punishment, Christian Theologies, and Reconciliation*, (Winnipeg: University of Manitoba Press, 2020) including my two studies: BUNGE, Marcia J., *The Significance of Robust Theologies of Childhood for Honouring Children’s Full Humanity and Rejecting Corporal Punishment*, 108–122; and *Rethinking Christian Theologies of Discipline and Discipleship*, 152–160; BUNGE, Marcia J., Christianity, Child Well-Being, and Corporal Punishment, in: DOMINGO, Rafael / HAUKE, Gary S. / JACKSON, Timothy P., eds., *Reflecting and Building on the Work of John Witte Jr.*, (Leiden: Brill, 2024) 540–567.

resilience and their capacity thrive. This wisdom is in line with growing social scientific research about how spiritual life and participation in a religious community can promote a person's sense of belonging and mental and physical well-being. As the Search Institute has long recognized, participation in a religious community is a social determinant of health and can provide a host of assets that help children thrive.

However, as more young people leave the church or struggle with loneliness and anxiety, faith leaders and caregivers alike realize that if they seek to nurture children and their faith, they must be more intentional. A strong theology of childhood can strengthen their efforts by reminding them to honor children's fully humanity. By recognizing that children are growing moral agents and spirit-filled members of the church with questions, insights, and gifts of their own, adults will focus not only on teaching children but also listening to them, learning from them, and honoring their contributions. In this way, they can build more effective approaches to faith formation and build closer relationships with children. Faith leaders would, for example, offer children more leadership roles in worship, give more time for their questions and insights in religious education programs, and cultivate many opportunities for meaningful inter-generational activities. Such activities can be as simple as sharing stories, carrying out service projects in the community, or praying together at home.

Informed by a strong theology of childhood, faith leaders would also build greater congregational awareness of the significance of spiritual and religious life for child well-being and resilience. In this way, they would also encourage parents and caregivers to share faith and spiritual practices at home, thereby building stronger relationships with their children. In these and other ways, adults honor children, learn from them, and can more effectively strengthen not only children's spiritual development, resilience, and sense of belonging but also their own. By cultivating children's resilience and meaningful adult-child relationships, caregivers also help prevent child abuse because, as studies show, perpetrators seek out vulnerable and often isolated children.

Third Example: Strengthening Child Advocacy and Pro-Child Public Policies

Roman Catholic, Protestant, and Orthodox branches of Christianity all have rich and respected traditions of child advocacy and ethical reflection, and Christian ethicists and faith leaders today seek to address many urgent ethical issues of our time. They often work with diverse secular and religious organizations to address

wide-spread problems that affect children and adults around the world, such as poverty, lack of health care, racial injustice, armed conflict, or climate change.

Nevertheless, among Christian leaders and ethicists, we still find signs of the marginalization of children. Much of their work is either adult-centered or focuses on a narrow range of child-related issues. For example, although they might offer statements on debates about abortion or contraception, they say less about the injustices many children face once they are born. Sometimes their various “pro-life” platforms fail to extend sufficiently to the needs of children as they grow and develop. Furthermore, although faith leaders might address child marriage, child trafficking, or lack of equal access to education, they do not consistently recognize the unique vulnerabilities of infants and children related to a vast range of other challenges, such as workplace exploitation, gun violence, or environmental pollution. The church also fails to listen adequately to the voices of young people, many of whom are expressing creative solutions to these very problems.

If Christians would embrace a robust theology of childhood, then they could greatly strengthen the church’s public advocacy for all children by paying more attention to children’s unique vulnerabilities and intersectional forms of suffering and honoring the voices and ideas of young people. For example, air and water pollution affect the health and well-being of children more seriously than of adults. Military conflicts, displacement, lack of nutrition, and violence in the home affect children’s development and have life-long consequences for their mental and physical health. Thus, the church’s environmental sustainability initiatives, social services, and relief efforts should take these risks and more into account. Finally, young people around the world are already powerful leaders in addressing social, economic, and environmental policies that would protect people and our planet, and the church should more consistently and publicly honor their voices and support their efforts.

In addition, although all nations in the world have ratified the CRC except the United States (US), the church could more proactively champion children’s rights and encourage nations to honor the needs of children outlined in the CRC. In the case of the US, although the Roman Catholic Church, various mainline Protestant denominations, and highly respected theologians in the US have taken seriously critiques of the CRC and persuasively argued that it is worthy of qualified ratification,¹⁷ they must do more to speak out and challenge outspoken conservative

¹⁷ See, for example: WITTE, John Jr., *Church, State, and Family: Reconciling Traditional Teachings and Modern Liberties*, (Cambridge: Cambridge University Press, 2019); especially

Protestants who oppose the CRC, fearing that its ratification or even the acceptance of selected children's rights might threaten religious liberty and erode parental authority and rights.

Fourth Example: Revising Theological Education and Re-thinking Christian Theology as a Whole

We also find the marginalization of children in theological education. Although seminaries across denominations and around the world usually offer courses on children, youth, and family ministries, these courses are frequently only electives. Furthermore, even though children are agents and members of the church and communities around the world, we see little attention to children in theological education beyond religious education or pastoral care. Even in many courses on abuse, trauma, and pastoral care, the experiences of children and the long-term effects of abuse and other adverse childhood experiences are marginalized or ignored.¹⁸ Even though attention to children and childhood is growing across disciplines and in interdisciplinary childhood studies programs worldwide, seminary courses on Christian ethics, the Bible, or church history rarely include attention to children.

Equally puzzling is the near absence of serious attention to children in systematic theology. Christian theologians around the world have brought attention to both the suffering and inspiring voices of the marginalized. They have articulated powerful and liberating theologies that help us rethink and revise doctrines and practices in the light of the marginalized. However, even Black, feminist, womanist, Dalit, and other liberating theologies at times have not paid adequate attention to one of the largest and most vulnerable groups on the planet—children.

Robust theologies of childhood call Christians to expand their vision and to rethink not only their views of children but also many central doctrines and practices in the light of attention to children and childhood and to develop “child-

his study on *Why Suffer the Children? Overcoming the Modern Church's Opposition to Children's Rights*, 238–273. See also: MARSHALL, Kathleen / PARVIS, Paul, *Honouring Children: The Human Rights of the Child in Christian Perspective*, (Edinburgh: Saint Andrew Press, 2004); and WITTE, John Jr / BROWNING, Don S., Christianity's Mixed Contributions to Children's Rights: Traditional Teachings, Modern Doubts, in: BUNGE, Marcia J., ed., *Children, Adults, and Shared Responsibilities: Jewish, Christian, and Muslim Perspectives*, (Cambridge: Cambridge University Press, 2012) 272–291.

¹⁸ See: VIETH, Victor I., The Least of These: The Urgent Need for ELCA Seminaries to Prepare Called Workers to Minister to Survivors of Abuse and Develop Trauma-Informed Congregations, in: *Journal of Lutheran Ethics* 23, Issue 6 (2023/2024).

attentive theologies.”¹⁹ Like feminist, black, or other liberating theologies, “child-attentive theologies” (or what some call “child theologies”) build on traditional and diverse sources of theology (such as the Bible, the tradition, insights from other disciplines), and they re-think and re-examine a range of central doctrines and practices with attention to the experience of the marginalized or exploited—in this case children. In this way, child-attentive theologies not only strengthen commitments to children but also enrich theology in itself for the whole church.

For example, if Christians honored the full humanity of children, then they would need to rethink and revise their understandings of:

1. the priesthood and ordained ministry (reexamining requirements for ordination and notions of pastoral authority, roles, and responsibilities in the light of children’s needs, strengths, and rights);
2. the nature of the church (recognizing that children are part of the body of Christ);
3. the Holy Spirit (recognizing that children are also spirit-filled); or
4. discipline (emphasizing it is not the same as the corporal punishment of children).

One of the most powerful lessons that liberating theologies have taught the church worldwide is that recognizing the full humanity of marginalized groups means we must revise theological education. We cannot limit attention to marginalized groups in one or two elective courses. Once we truly acknowledge their humanity, we realize the significance of honoring their concerns and contributions in courses across the curriculum and in every corner of theological research and education.

In this way, we deepen our interpretations of the Bible and Christian traditions, promote fresh understandings of Christian doctrines and practices, and strengthen our advocacy and engagement in the world. If Christians seek to strengthen child protection and well-being, then theological education must make more room in its research, course offerings, internships, and institutional mission statements for serious attention to children.

¹⁹ For an introduction to the specific task of child-attentive theologies, including child liberation theologies, see: BUNGE, Marcia J. / EIDE, Megan, Strengthening Theology by Honoring Children, in: *Child Theology*, xiii–xxv; and NESSAN, Craig, Attending to the Cries of Children in Liberation Theologies, in: *Child Theology*, 1–20. See also: STOLLAR, R. L. *The Kingdom of Children: A Liberation Theology*, (Grand Rapids: Eerdmans, 2023).

As we see in these four examples, a strong theology of childhood strengthens the church's efforts in child protection, faith formation, and child advocacy as well as Christian ethics and theological education simply by:

1. recognizing children's unique vulnerabilities and the specific ways they are suffering, maltreated, and exploited (in families, faith communities, schools, shelters, refugee camps, etc.).
2. recognizing their creative strengths, listening carefully to their voices and questions, learning from them, and taking seriously their ideas and contributions.
3. paying more attention to insights from both the Christian tradition and current scientific research about the significance of spiritual and religious life for child development and human flourishing.

Conclusion: Broader Implications for Diverse Disciplines and Initiatives

Although this study has focused on the power of robust Christian theologies of childhood, it warns readers from all worldviews about the dangers of narrow, adult-centered views of children and invites them to cultivate multi-dimensional conceptions of children that honor their full humanity. After all, whatever our context, we see ways in which adults have focused so much on their own needs, desires, and reputations that they have neglected the needs, strengths, and humanity of children.

As we see in contexts and countries around the world, "adult-centered" attitudes and sensibilities often leave children without the resources they need to thrive. Whether examining familial relationships, religious communities, educational institutions, corporate marketing, social media, or political policies, we see ways in which the needs of children are minimized or ignored. Furthermore, whether we look in schools, sports facilities, or refugee camps, we also find children who are exploited by adults. In every corner of the globe, we find examples of the suffering, neglect, abuse, and exploitation of children.

The good news is that we can challenge narrow and adult-centered assumptions of children and cultivate more multi-dimensional and child-attentive perspectives by building on the growing attention to children's needs and strengths across academic disciplines and among child advocates. We can start by re-examining assumptions about children in our own contexts—whether in our own families, academic disciplines, professions, faith communities, or countries—and asking ourselves some simple questions, such as:

1. What child-related work do you see being done in your discipline or profession? What further research or advocacy efforts need to take place?
2. What implications do you see for your discipline, community, or child-related advocacy efforts of more robust, multi-dimensional views of children?
3. What positive collaborative efforts related to children's well-being, protection, and rights do you see in your context? Between secular and faith-based organizations? Between scientists, child advocates, and/or faith leaders?
4. How might robust conceptions of childhood that honor the full humanity of children expand your own view of children and empower you to strengthen your respect for and protection of children?

By exploring such questions and by more intentionally noticing children in our midst we can all cultivate more robust understandings of children that honor their full humanity and help them thrive.

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Short Bio

Prof. Dr. Marcia J. Bunge is Professor of Religion, holding the Drell and Adeline Bernhardson Distinguished Endowed Chair of Lutheran Studies, and Co-Founder of the Gustavus Academy for Faith, Science, and Ethics at Gustavus Adolphus College (USA). She is an Extraordinary Research Professor at North-West University (South Africa). Marcia Bunge earned her M.A. and Ph.D. from the University of Chicago. She is a scholar, faith leader, and child advocate who has participated in child-focused consultations on six continents and published numerous articles and books.

The Protection and Promotion of the Dignity of the Child and the Pontifical Commission for the Protection of Minors

Luis Manuel Ali Herrera

Introduction

“The effective protection of minors (*Minorum tutela actuosa*) and a commitment to ensure their human and spiritual development, in keeping with the dignity of the human person, are integral parts of the Gospel message that the Church and all members of the faithful are called to spread throughout the world.”

Pope Francis¹

In 2024 the Pontifical Commission for the Protection of Minors marked two major milestones: The tenth anniversary of its establishment and the publication of its pilot *Annual Report on Safeguarding Policies and Procedures in the Catholic Church*.² The subject of the Commission’s work to protect children and vulnerable adults from abuse and the unresolved nature of that work in the Roman Catholic Church, made the 10-year anniversary different from most such recurrences. While not a moment of celebration, it has been an opportunity to pause and to assess the contribution of the Commission to the mission of protecting and promoting the wellbeing of children and vulnerable adults – understood as safeguarding – in the Roman Catholic Church today.

The establishment of the Pontifical Commission for the Protection of Minors on March 22nd, 2014, was one of the first major decisions following Pope Francis’s election. It signaled the beginning of a journey of conversion throughout the Church to a culture of safeguarding. The point of departure was the admission that the Catholic Church was failing in its approach to intervention, prevention, and assistance in alleged cases of the sexual abuse of a minor or vulnerable adult

¹ POPE FRANCIS, *Chirograph of his Holiness Pope Francis for the Institution of a Pontifical Commission for the Protection of Minors*, 22 March 2014, https://www.vatican.va/content/francesco/en/letters/2014/documents/papa-francesco_20140322_chirografo-pontificia-commissione-tutela-minori.html [08 December 2024].

² Pontifical Commission for the Protection of Minors, *Annual Report on Church Policies and Procedures for Safeguarding*, October 2024: <https://www.tutelaminorum.org/annual-report/> [08 December 2024].

in an ecclesial setting and therefore needed professional help.³ From the outset, it has been clear to the Commission that the journey of conversion – if it is to be affective and effective – is one of incremental learning and adjustment to a new attitude towards protecting and promoting the dignity of children and vulnerable people and their right to live free from abuse in any context.

The Nature and Origins of the Pontifical Commission

Over the course of ten years the Commission has had three iterations: The first, 2015 to 2018, its establishment; the second, 2018 to 2022, the delineation of its mandate and areas of intervention; the third and current iteration, 2022 to 2027, realignment to the requirements established by Pope Francis in the Apostolic Constitution *Praedicate Evangelium* which governs the Roman Curia, the Catholic Churches' administrative center.⁴

Originally, the Commission was established as an autonomous body independent of the other Curia departments, reporting directly to the Roman Pontiff through its president and its secretary, whom he also appoints.⁵ In March 2022, Francis promulgated the Apostolic Constitution, *Praedicate Evangelium*, reforming the Churches administrative center formally inserting the Commission into the Curia, within the Dicastery for the Doctrine of the Faith.⁶ However, its direct reporting lines to the Roman Pontiff remain. The Commission's primary governing organ is the Plenary Assembly, which gathers in session in Rome twice yearly to implement the mandate assigned to it according to the various resources available to it.

³ "Many painful actions have caused a profound examination of conscience for the entire Church, leading us to request forgiveness from the victims and from our society for the harm that has been caused. This response to these actions is the firm beginning for initiatives of many different types, which are intended to repair the damage, to attain justice, and to prevent, by all means possible, the recurrence of similar incidents in the future." POPE FRANCIS, *Chirograph of his Holiness Pope Francis for the Institution of a Pontifical Commission for the Protection of Minors*, 22 March 2014: https://www.vatican.va/content/francesco/en/letters/2014/documents/papa-francesco_20140322_chirografo-pontificia-commissione-tutela-minori.html [08 December 2024].

⁴ The Roman Curia. Vatican Website: https://www.vatican.va/roman_curia/index.htm [08 December 2024].

⁵ Secretary of State, *Chirograph of his Holiness Pope Francis for the Institution of a Pontifical Commission for the Protection of Minors*, 21 April 2015: https://www.vatican.va/content/francesco/en/letters/2014/documents/papa-francesco_20140322_chirografo-pontificia-commissione-tutela-minori.html#Statutes [08 December 2024].

⁶ See: POPE FRANCIS, Apostolic Constitution *Praedicate Evangelium* on the Roman Curia and its Service to the Church in the World, 19 March 2022, Art. 78: https://www.vatican.va/content/francesco/en/apost_constitutions/documents/20220319-costituzione-ap-praedicate-evangelium.html [08 December 2024].

The Commission's membership is predominantly drawn from among the laity but also clergy, and it includes non-Catholics, victims, and survivors of clerical child sex abuse, some who have publicly disclosed and others who have chosen not to. Past and present members have included pediatricians, psychiatrists, social scientists, pedagogues, professors of civil and canon law, law enforcement officers, high court judges, social workers, psychologists, theologians, and child rights advocates.

The inter-disciplinary composition of the Commission's membership has always guaranteed the fundamental freedom of the Commission's internal life and activities, which is necessary to assure an independent oversight and evaluation of the safeguarding practices of the ecclesial institutions which the Commission is called to assist. Its members are appointed directly by the Roman Pontiff to provide recommendations-for-action on how to ensure that the Catholic Church remains attentive and active in exercising its duty of care to children and vulnerable persons. Moreover, because the Commission has pontifical status, it shares in the exercise of the Petrine ministry with respect to the mission of accompaniment of victims and survivors of sexual abuse, their families and their communities.

The Priority of Listening and Learning

When Pope Francis established the Commission in 2014, he issued a Chirograph that provided the mandate at the time:

“The Commission's specific task is to propose to me the most opportune initiatives for protecting minors and vulnerable adults, in order that we may do everything possible to ensure that crimes such as those which have occurred are no longer repeated in the Church.”⁷

Pope Francis wrote that this mission is three-fold; to advise the Roman Pontiff on the protection of all minors and vulnerable adults; to assist him in listening and responding to victims/survivors of abuse, as well as their families and communities; to promote local responsibility in local Churches, and to offer support in their safeguarding efforts. Therefore, the Commission's first aspect is to be advisory, identifying the most significant priorities for the pope, and the dicasteries of the Holy See. This work focuses on initiatives for safeguarding all of God's children by supporting local churches in their efforts. A significant phrase from the

⁷ POPE FRANCIS, *Chirograph of his Holiness Pope Francis for the Institution of a Pontifical Commission for the Protection of Minors*, 22 March 2014: https://www.vatican.va/content/francesco/en/letters/2014/documents/papa-francesco_20140322_chirografo-pontificia-commissione-tutela-minori.html [08 December 2024].

Chirograph is that the Commission begin this work with “listening and responding to victims and survivors of abuse.” The members of the Commission call this area their “priority principle,” placing listening to victims and their families first, and this has occupied a vast part of the first ten years of the Commission’s life.

Without doubt, the members from the Commission’s first iteration were witnesses to courage and endurance, taking on an autonomous advisory role that was unprecedented in the Roman Curia. This autonomy allowed the Commission to work closely with victims and survivors, many of whom identified in the Commission a body that would advocate for and on behalf of them in the absence of any structure in the Church created specifically for them.

It is through their work with victims, survivors, their families, representatives, and communities that from the outset the Commission bravely emphasized the urgent need for mandated reporting systems across the Church not only as an intervention mechanism in instances where an abuse is occurring but also as a protection mechanism to reduce the risk of potential further harm.⁸ They also worked to ensure that whenever victims and survivors were not heard in their local context the Commission would be a welcoming platform for these victims to speak out, establishing protocols, which, over time, have allowed the Commission to create appropriate and safe processes by which to offer assistance.

Over the years, the Commission has corresponded and met with thousands of individuals and groups who have been impacted by the crime of clerical child sex abuse, also on behalf of the Roman Pontiff. It has exercised an active listening to distillate from their generous and courageous sharing of their experiences those institutional fault lines that allowed abuse to occur, remain undetected, go unreported, or even be covered up and thus to identify sustainable solutions. Pope Francis has continually taken a leadership role in meeting with and listening to victims. In 2014, the Commission proposed, for example, that he personally encounter a group of victim/survivors – and in July 2015, Pope Francis began the first of a continuing series of such meetings, celebrating the Eucharist and meeting in Santa Marta with a group representing different geographical areas of the Church.

The following year the Commission proposed a meeting with victims as an integral part of the World Meetings of Families, and such meetings were held in both

⁸ Pontifical Commission for the Protection of Minors, *Statement*, 4 March 2016: <https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2016/03/04/160304c.html> [09 December 2024].

2015 and 2018. These were not singular acts with an end unto themselves but were a visible sign of making space for victims and survivors of abuse in our communities at all levels. They were also occasions to speak openly about safeguarding and the role of religious communities in the promotion of the rights of the child. Moreover, in 2016, Pope Francis instituted a National Day of Prayer for Victims of Abuse for the entire church, responding to the initiative of our Commission and asking each conference of bishops to select a day in their own countries.⁹ Now these moments of prayer mark the liturgical life of local communities throughout the world. They offer a moment for community truth telling, collective acknowledgement and public accountability as well as safe space for education and safeguarding awareness raising across the community that is more accessible at a ground level. Then, in its second iteration, inspired by the model of the Survivor Advisory Panels (SAPs)¹⁰ first explored in the church in England and Wales, the Commission began their adaptation and establishment within local churches, where they were not present and culturally feasible. These SAPs represented a powerful platform for the integration of victims'/survivors' recommendations into the Commission's work. Over a period of four years – from 2018 to 2022 – and with a global pandemic in between, the Commission piloted specific SAPs in Brazil, Zambia, the Philippines and a Virtual SAP online.¹¹

In 2021, the SAP panels together organized a global seminar to gather and evaluate the learnings gained over four years, across the Church. Victims and survivors determined the program, chose the key speakers, led the presentations and assessed the outcomes. Titled “A Culture of Healing: Promoting a Culturally Sensitive Approach for Listening and Responding to Those Who Have Been Abused,” the seminar was offered online in five languages with around 700 attendees from five continents.

As the Commission approached its third term, a final assessment of the work of the SAPs was conducted to identify the strengths and weaknesses of the model as a platform for the voice of victims/survivors in the Church and study the convergence across the SAPs on policy gaps and good practices related to the protection

⁹ Pontifical Commission for the Protection of Minors, *Day of Prayer for Survivors and Victims of Sexual Abuse*, 12 September 2016: <https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2016/09/12/160912c.html> [8 December 2014].

¹⁰ Pontifical Commission for the Protection of Minors, *Press Release*, 17 February 2018: <https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2018/02/17/180217c.html> [9 December 2024].

¹¹ Pontifical Commission for the Protection of Minors, *Media*: <https://www.tutelaminorum.org/media/> [9 December 2024].

of children and vulnerable adults from abuse. The assessment also highlighted a renewed sense of importance for the Commission to accompany the local Church towards a victim-centered approach to safeguarding.¹²

Listening to the Local Churches

The second part of the Commission's mandate according to the 2014 Chirograph was to support local Churches. Prior to the Reform of the Roman Curia through the document *Praedicate Evangelium*, this was a systemic challenge. While the autonomy granted to the Commission by the Roman Pontiff in 2014 had permitted it to act as a priority channel for victims and survivors, the same autonomy had simultaneously put it outside the central governing organ of the Church, thus weakening the Commission's impact for change in universal policy and its ability to push through implementation of safeguarding measures at a local church level.

As a result, initially the Commissions' primary instrument for engagement with the local churches was through safeguarding formation and assistance on safeguarding guideline development, when such assistance was proactively sought.

Members travelled the globe in the first eight years of the Commission's life in a campaign of sensitization aimed at transforming resistances to the Churches' safeguarding agenda, often borne from the perception that it was an imposition from the western world. The first two terms of the Commission's membership were an exercise in breaking up the ground of the grass-roots church to sow the seeds for a ministry of safeguarding to take root and flourish.

Individually and collectively members participated in over 600 formation and education activities in local Churches across five continents in conferences, seminars, workshops, and formation courses. These included continental safeguarding conferences in Central and Latin America in 2016, 2018, 2022 and 2024; in Asia with the Federation of Asian Bishops Conference in 2017; in East Africa with AMECEA in 2018 and again in 2024; in Brazil in 2020 with the Brazilian Bishops' Conference and Conference of Religious of Brazil; in 2021 for Central and Eastern European Churches in Warsaw, Poland but to mention a few.

It was an immense task undertaken by the Commission's members of whom all committed their time and expertise on a voluntary basis, but it was also a vital

¹² Pontifical Commission for the Protection of Minors, *A Culture of Healing: Promoting a Culturally Sensitive Approach for Listening and Responding to Those Who Have Been Abused*, (Rome: LAS, 2022) 151.

opportunity to collect data and information from the local churches regarding the concrete safeguarding needs and challenges.

Much of this information also fed into the Commission's work of study and research in partnership with colleagues in the Roman Curia, the Pontifical universities and academic institutions across the world. In 2017, the Commission organized a conference at the Pontifical Gregorian University in Rome on "Safeguarding in Homes and Schools," which led to forming a task force with the Federation of Asian Bishops Conferences on strengthening safeguarding in Asia.¹³ In December 2019, the Commission developed a model for academic research, bringing together in Rome 45 experts to discuss transparency, confidentiality, and accountability in canonical penal processes, which led to a publication of the contributions in their original language English or Italian in the canon law journal of the Gregorian University, *Periodica*, as well as of translations of each contribution in English, Italian, Spanish and Polish.¹⁴ Two years later, a second academic seminar was organized by the Commission on "The Rights of Alleged Victims in Penal Processes," gathering experts from the Roman Curia, academia, and canon and civil law from around the world.¹⁵

Through the duality of this on-the-ground engagement with the local church and pursuit of research and study in collaboration with leading academics, the Commission's basin of evidence-based data and analysis increasingly pointed to a gaping disparity among global Church leadership in the approach to case management and abuse prevention strategies. In some cases, it was a simple question of

¹³ Pontifical Commission for the Protection of Minors, *Safeguarding Begins in Homes and Schools*, 1 January 2021: <https://www.tutelaminorum.org/safeguarding-begins-in-homes-and-schools/> [9 December 2024].

¹⁴ The seminar was entitled *Promoting and Protecting the Dignity of Persons in Allegations of Abuse of Minors and Vulnerable Adults: Balancing Confidentiality, Transparency and Accountability*. The original version of each contribution is published in either English or Italian in: *Periodica* 109 (2020) 401-676. A translation of each contribution in English and Italian can be found at the Website: <https://www.iuscangreg.it/seminario-tutela-minori>. In Spanish: WIJLENS, Myriam / OWEN, Neville, eds., *Confidencialidad, Transparencia y Accountability: La dignidad de las Personas en los procesos de denuncia de abuso sexual*, (Madrid: PPC Editorial 2021) In Polish: WIJLENS, Myriam / OWEN, Neville, eds., *Nadużycia seksualne w Kościele a tajemnica spowiedzi*, (Kraków: Wydawnictwo WAM, 2022).

¹⁵ SCICLUNA, Charles J. / WIJLENS, Myriam, eds., *Rights of Alleged Victims in Penal Proceedings. Provisions in Canon Law and in the Criminal Law of Different Legal Systems*, (Baden-Baden: Nomos, 2023), also in Open Access: <https://www.nomos-shop.de/nomos/titel/rights-of-alleged-victims-in-penal-proceedings-id-111375/> [9 December 2024]. In Spanish: SCICLUNA, Charles J. / WIJLENS, Myriam, eds., *Los Derechos de las Presuntas Víctimas en los Procesos Penales. Disposiciones en el Derecho Canónico y en el Derecho Penal de Distintos Sistemas Jurídicos*, (Madrid: PPC Editorial, 2024).

resourcing, in others of cultural obstacles, in others still of fear and resistance born of a lack of knowledge. This led to the 2018 Commission's proposal for a summit on safeguarding which in turn resulted in the February 2019 Vatican Summit on "The Protection of Minors in the Church" with the presidents of the Episcopal Conferences, a three-day meeting on responsibility, accountability, and transparency,¹⁶ following which the Roman Pontiff then promulgated new safeguarding laws for Vatican City State¹⁷ and the *motu proprio Vos estis lux mundi* to ensure that bishops and others in leadership positions are held accountable for their actions both with regard to abuse itself and the handling of complaints of abuse.¹⁸

Down through the years the Commission has tirelessly sought to build a network of partners beyond the Church, in acknowledgement that the protection of children, if it is to be effective, must be transversal across society. In 2018, the Commission supported the "Interfaith Alliance for Safer Communities Conference" in Abu Dhabi, bringing together world religious leaders to address the digital challenges that their communities are facing.¹⁹ In 2020, it co-sponsored a global Symposium entitled "Strategies for Preventing and Healing Childhood Sexual Abuse," partnering with Harvard University and the Catholic University of America.²⁰ In 2022, in support of the Global Collaborative, a survivor-led network of child advocacy organizations, survivor networks, academic and faith-based institutions, and governments committed to ending child sexual abuse, and supporting

¹⁶ The different addresses can be found at: <https://www.vatican.va/content/francesco/en/events/event.dir.html/content/vaticanevents/en/2019/2/22/incontro-protezioneminori.html> [9 December 2024].

¹⁷ POPE FRANCIS, *Law No. CCXCVII On the Protection of Minors and Vulnerable Persons* 26 March 2019: https://www.vatican.va/resources/resources_protezioneminori-legge297_20190326_en.html [9 December 2024].

¹⁸ POPE FRANCIS, Apostolic Letter issued *motu proprio Vos Estis Lux Mundi*, 7 May 2019: https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html [9 December 2024]. After the 2019 norms had been issued *ad experimentum*, Pope Francis promulgated a revised version of *Vos Estis Lux Mundi* in 2023. It is indefinite: https://www.vatican.va/content/francesco/en/motu_proprio/documents/20230325-motu-proprio-vos-estis-lux-mundi-aggiornato.html [9 December 2024].

¹⁹ Child Dignity Alliance, Interfaith Alliance for Safe Communities: *Child Dignity Online*: <https://www.childdignity.com/press-release-interfaith-alliance-for-safe-communities-child-dignity-online> [9 December 2024].

²⁰ Pontifical Commission for the Protection of Minors, *Tutela Minorum President Cardinal O'Malley, Opens Harvard Interfaith Symposium on Preventing Child Sexual Abuse*, 4 August 2021: <https://www.tutelaminorum.org/tutelaminorum-president-cardinal-omalley-opens-harvards-interfaith-symposium-on-preventing-child-sexual-abuse/> [9 December 2024].

victims and survivors of childhood trauma in their healing, the Commission supported the establishment of November 18 as the World Day for the Prevention of, and Healing from Child Sexual Exploitation, Abuse and Violence by the United Nations during the 77th General Assembly.²¹ The first World Day was observed by the Collaborative on November 18th 2022 in Rome with a special liturgy at the Vatican organized by the Commission and streamed globally.²²

Advice for Action

The third area of the Commission's work has always dealt with safeguarding norms, policies, and procedures. It is through its work on policy development, evaluation, and verification that the Commission most substantially offers its advice-for-action to the Roman Pontiff and assistance to the local Churches. In addition, as mentioned above, it is through its active listening to the victim and survivor community as well as the local church that the Commission can bring about affective and effective progress in how it advises the Church to better protect and promote the rights and dignity of minors.

For the first eight years, the Commissions offered advice to the Roman Pontiff formulated in proposals, many of which have been reflected in significant steps forward, both for the entire church and the church locally. In 2016, the Holy Father asked all bishops around the world to adopt policies of "zero tolerance" for abuse against children, issuing a Letter to Bishops on the Feast of the Holy Innocents.²³ In December 2019, Pope Francis promulgated changes to the canonical norms on abuse cases, raising the age for child pornography offenses to 18 and excepting abuse cases from what is referred to as the pontifical secret.²⁴ In March of that same year, the Holy Father instituted mandatory reporting to civil

²¹ Global Collaborative, *United Nations Declares November 18 World Day for the Prevention of, and Healing from Child Sexual Exploitation Abuse and Violence*: <https://www.globalcollaborative.org/> [9 December 2024]; And: <https://www.tutelaminorum.org/nov-18-a-global-movement-to-protect-children/> [9 December 2024].

²² Pontifical Commission for the Protection of Minors, *Nov. 18: A Global Movement to Protect Children*, 17 November 2021: <https://www.vaticannews.va/en/world/news/2022-11/world-day-prevention-healing-child-sexual-abuse-un-sierra-leone.html> [9 December 2024].

²³ POPE FRANCIS, *Letter of His Holiness Pope Francis to Bishops on the Feast of the Holy Innocents*, 28 December 2016: https://www.vatican.va/content/francesco/en/letters/2016/documents/papa-francesco_20161228_santi-innocenti.html [9 December 2024].

²⁴ POPE FRANCIS, *Rescriptum of the Holy Father Francis to Promulgate the Instruction on the Confidentiality of Legal Proceedings*, 6 December 2019: <https://press.vatican.va/content/salastampa/en/bollettino/pubblico/2019/12/17/191217b.html> [9 December 2024].

authorities in the Vatican City State, and strongly proposed mandatory reporting for the whole Church in *Vos estis lux mundi*.

The Commission's work has also contributed to several important documents, particularly the strengthening of norms on accountability, especially in *Vos estis lux mundi* (2019 and 2023) and *Come una madre amorevole* (2016)²⁵ and to the promulgation of new norms governing safeguarding in Vatican City State and the Vicariate for Vatican City.²⁶

Locally, the Commission supported the establishment of new offices for safeguarding by episcopal conferences and conferences of major superiors around the world, most directly through the regional work of members, in the Americas (Argentina, Brazil, Chile, Colombia, Mexico), in Africa (Kenya, Zambia, Zimbabwe), and the first such offices in Asia, in the Philippines and in India.

These were small signs of reform, which overtime gave the Commission glimmers of hope that the journey of conversion to a culture of safeguarding was underway in the Catholic Church. However, as the world locked down in 2020 during the global Covid-19 pandemic, through the listening network that it had built, the Commission became increasingly aware of new and emerging challenges, particularly the challenge of safeguarding in religious life and protecting and promoting the dignity of children in the digital world.

The scope of the work of the Commission was widened to consider the questions about the notion of vulnerability, as well as, the accountability of leadership, particularly in consecrated life. This led to a collaboration with the International Union of Superiors General (Women) and the Union of Superiors General (Men) and the production of three cycles of safeguarding leadership formation programs, reaching thousands of people in countries around the world.

As the world emerged from the pandemic and the second iteration of the Commission approached the end of its one-year extension in March 2022, the Holy Father promulgated the Apostolic Constitution on the reform of the Roman Curia, *Praedicate Evangelium*, substantively changing the status and role of the Pontifical Commission for the Protection of Minors in the life of the Church.

²⁵ POPE FRANCIS, Apostolic Letter issued motu proprio *Come una madre amorevole*, 4 June 2016: https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio_20160604_come-una-madre-amorevole.html [8 December 2024].

²⁶ POPE FRANCIS, *Guidelines for the Protection of Children and Vulnerable Adults*, 26 March 2019: https://www.vatican.va/resources/resources_protezioneminori-linee-guida_20190326_en.html [8 December 2024].

From ‘Think Tank’ to Safeguarding Authority

One year earlier, in the Summer of 2021, the Commission had conducted a strategic review of its work and direction in dialogue with current and former members and other partners. The results of the review combined with the direction of *Praedicate Evangelium* on the mandate of the Commissions revealed a renewed sense of importance for the Commission to accompany the local churches on the ground towards a victim-centered approach to safeguarding. Moreover, *Praedicate Evangelium* assigned the Commission with responsibility for ensuring the place of safeguarding Guidelines in every area of the Church’s life and ministry worldwide. This systemically changed the impact of the Commission’s safeguarding work with local church leadership.

Hence, the drafting of a universal framework for the development, implementation and review of safeguarding guidelines in the church became the first pillar of the Commission’s new mandate.

A second pillar was given to the Commission by the Holy Father in his April 2022 address when he tasked the Commission to present him with an Annual Report, to serve as a “reliable account of what the Church is doing, and what needs to change, in order to help competent authorities act.”²⁷ It was clear that Pope Francis was asking the Commission to pay specific attention to the Church at the local level and become more practical in its approach to the assistance it offered and the advice it formulated. Thus, the Commission structured its global membership according to the needs of the Catholic Church in the following four regions: Europe, Africa, Americas and Asia/Oceania and focused on bolstering its resources to concretize its work on policy development, implementation, and review. Thanks to the generous support of philanthropic organizations, the Commission created regional teams of safeguarding experts who could directly and promptly respond to the needs of the local churches and – more importantly – keep watch on local trends and emerging risks to the wellbeing of children in the churches’ care from the ground level.

This new focus on the local church naturally led to a third pillar in the Commission’s new mandate: accompaniment of the local churches’ capacity to build safeguarding structures, particularly in the Global South.

²⁷ POPE FRANCIS, *Address of His Holiness Pope Francis to the Members of the Pontifical Commission for the Protection of Minors*, 29 April 2022: <https://www.vatican.va/content/francesco/en/speeches/2022/april/documents/20220429-pontcommissione-tutelaminori.html> [9 December 2024].

It was becoming increasingly evident that training, publications, and seminars could not ensure sustainable safeguarding personnel or structures in the churches that were home to the youngest population in demographic terms. Spurred on by the Holy Father's encouragement to address existing safeguarding inequalities, the Commission gradually launched the *Memorare* Initiative, a capacity building program for churches in the Global South funded by more resourced sister churches in a sign of subsidiarity. The *Memorare* Initiative has three priority areas: The creation of stable and sustainable reporting and assistance services for people who come forward with an allegation of abuse; policy development and formation for all church personnel and the creation of local safeguarding networks and awareness raising campaigns.²⁸

Together the three pillars of our mandate are interwoven: comprehensive policy development in the Guidelines; building capacity where there are gaps or flaws through the *Memorare* Initiative and transparently pointing to where the Catholic Church is progressing in the protection of children and vulnerable people and where it is not in an Annual Report. Combined they are the instruments with which the Commission accompanies the Catholic Church on its journey of conversional justice.

This journey has been developed over the course of a decade and is the fruit of the work of successive memberships. Ten years ago, the clerical sexual abuse crisis was perceived as an anglophone problem, to such an extent that there was no translation for the concept of safeguarding into other languages. Ten years ago, it would have been inconceivable that a working document for a Synodal assembly of the Catholic Churches' Bishops would publicly acknowledge "the loss of credibility" due to scandals in the Church, particularly the "sexual abuse and other abuses of minors and vulnerable persons."²⁹

The final document that emerged from the 2021-2024 Synodal process, *For a Synodal Church: Communion, Participation, Mission*,³⁰ was the result of a

²⁸ Pontifical Commission for the Protection of Minors, *Memorare Initiative*: <https://www.tutelaminorum.org/memorare/> [8 December 2024].

²⁹ XVI Ordinary General Assembly of the Synod of Bishops, *How to be a Missionary Synodal Church, Instrumentum Laboris for the Second Session*, October 2024, 75: <https://www.synod.va/content/dam/synod/assembly2024/il/ENG-INSTRUMENTUM-LABORIS-A4.pdf> [9 December 2024].

³⁰ XVI Ordinary General Assembly of the Synod of Bishops, *For a Synodal Church: Communion, Participation, Mission Final Document*, 24 November 2024, https://www.synod.va/content/dam/synod/news/2024-10-26_final-document/ENG---Documento-finale.pdf [9 December 2024].

consultation and listening phase that began in parishes across the world and continued up to Continental Assemblies and the Assembly of the Synod of Bishops in Rome. It allowed ordinary Catholics to express their ‘lived’ understanding of what a synodal Church is, and to identify some priority issues. Those priorities included safeguarding children and vulnerable people from the risk of abuse in the Church. Catholics today identify the culture and practice of transparency and accountability as essential to the Churches mission.³¹ The Commission sees this as a concrete example of the slow but inexorable conversion within our Church – at every level – to a ministry of Safeguarding.

Let us also acknowledge the part that the Commission has had to play in this, down through the years: The Commission has ensured that the Safeguarding agenda remains a visible and permanent presence in the life of the Church, locally and universally, and when necessary – coherent with the ‘priority principle’ – it has been a voice for the voiceless continuing to push for reform where we identify systemic failures. The Commission is by its very nature, purpose, and structure synodal.

The Challenges that Lie Ahead

At midday on October 29th 2024, a press conference was held in the Holy See Press Office to present the first Annual Report of the Pontifical Commission for the Protection of Minors on Church Policies and Procedures for Safeguarding.³² It was a highly anticipated moment and a juncture for the Commission in its

³¹ The document *For a Synodal Church: Communion, Participation, Mission. Final Document* reads in Nr 150 “Another area of great importance is the promotion in all ecclesial contexts of a culture of safeguarding, making communities ever safer places for minors and vulnerable persons. The work to equip Church structures with regulations and legal procedures that enable the prevention of abuse and timely responses to inappropriate behavior has already begun. It is necessary to continue this commitment, offering ongoing specific and adequate formation to those who work in contact with minors and vulnerable adults so that they can act competently and recognize the signals, often silent, of those experiencing difficulties and needing help. It is essential that victims are welcomed and supported, and this needs to be done sensitively. This requires great humanity and must be carried out with the help of qualified people. We must all allow ourselves to be moved by their suffering and practice that proximity, which, through concrete choices, will uplift them, help them and prepare a different future for all. Safeguarding processes must be constantly monitored and evaluated. Victims and survivors must be welcomed and supported with great sensitivity.” XVI Ordinary General Assembly of the Synod of Bishops, *For a Synodal Church: Communion, Participation, Mission. Final Document*, 24 November 2024: https://www.synod.va/content/dam/synod/news/2024-10-26_final-document/ENG---Documento-finale.pdf [9 December 2024].

³² Pontifical Commission for the Protection of Minors, *Annual Report on Church Policies and Procedures for Safeguarding*, October 2024: <https://www.tutelaminorum.org/annual-report/> [08 December 2024].

efforts to express in concrete terms what the often over-used terms of ‘transparency’ and ‘accountability’ in safeguarding actually mean.

Divided into four sections, the Annual Report examines the safeguarding situation in various local churches across the globe, safeguarding trends across regions, the Roman Curia's effectiveness in safeguarding and how the Church works with society to safeguard children and vulnerable people. The Report also measures the status of the Churches' safeguarding efforts as a whole, what risks remain, and what ought to be done. It lists challenges and offers recommendations.³³

The 2023/2024 Report recommendations include: the need to better promote victims'/survivors' access to information; the need for a holistic approach to the definition and enforcement of vulnerability in the Church's safeguarding provisions; the need for consolidation and clarity around the jurisdictions held by dicasteries of the Roman Curia; the need for a streamlined process for discharge of a Church leader from office, when warranted; the need to further develop the Church's magisterium on her safeguarding ministry; the need to study damages and compensation policies to promote a rigorous approach to reparations and the need to promote the professionalization of safeguarding in the Church.

Presenting the Pilot to press Commission member and Annual Report Chair, Maud de Boer Buquicchio, spoke of it as “a tool of conversional justice” insofar as it records critical transitions, as they progressively occur in different parts of the Church around the world, “characterized by the initial development, implementation and enculturation of safeguarding policies, guidelines and procedures.”³⁴

The Annual Report also promotes the Church's commitment to a human rights-based and victim focused response to the scourge of abuse – consistent with the 2021 reforms of Book VI of the Code of Canon Law that frames the crime of abuse as a violation of the dignity of the human person.³⁵

³³ Pontifical Commission for the Protection of Minors, *Annual Report on Church Policies and Procedures for Safeguarding*, October 2024: <https://www.tutelaminorum.org/annual-report/> [08 December 2024].

³⁴ O'MALLEY, Seán Patrick / BOER-BUQUICCHIO, Maud de, *Press Conference to Present the Annual Report of the Pontifical Commission for the Protection of Minors on Church Policies and Procedures for Safeguarding*, 29 October 2024: <https://press.vatican.va/content/salas-tampa/en/bollettino/pubblico/2024/10/29/241029c.html> [08 December 2024].

³⁵ Code of Canon Law, Book VI, 1 June 2021: https://www.vatican.va/archive/cod-iuris-canonici/eng/documents/cic_lib6-cann1311-1363_en.html [08 December 2024].

Moreover, through the Annual Report's sharing of good practices it accompanies the continued pastoral conversion required to integrally consolidate the advancement of truth, justice, reparations, and institutional reform. In the words of Commission President, Cardinal Sean O' Malley OFM Cap.: "In our journey as Church, [...] the Annual Report serves to hold a record of our path of conversion, while also encouraging the continued road ahead. The Annual Report accompanies that ongoing transition, with recognition that there is still much needing to be done."³⁶

The Commission's work moving forward now consists in the effort to mainstream safeguarding throughout the entire Church, transforming resisters into partners and measuring overtime our progress on this journey of conversion to a culture of safeguarding in our Church, called for by the Roman Pontiff.

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³⁶ O'MALLEY / BOER-BUQUICCHIO, *Press Conference*.

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XVI Ordinary General Assembly of the Synod of Bishops, *For a Synodal Church: Communion, Participation, Mission Final Document*, 24 November 2024: https://www.synod.va/content/dam/synod/news/2024-10-26_final-document/ENG---Documento-finale.pdf [9 December 2024].

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Short Bio

Bishop Luis Manuel Alí Herrera, born in Barranquilla, Colombia in 1967, was ordained a priest in 1992 and holds degrees in theology (Pontificia Universidad Javeriana, 2003) and psychology (Pontifical Gregorian University, 2007). He directed the Psychological Orientation Area at the Conciliar Seminary of Bogotá (2007–2015) and taught various psychology courses. Appointed Auxiliary Bishop of Bogotá in 2015, he has served since 2021 as Secretary General of the Colombian Bishops' Conference. After having served as a member on the Pontifical Commission for the Protection of Minors since 2014, pope Francis appointed him as Secretary of the Commission in 2024.

Vulnerable Persons: A Phrase in Search of a Meaning

Neville Owen

Introduction:

‘Vulnerable persons’ and the Child Sex Abuse Tragedy: The Context

The child sex abuse tragedy has had a dramatic impact on the Catholic Church, globally and at local level.* Initially, the focus of attention was on incidents of sexual abuse of minors. But in recent years the ramifications of the crisis have widened to include the inept, grossly negligent response of some Church leaders to allegations of sexual misconduct by clerics and others in ministry.

During the 1990s, the Church in many parts of the World was forced to recognize the need to respond effectively and with fairness to the harm done to children affected by these crimes. Some local Churches began to develop safeguarding guidelines and other programs and protocols for investigating complaints and promoting ideals of justice and pastoral care for victims, survivors and their families. In the present decade, and under the strong leadership of the Holy Father, these realizations have spread to most parts of the global Church.

However, the inculcation of safeguarding and the need for justice for those who have suffered harm into the very core and being of the Church’s ministry and mission remains a work in progress. It is an evolving and ever-changing challenge. One aspect of the changing scenarios is the appreciation of the fact that safeguarding against harm extends beyond minors and includes some persons whose circumstances require particular attention.

The term or phrase often used to describe people who fall into this category is ‘vulnerable adults’ or ‘vulnerable persons.’ The phrases ‘vulnerable adult’ and ‘vulnerable person’ are often used interchangeably but they have the same general meaning. Vulnerable person is sometimes, although not always, preferred because it is then unnecessary to distinguish between vulnerable persons on the one hand and, on the other, minors (who are generally regarded as being, by reason of age and without more, in need of special care and attention). An alternative

* This article was first published in Italian translation in: MWANDHA, Kevin Otieno / FARINA, Andrea, eds., *La tutela dei minorenni e adulti vulnerabili contro gli abusi sessuali. Un approccio interdisciplinare*, Questioni di Diritto Canonico 14 (Rome: LAS, 2022) 17–40.

phrase or description that is also becoming more common is ‘adults at risk.’ I will have more to say about the term ‘adults at risk’ when I come to describe safeguarding standards currently under development in Australia.

In this paper I will generally be using the phrase ‘vulnerable persons’ because that is the language of some of the more recent Church laws and norms, such as *Vos estis lux mundi*.

The concept and language of vulnerability also appears in some Church documents that are not laws and norms. For example, the Chirograph issued by the Holy Father on 22 March 2014 announcing the creation of the Pontifical Commission for the Protection of Minors contains the following statement:

“The Commission’s specific task is to propose to me the most opportune initiatives for protecting minors and vulnerable persons, in order that we may do everything possible to ensure that crimes such as those which have occurred are no longer repeated in the Church. The Commission is to promote local responsibility in the particular Churches, uniting their efforts to those of the Congregation for the Doctrine of the Faith, for the protection of all children and vulnerable persons.”¹

A phrase like ‘vulnerable person’ does not, of itself and within itself, have an immediately recognizable and inherent meaning. It can only have substance within the context in which it is employed. For present purposes, the context is the safeguarding of people who have a special call on the responsibility of the Church to protect those who need to be shielded from harm as it carries out its ministry and mission.

In the search for a proper and effective response by the Church to the sexual abuse tragedy, it is opportune to examine the contextual meaning of the phrase ‘vulnerable person.’

The Purpose of this Paper

I am not a canon lawyer, nor a theologian and I defer to those who are in dealing with the edicts of Church law, norms and teachings. However, I believe that the experience of secular law regimes, in particular the common law tradition from which I come, may be a useful source of scholarship from which the

¹ POPE FRANCIS, *Chirograph of His Holiness Pope Francis for the Institution of a Pontifical Commission for the Protection of Minors*, 22 March 2014: https://www.vatican.va/content/francesco/en/letters/2014/documents/papa-francesco_20140322_chirografo-pontificia-commissione-tutela-minori.html [29 November 2024].

ecclesiological context of the ‘vulnerable person’ concept can be understood, refined and developed. I doubt it will be possible to find a universal definition of ‘vulnerable person’ that will be applicable for all purposes, and I have not attempted to do so. The purpose of this paper is to explore broad understandings of the concept rather than propound a definition. In the end, it is likely that the assessment of whether a particular person is ‘vulnerable’, in relation to the response to a concern or allegation, will need to be undertaken on a case-by-case basis.

There are canonical and non-canonical aspects that will have to be considered in developing an understanding of the concept of vulnerable person or vulnerable persons. The canonical aspects are exemplified by the reference to the concept in the *Motu proprio Vos estis lux mundi* (7 May 2019) [VELM].² But there are many non-canonical aspects of responding to allegations relating to vulnerable persons with which Church authorities will be concerned.

In dealing with matters which are directly addressed in VELM (that is, canonical responses to allegations concerning abuse of vulnerable persons), Church authorities will need to develop an understanding of the concept that replicates or at least incorporates or reflects all the elements of VELM’s definition. Similarly, precision will be required in any definition or understanding of vulnerable person that is developed for delicts that attract canonical penal laws, processes and sanctions. However, the pastoral approach necessary in the non-canonical applications may involve broader understandings of the concept but it will always be necessary to avoid and guard against inconsistency. It is for these reasons that I say recourse to the scholarship of the secular law traditions can be instructive.

I will commence by setting out my understanding of certain Church norms that are relevant to the discussion. It may be useful then to turn to the way some local Churches have approached the issue. I will then move to three doctrines which the common law has developed in areas analogous to vulnerability; namely, unconscionable conduct, undue influence and duress.

Before I do, I should set out some terms that I will use in the remainder of this discourse.

1. *Church norms*: the Code of Canon Law and other Church laws and norms recognized as part of the system of laws and legal principles utilized in the governance of the Church.

² POPE FRANCIS, Apostolic Letter issued *motu proprio Vos Estis Lux Mundi*, 7 May 2019: https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html [9 December 2024].

2. *Civil law*: the secular system of laws developed in the Roman-Dutch and Napoleonic traditions and used in (among other places) Continental Europe.
3. *Common law*: the secular system of laws developed in Britain from the 12th century and used in many parts of the world that were once British colonies or part of the British Commonwealth, including Australia and the United States. It has been developed by judicial decisions made by Courts rather than statutes enacted by Parliaments.
4. *Equity*: a sub-system of rules or principles within the common law tradition forming a gloss or appendage on the general rules of law recognized by the tradition.
5. *Secular law*: the system of laws, rules and other binding edicts developed by national administrations to regulate the peace, good order and government of secular societies.

By concentrating on the common law tradition, I do not mean to suggest that the civil law does not also have analogous doctrines. It is simply that I am familiar with the former and have little knowledge of comparative concepts in the latter. But it should not be difficult for those interested in the subject to explore the scholarship of the civil law in relevant areas.

The Term ‘Vulnerable Persons’ in Church Norms and Teaching

Catholic Social Teaching has long recognized the Gospel mission to the poor and the vulnerable. One of the seven principles often cited within those teachings is a ‘Preferential Option for the Poor and Vulnerable,’ which one commentator has described in these terms:

“The moral test of a society is how it treats its most vulnerable members. The poor have the most urgent moral claim on the conscience of the nation. We are called to look at public policy decisions in terms of how they affect the poor. The ‘option for the poor,’ is not an adversarial slogan that pits one group or class against another. Rather it states that the deprivation and powerlessness of the poor wounds the whole community.”³

The Code of Canon Law (1983) does not use the term ‘vulnerable person.’ However, in 2010 the Holy Father published revised norms on *de gravioribus delictis* reserved to the Congregation for the Doctrine of the Faith (CDF), which amended the 2001 Motu proprio *Sacramentorum Sanctitatis Tutela* (SST). In relation to

³ DEVITT, Paul, *Principles of Catholic Social Teaching*, The Catholic Archdiocese of Canberra and Goulburn: <https://cgcatholic.org.au/services-directory/councils-commissions/social-justice-commission/principles-of-catholic-social-teaching> [29 November 2024].

reserved delicts against the sixth commandment committed by a cleric with a minor below the age of eighteen years, Art 6 § 1 n.1 of *De gravioribus delictis* says: “a person who habitually has the imperfect use of reason is to be considered equivalent to a minor.”

However, this does not mean that for the purposes of SST persons who might, according to common understanding, be deemed ‘vulnerable’ are to be treated in the same way as are minors. This much was made clear in the July 2020 document issued by the CDF entitled *Vademecum on Certain Points of Procedure in Treating Cases of Sexual Abuse of Minors Committed by Clerics*.⁴ Delicts against the sixth commandment of the Decalogue committed by a cleric with a minor or a person who habitually has the imperfect use of reason are reserved to the CDF. Other situations outside of these cases are handled by the competent Dicasteries.

In Art. 1 §2 of VELM the term ‘vulnerable person’ is defined in much the same language as is used in *Law N. CCXCVII on the Protection of Minors and of Vulnerable Persons of Vatican City State* (26 March 2019):

“§2. For the purposes of these norms,

- a) ‘minor’ means: any person under the age of eighteen, or who is considered by law to be the equivalent of a minor;
- b) ‘vulnerable person’ means: any person in a state of infirmity, physical or mental deficiency, or deprivation of personal liberty which, in fact, even occasionally, limits their ability to understand or to want or otherwise resist the offence.”⁵

The Approach of Local Churches to the Term ‘Vulnerable Persons’

The Australian document, *Towards Healing*⁶ (1996), dealt with the concept on vulnerable person in this way:

⁴ Congregation for the Doctrine of the Faith, *Vademecum on Certain Points of Procedure in Treating Cases of Sexual Abuse of Minors Committed by Clerics*, 16 July 2020 https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20200716_vademecum-casi-abuso_en.html pars 3 - 5. [29 November 2024].

⁵ This is taken from what I believe to be the official English language version. If that is correct, and with respect, the last two lines are not entirely clear.

⁶ Australian Catholic Bishops Conference / Catholic Religious Australia, *Towards Healing. Principles and Procedures in Responding to Complaints of Abuse Against Personnel of the Catholic Church in Australia*, January 2010, 5: <https://law.marquette.edu/assets/community/pdf/rji/rji-2011-Towards-Healing.pdf> [29 November 2024].

“a person who has recently suffered bereavement, marriage breakdown or other such adversity making them in particular need of pastoral support, or a person with an intellectual disability, mental illness or other impairment that makes it difficult for that person to protect themselves from abuse or exploitation.”

Some Australian Church entities, including providers of social services, have devised other definitions of the concept, for example:

“a person who may be in need of community services due to age, illness or mental or physical disability; or who may be unable to take care of him/herself or protect him/herself against significant harm or exploitation.”⁷

It has also been suggested that the concept could be understood in terms of persons belonging to a cohort that is at higher risk of abuse and ill treatment than the general population of persons or others whose particular circumstances involve them having been subjected to abuse or ill treatment or put them at risk of being treated in this manner.

Some of the dioceses in the United States have addressed the issue in safeguarding protocols. The following are examples of definitions of vulnerable person:

1. Persons with physical, mental or emotional conditions that render them unable to defend or protect themselves or get help when at risk of harm. [Archdiocese of St Paul-Minneapolis]⁸
2. Any person 18 years or older is considered vulnerable when, because of impairment of mental or physical functions, that person is unable or unlikely to report abuse or neglect without assistance. [Archdiocese of Louisville]⁹
3. A minor under 18 years of age or a person whose ability to perform normal activities of daily living is impaired due to a mental, emotional, long-term physical or developmental disability or dysfunction, or brain damage, or the infirmities of aging. [Archdiocese of Miami]¹⁰

⁷ Missionaries of the Sacred Heart Australian Province, *Safeguarding Children and Vulnerable Adults. Policy on Safeguarding Children and Vulnerable Persons*, February 2016 (version 1.0): <https://misacor.org.au/item/2052-safeguarding-children-and-vulnerable-adults-policy-of-the-missionaries-of-the-sacred-heart-australian-province> [29 November 2024].

⁸ Archdiocese of St. Paul and Minneapolis, *Code of Conduct for Clergy*, 2016: <https://www.archspm.org/policies/100-ministerial-standardssafe-environment/104-code-conduct-clergy/> [20 May 2025].

⁹ Archdiocese of Louisville, *Restoring Trust: The Sexual Abuse Policies of the Archdiocese of Louisville*, 2023, 9: <https://www.archlou.org/about-the-archdiocese/archdiocesan-policies-guidelines-and-handbooks/restoringtrust/victim-assistance/> [20 May 2025].

¹⁰ Archdiocese of Miami, *Creating and Maintaining a Safe Environment for Children and Vulnerable Adult*, 2: https://www.miamiarch.org/CatholicDiocese.php?op=Protection_General_Policy [20 May 2025].

4. A vulnerable individual over the age of seventeen is also covered by this policy [...] when such a person is unable or unlikely to report abuse without assistance because of impairment of physical or mental function or emotional status. [Archdiocese of Washington]¹¹

We can discern some themes from these pronouncements as to what the authors of the document thought ought to be covered:

1. Persons in adversity rendering them in particular need of pastoral support.
2. Persons with physical, mental or emotional disabilities that impair their capacity to report abuse without assistance.
3. Persons with physical, mental or emotional disabilities that impair their ability to protect themselves against abuse, exploitation or harm.
4. Persons with physical, mental or emotional disabilities (including infirmities of aging) that impair the ability to perform normal activities of daily living.

The Catholic Church in Australia has established a body called Australian Catholic Safeguarding Ltd (ACSL) with a brief to, among other things, promote and oversee a nationally consistent, comprehensive and sustainable framework for the protection of children and vulnerable adults within the Church and to audit compliance by Church entities with published standards. Since 2019, ACSL has been developing a set of National Catholic Safeguarding Standards and in the course of that work has consulted widely with interested and affected groups. In May 2021, ACSL published Draft Two, NCSS Edition 2 of the proposed standards.¹² In the second draft, the authors noted that the consultations after the first draft showed ‘clear support for the shift in terminology from ‘vulnerable adults’ to ‘adults at risk.’ The second draft contains a definition of ‘adults at risk,’ namely:

“any person aged 18 years and over who is at increased risk of experiencing abuse, such as people:

- who are elderly
- with a disability
- who suffer from mental illness
- who have diminished capacity
- who have cognitive impairment

¹¹ Archdiocese of Washington, *Child Protection and Safe Environment Policy*, 2019, 5: <https://adw.org/wp-content/uploads/sites/2/2018/07/19Policy-ChildProtection-FINAL.pdf> [25 May 2025].

¹² Australian Catholic Safeguarding Ltd, *National Catholic Safeguarding Standards*, Draft Two, NCSS Edition Two. Inclusion of Safeguards for Adults: https://www.cpsltd.org.au/media/1812/drafttwo_edition-two_nationalcatholicsafeguardingstandards_may2021.pdf [29 November 2024].

- who have suffered previous abuse
- who are experiencing transient risks
- who in receiving a ministry or service are subject to a power imbalance
- who identify as [Australian First Nations People]
- who are from a culturally and linguistically diverse background
- who have any other impairment or adversity that makes it difficult for them to protect themselves from abuse.”

There is a note to the definition: ‘Not all people from these cohorts would consider themselves vulnerable to abuse, notwithstanding evidence which suggests a higher representation.’ This, too, is a common experience in real life and, where it is encountered, adds to the difficulty and complexity of dealing with situations of vulnerability.

The way in which the draft standards deal with this issue is different to previous attempts to ascribe a meaning to the concept, both in terminology (adults at risk) and in expanded content. However, it is consistent with the general notion of ‘vulnerability’ in, for example, *Towards Healing*, and is aimed at directing attention to a wider range of practical situations in which vulnerability may be encountered.

Vulnerability in Secular Law Regimes

In this paper I am more concerned with common law principles than with statute law because they tend to look at relationships, underlying root causes and matters of fair dealing and conscience as indicia of vulnerability. I think this approach is of more assistance in the search for a meaning that might inform the development of the concept in an ecclesial setting.

However, before I describe the relevant common law doctrines I should say something about the legislative approach.

Parliaments have addressed issues of vulnerability in many fields. Perhaps the most common is in the area of guardianship. In some circumstances it is seen as necessary for the personal and financial affairs of an affected person to be placed under the care and control of a third party. Usually, this is because the cognitive faculties of the affected person are seen as being so compromised that she or he is not able to manage her or his own affairs or make reasonable judgments in financial, medical and other personal matters. This is an area in which International Law has intervened through the concepts of ‘supported’ and ‘substituted’ decision making, about which I will have more to say later.

As a broad general statement, legislatures will often identify the indicia of vulnerability by categories of persons or the circumstances in which they live. An example is to be found in the *Safeguarding Vulnerable Groups Act* 2006, United Kingdom, section 59 of which provides that a person is a ‘vulnerable person’ if, having attained the age of 18, she or he

1. is in residential accommodation,
2. is in sheltered housing,
3. receives domiciliary care,
4. receives any form of health care,
5. is detained in lawful custody,
6. by virtue of an order of a court, is under supervision per criminal statutes regarding community sentences,
7. receives a welfare service of a prescribed description,
8. receives any service or participates in any activity provided specifically for persons who has particular needs because of age, a form of disability or prescribed physical or mental problem,
9. has payments of social service entitlements directed to an accepted representative,
10. requires assistance in the conduct of own affairs.

Given the need for certainty and clarity when dealing with issues of this kind in a statutory setting, a check list approach is appropriate. As with the draft safeguarding standards of ACSL mentioned earlier, it directs attention to a wide range of practical, day to day situations in which vulnerability may be encountered.

However, this does not detract from the efficacy of a deeper search for an underlying meaning of the term ‘vulnerability’ where it falls to be applied in a wide variety of situations that are not easy to define with precision and in an exhaustive sense.

Vulnerability and the Common Law Tradition

I wish now to examine some of the doctrines developed in the common law tradition for the protection of people under a disability or at a disadvantage. But before I embark on that exercise, I need to say something, very briefly, about the Common Law and Equity so as to explain why I say that the principles developed within those traditions can be instructive to those looking at similar issues in an ecclesial context.

Equity and Conscience

Within the common law tradition, there are two streams of rules or principles: Common Law (with a capital ‘C’ and a capital ‘L’) and Equity (with a capital

‘E’). The common law tradition developed in Britain from the 12th century with judges seeking to identify long standing customs and declaring what the law was (and had always been) according to custom and expressing those conclusions as general rules. This came to be known as the Common Law. But it was inflexible and not suited to changing circumstances and could work injustice in a particular case. As a reaction to this rigidity, there developed a complimentary stream of rules and principles as an appendage or gloss to the general rules and aimed at ameliorating or mitigating the strict application of the general rules to avoid injustice. This complimentary stream came to be known as Equity.

Equity emerged from the Courts of Chancery administered by the Lord Chancellors. The judges (including the Lord Chancellor) were almost always clerics and therefore steeped in the traditions of ecclesiastical law and ecclesiastical courts. But Equity prided itself in its commitment to established principles and legitimate processes of legal reasoning from the starting point of a proper understanding of the conceptual foundation of the relevant doctrines. It rejected administration according to idiosyncratic notions of fairness and justice depending on the whim and personal preferences of individual judges.¹³

Its origins in the Chancery (and thus under the influence of clerics) explains why Equity laid great emphasis on reason and conscience.¹⁴ As one of the early writers said:

“The term ‘conscience’, as denoting a principle of judicial decision, appears to have been of clerical intervention; it seems to have embraced the obligation which resulted from a person being placed in any situation as regards another that gave to the one a right to expect, on the part of the other, the exercise of good faith towards him; and nearly resembled the *bona fides* of the Praetorian Code.”¹⁵

The concept of conscience, as administered in Equity, never embraced the notion that there was one objective ‘conscience’ that God and all people acknowledged was correct or that it depended on individual subjective views of right thinking. Equity regarded itself as a ‘court of conscience’ focused on an objective assessment of what was right according to developed principles, rather than on what

¹³ *Muschinski v Dodd* (1985) 160 CLR 583, 615.

¹⁴ YOUNG, Peter W. / CROFT, Clyde E. / SMITH, Megan, *On Equity*, (Pymont: Thomson Reuters/Lawbook Company, 2009) 105.

¹⁵ SPENCE, George, *The Equitable Jurisdiction of the Courts of Chancery*, vol. 1, (London: Stevens/Norton, 1849) 411.

individuals, particularly judges, considered to be fair.¹⁶ As one Lord Chancellor said:

“With such conscience as is only *naturalis et interna*, this Court has nothing to do; the conscience by which I am to proceed is merely *civilis et politica*, and tied to certain measures; and it is infinitely better for the public trust, security, or agreement, which is wholly secret, should miscarry, than that men should lose their estates by the mere fancy and imagination of a chancellor.”¹⁷

General notions of fairness and justice are still relevant to the content and development and application of equitable doctrines, but they do so to the extent that they emerge from established principles and in this sense, it is administered by courts that see themselves both as adherents to precedent and as ‘courts of conscience.’

The doctrines I am about to describe all emerge from the province of Equity, and thus have a basis in conscience, a notion with which theologians and ecclesiologists will be well familiar.

Parens patriae

I need to commence by saying something about a constitutional doctrine that is not in itself equitable but from which many of the equitable principles derive. *Parens patriae* is the political and constitutional doctrine that the Sovereign, as ‘liege lord,’ or any other authority, has responsibility as the legal protector of citizens unable to protect themselves. Many of the equitable principles that are relevant to this discussion take their color and stem from that notion.

The origin or source of the doctrine is the prerogative of the English Christian monarch to care for his or her subjects when they cannot care for themselves. As such, it is perhaps the last example of the exercise by the Court as delegate of a largely unrestrained royal power. This understanding of *parens patriae* accommodates the notion that the jurisdiction included, or even developed out of, traditional Christian values that emphasized obligations to the vulnerable.¹⁸

¹⁶ YOUNG, / CROFT, / SMITH, *On Equity*, 108.

¹⁷ *Cook v Fountain* (1672) 36 ER 984, 990.

¹⁸ KUNC, Francois / HEATH, Kathleen, *Dented and Rusty Like a Suit of Armour? Reflections on the origins of the parens patriae jurisdiction*, Supreme Court of New South Wales: https://supremecourt.nsw.gov.au/documents/Publications/Speeches/Pre-2015-Speeches/Kunc/kunc_201410.pdf [29 November 2024].

A Church that propounds gospel values and seeks to emulate the Good Shepherd is in a similar position to a Sovereign power in relation to those in its care whose capacity to protect themselves is compromised.

Unconscionable Conduct¹⁹

In modern jurisprudence, the equitable doctrine of unconscionable conduct (or unconscionable dealing) arises most frequently in transactions concerning property, which explains some of the language in the succeeding paragraphs. Nonetheless, the principles are of wider import and can be applied to other circumstances.

It has been said that unconscionability is better described than defined. As a broad general statement, the term 'unconscionable' is to be understood as referring to what one party ought not, in conscience as between the parties, be allowed to do. Conduct, which is 'unconscionable,' will commonly involve the use of, or insistence on, strict legal entitlements. Equity regards such conduct as abhorrent where it allows one person to take advantage of another's special disability, vulnerability or misadventure in a way that is so unreasonable and oppressive that it is an affront to ordinary minimum standards of fair dealing.

Unconscionable conduct is an underlying general principle that may be invoked whenever one party, by reason of some condition or circumstance, is placed at a special disadvantage *vis a vis* another, and unfair or unconscientious advantage is then taken of the opportunity thereby created. One way of describing the doctrine is that equity will intervene where:

- (a) a party to a transaction is under a special disability in dealing with the other party with the consequence that there is an absence of any reasonable degree of equality between them; and
- (b) that disability was sufficiently evident to the stronger party to make it *prima facie* unfair or 'unconscientious' that she or he procure, or accept, the weaker party's assent to the impugned transaction in the circumstances in which he or she procured or accepted it.

Where those circumstances are shown to have existed, an onus is cast upon the stronger party to show that the transaction was fair, just and reasonable.²⁰

Another way of describing it is to look at three things. First, a relationship between the parties which, to the knowledge of the one (person A), places another

¹⁹ This section is taken from the judgment in *Bell Group Ltd v Westpac Banking Corporation* [2008] WASC 239.

²⁰ *Commercial Bank of Australia Ltd v Amadio* (1983) 151 CLR 447, 474.

(person B) at a special disadvantage *vis a vis* A. Secondly, A has unconsciously exploited B's disadvantage. Thirdly, the will of B has consequently been overborne whereby B is unable to make a worthwhile judgment as to what is in her or his best interest.²¹

As can be seen, an essential element is that the weaker party be at a 'special disadvantage.' In this area of the law, the phrases 'special disadvantage' and 'special disability' are used interchangeably but there is no evident difference in meaning. The concept of a 'special disadvantage' has been described in these terms:

"One party to a transaction is at a special disadvantage in dealing with the other party [where he or she is afflicted by] illness, ignorance, inexperience, impaired faculties, financial need or other circumstances affect his ability to conserve his own interests, and the other party unconsciously takes advantage of the opportunity thus placed in his hands. [But] the situations mentioned are no more than particular exemplifications of an underlying general principle which may be invoked whenever one party by reason of some condition of circumstance is placed at a special disadvantage vis-a-vis another and unfair or unconscientious advantage is then taken of the opportunity thereby created."²²

It is important to understand that the unconscionable conduct doctrine has both objective and subjective elements. The categories of special disadvantage extend to 'situational disadvantage' (from particular features of a relationship between actors in the transaction) as well as the constitutional (or inherent) disadvantages engendered by such disabilities as illiteracy, lack of education, illness, ignorance, inexperience, impaired faculties, financial need, or other circumstances affecting the ability to conserve his own interests.²³ A disadvantage may also be found where there is a lack of assistance or explanation where assistance or explanation is necessary or could reasonably have been expected.²⁴ Strong emotional dependence or attachment may, in certain circumstances, give rise to a special disability.²⁵

I will now summarize the main features of the doctrine of unconscionable conduct.

²¹ *Louth v Diprose* (1992) 175 CLR 621, 626.

²² *Commercial Bank of Australia Ltd v Amadio*, 462.

²³ See: *Australian Competition and Consumer Commission v CG Berbatis Holdings Pty Ltd* (2000) FCR 491.

²⁴ *Blomley v Ryan* (1956) 99 CLR 362, 392.

²⁵ *Bridgewater v Leahy* (1998) 194 CLR 457, 490.

1. It focuses more on the conduct of the stronger party, rather than (as in, for example, undue influence) the position, quality and consent of the weaker party.
2. Unconscionable conduct justifies intervention by the court because the impugned transaction arises from a combination of the disadvantageous position in which the party seeking relief is placed and the fact that the stronger party unconscionably takes advantage of that position.
3. The weaker party has to prove that she or he was at a special disadvantage prior to entering into the transaction.
4. There are many factors from which a special disadvantage can be inferred. Often a combination of factors will be present. Disadvantage can be 'situational' (objective features of a relationship between actors in the transaction) or constitutional (or inherent) disadvantages of a more subjective nature such as illiteracy, lack of education, illness, ignorance, inexperience, impaired faculties, lack of assistance or explanation, strong emotional dependence, financial need, or other circumstances affecting the ability of the weaker party to conserve their own interests.
5. The stronger party must know of the disadvantage in the sense that the disability was sufficiently evident to the stronger party to make it *prima facie* unfair or 'unconscientious' that she or he procure, or accept to procure, the weaker party's assent to the impugned transaction.
6. It is not enough that the parties are of unequal bargaining power. The conduct of the stronger party has to be exploitative or oppressive.
7. It is not necessary for the weaker party to show emphatically that she or he has been deprived of an independent judgment and voluntary will. It is sufficient to establish that the special disadvantage rendered the person unable to make a worthwhile judgment about what was in her or his best interests.

Undue Influence

Equity does not save people from the consequences of their own folly but will save them from being victimized by other people.²⁶ But relief may be granted where a person enters into a transaction in circumstances where they are subject to improper dominion or 'psychological ascendancy' of another so that their consent to the transaction was not independent and voluntary.²⁷

²⁶ *Allcard v Skinner* (1887) 36 Ch D 145, 182-183.

²⁷ YOUNG, / CROFT / SMITH, *On Equity*, 312.

The ascendancy or dominion may be subtle and need not amount to domination, nor is it necessary to establish that the person was under compulsion or duress or that the other party acted in bad faith or for an improper motive.²⁸

Cases where a transaction may be set aside for undue influence fall into two categories, which may overlap. First, where influence was expressly and actually used by one party for the purpose of procuring the transaction (express influence). Secondly, where the relationship between the two parties is such as to raise a presumption that one exercised influence over the other (presumed influence).

I can deal with the first category in short order. A person claiming actual undue influence must show that one party had the capacity improperly to influence the other, that this in fact occurred and that the transaction was the result of the influence.²⁹

The second category is of greater interest for the present purposes. Some relationships automatically give rise to the presumption, and they are usually relationships that are fiduciary in character, although not all fiduciary relationships attract the doctrine. This is because in most fiduciary relationships, confidence is necessarily reposed by one party in the other and the influence which naturally grows out of that confidence is held by the other. All the circumstances have to be considered to determine whether this confidential relationship exists but there are certain relationships where it will be readily inferred that one party reposes confidence in the other.³⁰ Relationships falling into this category include:

1. Parent and child or guardian and ward
2. Trustee and beneficiary
3. Solicitor and client
4. Medical practitioner and patient

Historically, the courts included in the category of presumed influence the relationship between a religious adviser and the person seeking advice and the relationship between a superior and a member of a religious community.³¹ The following reason was given:

²⁸ Ibid., 313.

²⁹ Ibid., 314.

³⁰ TURNER SNELL, Edmund Henry / MEGARRY, Robert Edgar / VIVIAN BAKER, Paul, *Snell's Principles of Equity*, (London: Sweet & Maxwell, 1966) 610.

³¹ *Huguenin v Baseley* (1807) 14 Ves. 273.

“The influence of one mind over another is very subtle, and of all influences religious influence is the most dangerous and the most powerful and to counteract it Courts of Equity have gone very far.”³²

However, in recent times the courts, at least in Australia, have doubted the wisdom of including religious advisers and religious superiors in the presumptive category.³³ Nonetheless, the religious context of a relationship can still be of significance. In a case involving a gift, the court applied a higher standard than general community standards and said:

“It may be unconscionable to accept and rely on a gift which was fully intended and understood by the donor and originated in the donor’s own mind where the intention to make the gift was produced by religious belief.”³⁴

In presumptive cases, the presumption that the transaction is tainted by undue influence can be rebutted by affirmative evidence that the person entered into it spontaneously and by the free exercise of her or his will and after free and informed thought about it.³⁵

I will now summarize the main features of the undue influence doctrine.

1. Especially in presumptive cases, the doctrine focuses as much on the position, quality, and nature of the consent of the weaker party as it does on the conduct of the stronger party.
2. Undue influence seeks to protect a person who has entered into a transaction in circumstances where they are subject to improper dominion or ‘psychological ascendancy’ of another so that their consent to the transaction was not independent and voluntary.
3. One category of undue influence case is where influence was expressly and actually used by one party for the purpose of procuring the transaction.
4. A separate category arises where the relationship between the two parties is such as to raise a presumption that one exercised influence over the other.
5. The presumptive category is often, although not necessarily, where the relationship between the parties is fiduciary in character. This is because the relationship, of itself, engenders trust, confidence, and reliance.
6. Historically, although of less frequent application in recent times, the relationship between a religious adviser and the person advised and between

³² *Allcard v Skinner* (1887) 36 Ch D 145.

³³ *Quek v Beggs* (1990) 5 BPR 11,761.

³⁴ *Hartigan v International Society for Krishna Consciousness Inc* [2002] NSWSC 810, 28.

³⁵ *Allcard v Skinner* at 171; *Zamet v Hyman* [1961] 1 WLR 1442, 1444.

superior and member of a religious community has been regarded as falling into the presumptive category because of the powerful and abiding nature of religious belief.

7. A presumption of undue influence can be rebutted by proof that the person entered into it spontaneously and by the free exercise of her or his will and after free and informed thought about it.

Duress³⁶

Duress is, in essence, the bringing to bear of undue pressure or coercion to force a person to enter into a transaction. It is of lesser significance than unconscionable conduct and undue influence in the context about which we are speaking because it is essentially a Common Law doctrine (although subject to amelioration by the intervention of Equity) and is, in the jurisprudence, of limited scope and application. Originally, duress in the Common Law was limited to cases of threats to 'life and limb' but under the influence of equity, it was extended to threats to property and economic duress and gradually to other forms of coercion.

Because conduct that amounts to duress will usually be unlawful, or certainly improper, it is unlikely to have much informative significance for the Church's search for a deep meaning of the phrase 'vulnerable person' in the safeguarding context. An example is a cleric demanding sexual favors from a person in return for him providing necessary documentation or otherwise supporting the latter's application for admission to a religious institute. That may amount to duress, but the person concerned is vulnerable on any practical measure.

For that reason, I will go straight to a summary of the relevant principles.

1. Duress means the bringing to bear of unlawful, illegitimate, or improper forms of pressure, or intimidation to force a person to enter into a transaction.³⁷
2. There are two elements: first, pressure amounting to compulsion of the will of the victim and secondly, the illegitimacy of the pressure exerted. And the practical effect of the pressure is the compulsion or the absence of choice.³⁸
3. Pressure will be 'unlawful' if it is a crime and may be so if it is a breach of a common law or statutory duty. A threat to do what a person has a legal

³⁶ See generally: YOUNG / CROFT / SMITH, *On Equity*, 328-338.

³⁷ BEATSON, Jack / BURROWS, Andrew / CATWRIGHT, John, *Anson's Law of Contract*, (Oxford: Oxford University Press, 2002) 277.

³⁸ *Universe Tank Ships Inc v International Workers Federation* (1983) 1 AC 366, 400.

right to do, if coupled with a demand, while not unlawful, may be illegitimate and therefore constitute duress.³⁹

4. The unlawful, illegitimate, or improper pressure must have been a significant, although not necessarily the only or predominant, motive for the person entering into the transaction.⁴⁰

5. Duress need not involve the will of the person entering into the transaction being totally overborne. Rather, he or she is left with no real choice but to succumb to the illegitimate pressure placed on them.⁴¹

References in International Law

There is an aspect of International Law that is, I think, important in the context in which this discussion arises.

The concepts of ‘supported and ‘substituted’ decision making is well known to practitioners in the disability field.

Legal capacity is an issue affecting people with disabilities. Article 12 of the United Nations Convention on the Rights of Persons with Disabilities addresses, among other things, the responsibilities of States in recognizing the importance of legal capacity when it comes to a person exercising rights, whether in day-to-day transactions or in more onerous circumstances. In an article *Moving towards substituted or supported decision-making?*⁴² the authors say:

“There are two competing approaches as to how people who have difficulties making decisions are treated: substituted decision-making and supported decision-making. Substituted decision-making enables a proxy to make decisions on behalf of another person [...] who is incapable, therefore, the concerned individual has no right to make a decision for himself or herself. [...]

Alternative to guardianship arrangements is the supported decision-making model. The concept of supported decision-making is new in relation to Article 12.3 and is predicated on the basic principle that all people are autonomous beings who develop and maintain capacity as they engage in the process of their own decision-making even if at some level support is

³⁹ See previous footnote.

⁴⁰ *Dimskal Shipping v International Transport Workers Federation* (1992) 2 AC 152, 165.

⁴¹ *YOUNG / CROFT / SMITH, On Equity*, 334; *Crescendo Management Pty Ltd v Westpac Banking Corporation* (1988) 19 NSWLR 40.

⁴² DEVI, Nandini / BICKENBACH, Jerome / STUCKI, Gerold, *Moving Towards Substituted or Supported Decision-Making? Article 12 of the Convention on the Rights of Persons with Disabilities*, in: *Alter*, vol. 5, Issue 4-5 (2011) 249-264: <https://www.sciencedirect.com/science/article/pii/S187506721100071X> [1 December 2024].

needed [...]. In the supported decision-making paradigm, the individual receives support from a trusted individual, network of individuals or entity to make personal, financial and legal decisions that must be followed by third parties such as financial institutions, business, health professionals, and service providers [...]. Depending on the needs of the individual with a disability, the support person will aid the individual to understand the relevant issues and information and make decisions based on his or her own preferences [...]. If necessary, the support person interprets and communicates the individual's preferences and desires to third parties so that they can be realised [...]. Supported decision-making recognises that 'even people who have difficulty making choices, formulating decisions and communicating their preferences can make positive choices and decisions that further their personal development, relationships and participation in their communities' [internal citations omitted but can be seen in the website version described in the footnote]."

The fundamental difference between the two regimes is that a decision made by a substitute decision-maker is likely to be based on what is believed to be in the objective 'best interests' of the person concerned, as opposed to being based on the person's own will and preferences.

States are expected to facilitate supported decision making. This is critical for vulnerable persons who are or may be at the risk of being sexually abused.

Sexual Offences in the Criminal Law

Before I turn to my conclusions, I will add a very brief comment about sexual offences within the criminal law, again relying on the secular law in Western Australia as an exemplar. I will explain why I have done so at the end of this section.

Historically, consent has been a crucial issue in crimes (including sexual offences) in most secular jurisdictions because, as a general statement, criminal offences depend on the prosecution proving that the accused did the act with a particular intention (sometimes called the doctrine of *mens rea*) and consent is relevant to intention. However, secular regimes have moved to protect children by making consent irrelevant in many sexual offences. And consent is broadly construed. For example, in Western Australia for the purposes of sexual offences:

"(a) consent means a consent freely and voluntarily given and, without in any way affecting the meaning attributable to those words, a consent is not freely and voluntarily given if it is obtained by force, threat, intimidation, deceit, or any fraudulent means;

- (b) where an act would be an offence if done without the consent of a person, a failure by that person to offer physical resistance does not of itself constitute consent to the act;
- (c) a child under the age of 13 years is incapable of consenting to an act which constitutes an offence against the child.”⁴³

In the Western Australian *Criminal Code* there is a wide range of different sexual offences and many of them depend on the age of the child. They are categorized as:

1. Offences against a child under 13.
2. Offences against a child over 13 and under 16.
3. Offences against a child under 18 but under the authority of the accused.

In each of these categories, consent is irrelevant. The law deems a person under the age of 13 to be incapable of giving consent. For children between 13 and 16 and for children over 16 and under 18 but under the authority of the accused, it is not a defense that the child may have consented.

Most offences against persons require proof that the victim did not consent to the sexual conduct and the definition cited above is applicable. In relation to persons who might be considered as ‘vulnerable persons’, the reference in the definition to ‘threats intimidation, deceit, or any fraudulent means’ is noteworthy. In addition, there are two other categories of offence that affect the situation of people who might be considered ‘vulnerable.’ One is the offence of ‘sexual coercion:’

“A person who compels another person to engage in sexual behaviour is guilty of a crime.”⁴⁴

The second is the discrete offences of a sexual nature committed against an ‘incapable person,’ defined as:

- “a person who is so mentally impaired as to be incapable –
- (a) of understanding the nature of the act the subject of the charge against the accused person; or
 - (b) of guarding himself or herself against sexual exploitation.”⁴⁵

The reason I mention the criminal law is because the definition of ‘vulnerable person’ in VELM, while it does not use the word ‘consent,’ by referring to an ability to ‘understand or to want or otherwise resist the offence’ has some of the

⁴³ *Criminal Code* (Western Australia) s 319.

⁴⁴ *Ibid.*, s 327.

⁴⁵ *Ibid.*, s 330.

hallmarks of ‘a consent freely and voluntarily given’ as described in the *Criminal Code*.

The local Church pronouncements that I have described do not mention the capacity to consent but are more concerned with persons unable to protect themselves. But as can be seen, the criminal law has not limited itself to consent but, in the offences of sexual coercion and those against incapable persons, has broadened the protection to those who for any reason are unable to guard themselves against harm. In other words, the criminal law recognizes both limbs of the protective regime.

Conclusion

As we search for meaning in the phrase ‘vulnerable person’ for both the canonical and non-canonical aspects of the Church’s response to the sexual abuse tragedy, what can we take from the jurisprudence of the common law tradition? I proffer the following comments.

1. The unconscionability doctrine and the undue influence principle focus on two aspects of the problem: the perpetrator of the ‘harm’ and the person who is ‘harmed.’ It is necessary to look at both.
2. They are sensitive to the nature of relationships. They recognize that there are situational (objective) and constitutional or inherent (subjective) aspects that come into play in relationships.
3. The mischief, which the doctrines seek to protect against, is the abuse and misuse by A of power residing in A that affects the ability of B to exercise a free and informed judgment about the effect on them of that power and to conserve their own interests.
4. The doctrines recognize that not all people from cohorts to whom the law seeks to offer protection would consider themselves under a disability or at a disadvantage. This is, itself, a factor that has to be taken into consideration and attracts notions of ‘supported’ and ‘substituted’ decision making.
5. The body of case law and experience that has developed over the centuries has identified some relationships that are, by their very nature, likely to lead to an imbalance of power and the interchange between a religious adviser and the person advised is (or at least was, and for some purposes still is) one of them.
6. That same body of case law and experience has also identified some aspects that amount to ‘special disadvantage’ and that in certain circumstances can be problematic.

6.1 Some human conditions are more likely than others to lead to mischief.

6.2 It is too narrow to confine the deficiencies of the human condition to impaired mental or physical faculties.

6.3 In addition to those, issues such as illiteracy, lack of education, illness, ignorance, inexperience, lack of assistance or explanation, strong emotional attachment or dependence, and financial need may constitute disadvantage if the issue materially affects the ability of the weaker party to conserve their own interests.

7. The categories of cases that amount to ‘special disadvantage’ are not closed.

8. Ideas of ‘conscience,’ although that term is not used in the same way as it is understood in Theology and Ecclesiology, is still relevant and persuasive in holding people to standards of conduct that are fair, just, and reasonable.

9. The criminal law deals with both ‘consent’ and ‘protective’ concepts in devising a regime to limit the capacity for harm to occur.

To summarize the principles in a simple sentence, person A should not be able unconscientiously to exploit person B’s disadvantage and person B should be free to make worthwhile decisions as to what is in their best interest without illicit domination or pressure.

In pursuing its Gospel ministry, the Church is a steward of the gifts of grace and love and must act in the best interests of all of God’s creation. It must act fairly, justly, and effectively and be accountable as a steward. The recognition of special obligations to children and vulnerable persons is critical for the Church to fulfil its mission.

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Short Bio

Hon. Justice Neville Owen Former senior judge of the Court of Appeal of the Supreme Court of Western Australia. In 2014 he was appointed by the Roman Catholic Australian Catholic Bishops Conference to chair “The Truth Justice and Healing Council” as the Church's official coordinating agency with the Royal Commission into Institutional Responses to Child Sexual Abuse. He has been a member of the Pontifical Commission for the Protection of Minors since 2018.

From Protecting Abusive Clerics to Promoting the Dignity of Victims of Sexual Abuse in the Catholic Church. Developments in the Law of the Church

John Anthony Renken

Introduction

The sexual abuse crisis in the Catholic Church has brought tremendous harm and suffering to countless victims, their families, and their communities. The pain cannot be minimized, and no efforts can eliminate the damage. This will never be forgotten. It cannot be forgotten. The sexual abuse of children is a fundamental violation of their dignity.

The dignity of every child, like that of every human being, is *infinite*. This awareness was refreshed recently by the Dicastery for the Doctrine of the Faith in its declaration, *Dignitas infinita*,¹ that explains:

“Every human person possesses an infinite dignity, inalienably grounded in his or her very being, which prevails in and beyond every circumstance, state, or situation the person may ever encounter. This principle, which is fully recognizable even by reason alone, underlies the primacy of the human person and the protection of human rights. In the light of Revelation, the Church resolutely reiterates and confirms the ontological dignity of the human person, created in the image and likeness of God and redeemed in Jesus Christ. From this truth, the Church draws the reasons for her commitment to the weak and those less endowed with power, always insisting on “the primacy of the human person and the defense of his or her dignity beyond every circumstance [FRANCIS, apostolic exhortation *Laudate Deum*, 4 October 2023, no. 39 in *L’Osservatore Romano*, 4 October 2023, III]” (Art. 1).”²

¹ Dicastery for the Doctrine of the Faith (=DDF), Declaration on Human Dignity *Dignitas infinita*, 2 April 2024: https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_ddf_doc_20240402_dignitas-infinita_en.html [25 March 2025].

² The Declaration elaborates: “The most important among [various considerations of human dignity] is the *ontological dignity* that belongs to the person as such simply because he or she exists and is willed, created, and loved by God. Ontological dignity is indelible and remains valid beyond any circumstances in which the person may find themselves” (Art. 7; see: Art. 11). See also: FERNÁNDEZ, Víctor Manuel, *La dignità ontologica della persona in Dignitas infinita: Alcuni chiarimenti. Conferenza alla Facoltà di Teologia Cattolica di Colonia*, 17

This paper offers reflections on the Church's response to the sexual abuse of children.³ It displays that the Church's development of various safeguarding measures reflects a growing awareness of the infinite dignity of children. This awareness is evidenced especially in the progressive developments in the Church's penal law on sexual abuse over the past 40+ years, particularly during the papacy of Pope Francis. Awareness of the infinite dignity of every child results in a radical change in focus, a true conversion of priorities and practice.⁴ When in 1983 the *Code of Canon Law* was issued, sexual abuse of *some* minors (i.e., only those under the age of 16) was a delict against the special obligations of a cleric. Now, as will be displayed in this paper, sexual abuse of *all* minors (i.e., persons under the age of 18) – and also the sexual abuse of “vulnerable adults” – is a delict against human life, dignity, and freedom (when perpetrated by any “church leader,” not only by clerics).

Canon law governs the Catholic Church at various levels – local, regional, universal. This paper focuses on the canon law that governs the universal Church (i.e., the Latin Church and the several Eastern Churches). Universal canon law is contained in multiple sources, particularly in two law “codes” that systematically

February 2025: <https://www.doctrinafidei.va/content/dam/dottrinafedellafede/discorsi-del-prefetto/2025-02-17-Fernandez---La-dignita-ontologica-della-persona.pdf> [25 March 2025].

Written from the perspective of faith, the instruction consistently reflects the ontological (i.e., “God-given”) dignity of the human person. Philosophical reflections on human dignity, including especially that of children, often lack that fundamental basis of faith. See: BAUMANN, Holger / BLEISCH, Barbara, *Respecting Children and Children's Dignity*, in Alexander BAGATTINI / Colin MACLEOD, eds., *The Nature of Children's Well-Being*, (Berlin: Springer, 2014) 141-156; and Randi SIGURDSEN, *Children's Right to Respect for Their Human Dignity*, in: HAUGLI, Trude, et al., eds., *Children's Constitutional Rights in the Nordic Countries*, (Leiden: Brill/Nijhoff, 2020) 19-36.

³ *Inter alia multa*, see also: POPE FRANCIS, *Address to the Congress on Child Dignity in the Digital World*, 6 October 2017:

https://www.vatican.va/content/francesco/en/speeches/2017/october/documents/papa-francesco_20171006_congresso-childdignity-digitalworld.html_ID_, *Address to the Congress on Child Dignity in the Digital World*, 14 November 2019:

https://www.vatican.va/content/francesco/en/speeches/2019/november/documents/papa-francesco_20191114_convegno-child%20dignity.html [25 March 2025].

⁴ The growing awareness of sexual abuse of minors in the Church has advanced a growing awareness of their rights in confronting the violation of that dignity. For reflections on the rights of victims of sexual abuse of minors in the Church, see: SCICLUNA, Charles J. / WIJLENS, Myriam, eds., *Rights of Alleged Victims in Penal Proceedings. Provisions in Canon Law and in the Criminal Law of Different Legal Systems*, (Baden-Baden: Nomos, 2023): <https://www.nomos-shop.de/en/p/rights-of-alleged-victims-in-penal-proceedings-gr-978-3-7560-0037-1> [20 June 2025]; UMAÑA CALDERON, Yeshica Marianne, *The Participation of the Victim of Sexual Abuse in Canonical Penal Proceedings*, in: *Studia Canonica* 57 (2023) 665-682.

arrange stable legislation. One code is the *Code of Canon Law*⁵ (for the Latin Church, promulgated 25 January 1983, effective 27 November 1983); the second is the *Code of Canons of the Eastern Churches*⁶ (promulgated 18 October 1990, effective 1 October 1991). Pope John Paul II promulgated both codes. This paper traces the advances in universal *penal* legislation starting with the *Code of Canon Law*.⁷

Initial Universal Legislation to Safeguard the Infinite Dignity of Minors

A consideration of the development of universal legislation to safeguard minors begins with the *Code of Canon Law* that establishes as delicts *some* acts of sexual abuse by clergy of *some* minors.

“Canon 1395 §2. A cleric who ... has committed an offense against the sixth commandment of the Decalogue, if the delict was committed by force or threats or publicly or with a minor below the age of sixteen years, is to be punished with just penalties, not excluding dismissal from the clerical state if the case so warrants.”

This canon was placed among delicts violating “special obligations;”⁸ only obliquely and indirectly (if at all!) does it regard the infinite dignity of the minor. It proscribes clerical sexual abuse only of *some* minors (those *under* 16)⁹ and this abuse is situated within a listing of other clerical delicts of sexual abuse that violate the “special obligation” of clerical celibate chastity: sex with force, sex with threat, or sex in public. The delict of clerical sexual abuse of minors under the

⁵ *Codex iuris canonici, auctoritate Ioannis Pauli PP. II promulgatus, fontium annotatione et indice analytico-alphabetico auctus*, (=CIC) (Vatican: Libreria editrice Vaticana, 1989), English translation *Code of Canon Law: Latin-English Edition, New English Translation*, 4th ed., (Washington: CLSA, 2023), prepared under the auspices of the Canon Law Society of America (=CLSA).

⁶ *Codex canonum Ecclesiarum orientalium, auctoritate Ioannis Pauli PP. II promulgatus, fontium annotatione auctus*, (=CCEO) (Vatican: Libreria editrice Vaticana 1995), English translation *Code of Canons of the Eastern Churches: Latin-English Edition, New English Translation*, 2nd ed., (Washington: CLSA, 2024) prepared under the auspices of the CLSA,

⁷ See: RENKEN, John A., *The Penal Law of the Roman Catholic Church. Substantive Law*, (Ottawa: Faculty of Canon Law, Saint Paul University, 2024) 494-526.

⁸ Other delicts against special obligations in this section of penal law are: a cleric/religious exercising a trade/business in violation of canon law (c. 1392); anyone violating obligations imposed by a penalty (c.1393); a cleric/perpetually professed religious attempting marriage (c. 1394); a cleric living in concubinage or persisting scandalously in an external sexual sin (c. 1395 §1); violating the obligation of residence binding by an ecclesiastical office (c. 1396).

⁹ Canon 97 §1 says that a minor is a person under 18 (and, equated to “minors” are adults who habitually lack the use of reason: c. 99).

age of 16 could be prosecuted for 5 years (c. 1362 §1, 2°). The *Code of Canons of the Eastern Churches* contained no delict of clerical sexual of a minor.

Originally the handling of allegations of clergy sexual abuse of minors was handled by local authorities (especially diocesan bishops). After becoming aware of the need for a more robust and universally consistent handling of such allegations, Pope John Paul II decided to remove the competence of local authorities and to reserve to himself making judgments about the alleged sexual abuse of minors. On 30 April 2001, he issued *Sacramentorum sanctitatis tutela*¹⁰ that reserves to the Congregation for the Doctrine of the Faith (=CDF) the task of prosecuting specific “more grave delicts” (*graviora delicta*) against the faith, morals, or celebration of sacraments. On 18 May 2001, the CDF issued *Normas de gravioribus delictis Congregationi pro doctrina fidei reservatis* that identify these reserved delicts.¹¹ These *Norms* promoted the dignity of minors by establishing clergy sexual abuse of *all* minors (persons under 18) as a delict for the *entire* Catholic Church (Latin and Eastern):

“Article 4 §1. Reservation to the Congregation for the Doctrine of the Faith is also extended to a delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen.

§2. One who has perpetrated the delict mentioned in §1 is to be punished according to the gravity of the offense, not excluding dismissal or deposition.”

From 2001 onwards, the CDF must receive all allegations of clergy sexual abuse with minors, following a local penal preliminary investigation (Art. 13). The process is subject to the so-called pontifical secrecy Art. 25 §1).¹² This delict can

¹⁰ POPE JOHN PAUL II, *Apostolic Letter motu proprio Sacramentorum sanctitatis tutela*, 30 April 2001, in: *AAS* 93 (2001) 737-739:

https://www.vatican.va/content/john-paul-ii/en/motu_proprio/documents/hf_jp-ii_motu-proprio_20020110_sacramentorum-sanctitatis-tutela.html [24 March 2025].

¹¹ Congregation for the Doctrine of the Faith, *Normas de gravioribus delictis Congregationi pro doctrina fidei reservatis* (=Norms), unpublished in *AAS*. Available in WOESTMAN, William H., *Ecclesiastical Sanctions and the Penal Process. A Commentary on the Code of Canon Law*, 2nd ed., (Ottawa: Faculty of Canon Law, Saint Paul University, 2003) 303-309; See: 314-316.

¹² See: Secretariat of State, Instruction *Secreta continere*, 4 February 1974, in: *AAS* 66 (1974) 89-92. This instruction comments about pontifical (papal) secrecy: “As regards the Roman Curia, however, matters which are handled by it for the service of the universal Church, are cloaked in general official secrecy. The moral obligation of this secrecy must be measured by the superior's prescription or by the nature and importance of the matter. On the other hand, in certain matters of more serious consequence, special secrecy is obligatory; it is called papal secrecy and there is always a serious obligation to observe it” (*Introduction*).

from now on be prosecuted for 10 years after the victim turns 18 (Art. 5), an increase from the then-existing prescription period of 5 years after the delict (c. 1362 § 1, 2°). The change reflects a growing awareness by church authorities concerning the complexity of reporting sexual abuse by victims. It marks a turning point from focusing almost exclusively on the failure of clerics to maintain to their obligations to recognizing that sexual abuse is above all a violation of the dignity of the victim.

During the nine years following the promulgation of the above-mentioned *Norms*, the Holy Father became aware of the need to ensure a universal response to the clergy sexual abuse of adults who habitually lack the use of reason. On 21 May 2010, Pope Benedict XVI revised the *Normae de gravioribus delictis*¹³ and added other reserved delicts of clerical sexual abuse in an effort to safeguard further the human dignity of minors and these *unprotected adults*:

“Article 6 §1. The more grave delicts against morals which are reserved to the Congregation for the Doctrine of the Faith are:

- 1° the delict against the sixth commandment of the Decalogue committed by a cleric with a minor below the age of eighteen years; in this number, a person who habitually has the imperfect use of reason is to be considered equivalent to a minor
- 2° the acquisition, possession, or distribution by a cleric of pornographic images of minors under the age of fourteen, for purposes of sexual gratification, by whatever means or using whatever technology.

§2. A cleric who commits the delicts mentioned above in §1 is to be punished according to the gravity of his crime, not excluding dismissal or deposition.”

These revised *Norms* introduce two significant modifications: the delict now includes (1) clerical sexual abuse of adults who habitually have the imperfect use of reason; and (2) clerical acquisition, possession, or distribution of pornographic images of *some* minors (under 14). This revision establishes *for the first time* the delict of sexually abusing minors *in the digital world* through pedopornography “by whatever means or using whatever technology.” From 2010 onwards the *Norms* allow the delicts to be prosecuted for 20 years after the victim turns 18 and permit the CDF to derogate from the prescription period (Art. 7). The process is subject to pontifical secrecy (Art. 30 §1).

¹³ Congregation for the Doctrine of the Faith, *Normae de gravioribus delictis*, 21 May 2010, in: *AAS* 102 (2010) 419-430: https://www.vatican.va/resources/resources_norme_en.html [24 March 2025].

On 3 May 2010, the CDF, issued a *Circular Letter to Assist Episcopal Conferences in Developing Guidelines for Dealing with Cases of Sexual Abuses of Minors Perpetrated by Clerics*.¹⁴ Such guidelines assist the diocesan bishop in his duty “to give an appropriate response to the cases of sexual abuse of minors by clerics in his diocese. Safeguarding entails the development of procedures suitable for assisting the victims of such abuse, and also for educating the ecclesial community concerning the protection of minors.” Guidelines will: provide pastoral care to minors who are victims of clergy sexual abuse; address formation of priests and religious; comply with civil criminal reporting requirements. The circular letter recalls that the acquisition, possession, or distribution of pedopornography is a delict.

This circular letter begins to shift the focus of sexual abuse from violation of special clerical obligations to violation of the dignity of victims. Hereafter, the dignity of victims continues to be the focus in addressing sexual abuse in the Church.

Advancing Universal Legislation to Safeguard the Infinite Dignity of Minors

The universal penal legislation of the Church, beginning during the pontificates of Pope John Paul II and Pope Benedict XVI, advanced significantly during the pontificate of Pope Francis, starting very soon after his election as Bishop of Rome on 13 May 2013.

On 22 March 2014, Pope Francis established the Pontifical Commission for the Protection of Minors (=PCPM).¹⁵ Acknowledging his intention “to continue the work begun by my Predecessors,” he explained: “The effective protection of minors and a commitment to ensure their human and spiritual development, in keeping with the dignity of the human person, are integral parts of the Gospel message that the Church and all members of the faithful are called to spread throughout the world.” He added:

¹⁴ Congregation for the Doctrine of the Faith, Circular Letter *Tra le importanti responsabilità*, 3 May 2011:

https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20110503_abuso-minori_en.html [24 March 2025].

¹⁵ POPE FRANCIS, *Chirograph instituting the PCPM Minorum tutela actiosa*, 22 March 2014, in: *AAS* 107 (2015) 562-563:

https://www.vatican.va/content/francesco/en/letters/2014/documents/papa-francesco_20140322_chirografo-pontificia-commissione-tutela-minori.html [24 March 2025].

“The aim of the Commission is to promote the protection of the dignity of minors and vulnerable adults, using the forms and methods, consonant with the nature of the Church, which they consider most appropriate, as well as through their cooperation with individuals and groups pursuing these same objectives.”

He elucidated further:

“The Commission’s specific task is to propose to me the most opportune initiatives for protecting minors and vulnerable adults, in order that we may do everything possible to ensure that crimes such as those which have occurred are no longer repeated in the Church. The Commission is to promote local responsibility in the particular Churches, uniting their efforts to those of the Congregation for the Doctrine of the Faith, for the protection of all children and vulnerable adults.”¹⁶

In establishing the PCPM, Pope Francis underscored the human dignity of both *minors* and *vulnerable adults*. Hereafter, reference to vulnerable adults continues to be included in conversations concerning sexual abuse in the Church. On 4 June 2016, Pope Francis issued *Come una madre amorevole*¹⁷ that provides for the administrative removal from office of bishops (and their equivalents)¹⁸ who are gravely negligent in the exercise of their office, “in particular in relation to cases of sexual abuse inflicted on minors and vulnerable adults.”

¹⁶ See also: Secretariat of State, *Statutes for the Pontifical Commission for the Protection of Minors*, 21 April 2015, in: *AAS* 107 (2015) 564-569: https://www.vatican.va/content/francesco/en/letters/2014/documents/papa-francesco_20140322_chirografo-pontificia-commissione-tutela-minori.html [24 March 2025]; and POPE FRANCIS, *Letter to the Presidents of the Episcopal Conferences and Superiors of Institutes of Consecrated Life and Societies of Apostolic Life Concerning the PCPM*, 2 February 2015: https://www.vatican.va/content/francesco/en/letters/2015/documents/papa-francesco_20150202_lettera-pontificia-commissione-tutela-minori.html [24 March 2025].

On 19 March 2022, Pope Francis placed the PCPM within the DDF. He stated that its purpose is “to provide the Roman Pontiff with advice and counsel and to propose the most appropriate initiatives for the protection of minors and vulnerable persons” POPE FRANCIS, Apostolic Constitution *Praedicate Evangelium* on the Roman Curia and its Service to the Church in the World, 19 March 2022, Art. 78, in: *Communicationes* 54 (2022) 9-81: <https://press.vatican.va/content/salastampa/it/bollettino/pubblico/2022/03/19/0189/00404.html> [24 March 2025].

¹⁷ POPE FRANCIS, Apostolic Letter issued motu proprio *Come una madre amorevole*, 4 June 2016, effective 5 September 2016: http://w2.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio_20160604_come-una-madre-amorevole.html [24 March 2025].

¹⁸ Equivalent to diocesan/eparchial bishops are those who even temporarily are “responsible for a particular church or other community of faithful that is its legal equivalent” and “major superiors of religious institutes and societies of apostolic life of pontifical right” (Art. 1, §§1, 4).

During the early years of his pontificate, it is obvious that Pope Francis became aware of certain inadequacies by authorities in addressing sexual abuse. Accordingly, on 12 September 2018, Pope Francis announced a world-wide convocation of church leaders to address “The Protection of Minors in the Church” (that came to be called the “Vatican Summit”). The convocation occurred on 21-24 February 2019; attending were 189 persons (primarily bishops) from every episcopal conference, the Eastern Catholic Churches, superiors general of men and women religious, and the Roman Curia.¹⁹

The focus of the gathering was not only on sexual abuse: it also addressed the responsibility (and failures) of church authorities to respond adequately to complaints about sexual abuse. The gathering emphasized that ignoring or covering up alleged abuse denies the dignity of the victim and also the trustworthiness of the Church as a community. Previously, abusers were commonly transferred to another assignment; now, the summit openly addressed the abuse and strongly stressed the need to see abuse and the handling of allegations through the lenses of the dignity of those abused.

Each of the first three days of the Vatican Summit was devoted to a specific theme: *Responsibility*, *Accountability*, and *Transparency*.²⁰ On the fourth day, Pope Francis celebrated the Eucharist in which the homily was delivered by Archbishop Mark Coleridge of Brisbane.²¹ Coleridge was the president of the Episcopal Conference of Australia where the Royal Commission into Institutional Responses to Child Sexual Abuse (2013-2017) had recently completed its investigation. He urged a “necessary conversion” and a “true revolution” mindset that must understand that the Church revolves around the abused (and not the abused around the Church).

Immediately after the Eucharist, Pope Francis offered a lengthy reflection that included visioning for the future.²² He first acknowledged that sexual abuse,

¹⁹ See: POPE FRANCIS, *Meeting, The Protection of Minors in the Church*, Vatican, February 21-24, 2019: <https://www.pbc2019.org/conference/participants> [24 March 2025].

²⁰ The texts of these presentations, in various languages, are available at: https://www.vatican.va/resources/index_en.htm#MEETING_THE_PROTECTION_OF_MINORS_IN_THE_CHURCH [24 March 2025].

²¹ COLERIDGE, Mark, *Homily at the Mass Concluding the Meeting Protection of Minors in the Church*, 24 February 2019: <https://press.vatican.va/content/salastampa/it/bollettino/pubblico/2019/02/24/0155/00320.html#it> [24 March 2025].

²² POPE FRANCIS, *Address at the End of the Eucharistic Concelebration*, 24 February 2019: https://www.vatican.va/content/francesco/en/speeches/2019/february/documents/papa-francesco_20190224_incontro-protezioneminori-chiusura.html [24 March 2025].

especially of minors, is a long-standing and world-wide problem found in numerous settings and includes “sexual tourism” and “pornography” (he adds that minors in pornography “are thus gravely violated in their dignity.”) He then addressed sexual abuse in the Church, claiming candidly that sexual abuse of minors is “always the result of an abuse of power, an exploitation of the inferiority and vulnerability of the abused, which makes possible the manipulation of their conscience and of their psychological and physical weakness.” He said that church legislation against sexual abuse must concentrate on eight aspects: (1) protection of children; (2) impeccable seriousness (3) genuine purification; (4) formation; (5) strengthening and reviewing guidelines by episcopal conferences; (6) accompaniment of the abused; (7) the digital world; and (8) sexual tourism.

Following the Vatican Summit, on 26 March 2019 Pope Francis issued *three* legislative documents²³ for the Roman Curia and/or Vatican City State to establish proactive and reactive measures to safeguarding minors and vulnerable adults.

On 7 May 2019, Pope Francis issued *Vos estis lux mundi*²⁴ that reflected conversations at the Vatican Summit. Title I of the document is “general provisions” that expand the delict of sexual abuse, its victims, and its perpetrators; that forbid obstruction in the investigation of this delict by church leaders; that identify mandated reporters of proscribed behavior; that require mechanisms to receive these reports; and that ensure pastoral care for alleged victims and their families (arts. 1-5). Title II is an unprecedented procedure to investigate “bishops and their

²³ These are: (1) POPE FRANCIS, Apostolic Letter *Tutela dei minori e delle persone vulnerabili* [for the Roman Curia and Vatican City State], 26 March 2019: https://www.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190326_latutela-deiminori.html [24 March 2025]; (2) ID., *Legge N. CCXCVII: Sulla protezione dei minori e delle persone vulnerabili* [for Vatican City State], 26 March 2019: https://www.vatican.va/resources/resources_protezioneminori-legge297_20190326_it.html [24 March 2025]; (3) ID *Linee guida per la protezione dei minori e delle persone vulnerabili* [for the vicariate of Vatican City State], 26 March 2019: https://www.vatican.va/resources/resources_protezioneminori-lineeguida_20190326_it.html [24 March 2025].

²⁴ POPE FRANCIS, Apostolic Letter issued motu proprio *Vos estis lux mundi*, 7 May 2019, effective 1 June 2023:

http://w2.vatican.va/content/francesco/en/motu_proprio/documents/papa-francesco-motu-proprio-20190507_vos-estis-lux-mundi.html [24 March 2025].

(=VELM) Pope Francis issued a revision of VELM on 5 March 2023, effective 30 April 2023. (See details about the 2023 revision later in this article).

equivalents”²⁵ who are accused of sexual abuse, or of obstructing the civil or canonical investigation of others’ alleged sexual abuse (Arts. 6-19).

VELM identifies potential sexual abusers as: (1) clerics; (2) members of institutes of consecrated life; or (3) members of societies of apostolic life (Art. §1). Previously, only clerics were such abusers. These same persons are “mandated reporters” of their peers whom they believe are committing these delicts (Art. 3 § 1). No report of alleged sexual abuse is subject to “imposed silence” (Art. 4 § 3).

The apostolic letter identifies these “sexual behaviors” as delicts:

1. forcing someone, by violence or threat or through abuse of authority, to perform or submit to sexual acts
2. performing sexual acts with a minor or a vulnerable person
3. production, exhibition, possession, or distribution, including by electronic means, of child pornography; the recruitment of or inducement of a minor or a vulnerable person to participate in pornographic exhibitions (Art. 1 §1 a).

VELM identifies the delict of “the production, exhibition,²⁶ possession, and distribution” of child pornography, described as “any representation of a minor, regardless of the means used, involved in explicit sexual activities, whether real or simulated, and any representation of sexual organs of minors for primarily sexual purposes” (Art. 1 §2, c).

Victims of sexual abuse are minors and vulnerable adults. Earlier references to sexual abuse of *vulnerable adults* had not established such abuse as a delict. *VELM* describes a vulnerable adult as: “any person in a state of infirmity, physical or mental deficiency, or deprivation of personal liberty which, in fact, even occasionally, limits their ability to understand or to want or otherwise resist the offence” (Art. 1 §2, b).

The Apostolic Letter requires dioceses/eparchies to have “stable and easily accessible systems for submission of reports, even through the institution of a

²⁵ *VELM* identifies “bishops and their equivalents” as: “a) cardinals, patriarchs, bishops, and legates of the Roman Pontiff; b) clerics who are, or who have been, the pastoral heads of a particular Church or of an entity assimilated to it, Latin or Oriental, including the personal ordinariates, for the acts committed *durante munere*; c) clerics who are or who have been in the past leaders of a personal prelature, for the acts committed *durante munere*; d) those who are, or who have been, supreme moderators of institutes of consecrated life or of societies of apostolic life of pontifical right, as well as of monasteries *sui iuris*, with respect to the acts committed *durante munere*” (Art. 6).

²⁶ *VELM* adds “exhibition” to the delicts against pornography. Compare the 2010 *Norms* of the CDF, Art. 6 §1, 2°.

specific ecclesiastical office” (Art. 2 §1). It mandates church authorities to provide “care” for “those who state that they have been harmed [and] their families” (Art. 5 §1). The good name, privacy, and personal data of “persons involved” must be protected (Art. 5 §2).

On 3 December 2019, Pope Francis modified the 2010 *Norms*²⁷ by making the clerical acquisition, possession, or distribution of pornographic images of *all* minors to be a delict (not only images of minors under the age of 14). On 6 December 2019, Pope Francis issued an instruction on confidentiality²⁸ that exempts accusations, trials, and decisions involving sexual abuse from pontifical secrecy. “Office confidentiality” remains but does not prevent compliance with civil reporting obligations. The Church must cooperate with civil authorities. Silence is not imposed on reporters, victims, or witnesses of sexual abuse. On 16 July 2020, the CDF published its *Vademecum on Certain Points of Procedure in Treating Cases of Sexual Abuse of Minors Committed by Clerics*.²⁹ This is a step-by-step procedural handbook for prosecution of cases of the sexual abuse of minors by clerics (that are reserved to the CDF). Although the document does not directly address other acts of sexual abuse not reserved to the CDF, *so much of its content* also pertains to procedures addressing other penal behavior in the Church, including sexual abuse of persons (minors or not) by “church leaders” (clerics or not).

The *Vademecum* says the delict of clergy sexual abuse includes “every external offense against the sixth commandment of the Decalogue committed by a cleric with a minor” (no. 1) and adds:

“The typology of the delict is quite broad; it can include, for example, sexual relations (consensual or non-consensual), physical contact for sexual gratification, exhibitionism, masturbation, the production of pornography,

²⁷ Secretary of State and CDF, *Rescriptum ex audientia SS.MI on Modifications in Normae de gravioribus delictis*, 3 December 2019, effective 1 January 2020:

http://www.vatican.va/roman_curia/secretariat_state/2019/documents/rc-seg-st-20191203_rescriptum_en.html [24 March 2025].

²⁸ Secretary of State, *Rescriptum ex audientia SS.MI, Instruction on the Confidentiality of Legal Proceedings*, 6 December 2019, effective immediately:

http://www.vatican.va/roman_curia/secretariat_state/2019/documents/rc-seg-st-20191206_rescriptum_en.html [24 March 2025].

²⁹ Congregation for the Doctrine of the Faith, *Vademecum on Certain Points of Procedure in Treating Cases of Sexual Abuse of Minors Committed by Clerics* (version 1.0), 16 July 2020: https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20200716_vademecum-casi-abuso_en.html [24 March 2025].

The DDF issued a second version of the *Vademecum* on 5 June 2022. (See details about the 2022 revision later in this article.)

inducement to prostitution, conversations and/or propositions of a sexual nature, which can also occur through various means of communication” (no. 2).

All such horrific behaviors violate the human dignity of victims of sexual abuse. Indeed, the *Vademecum* repeats much preceding legislation enacted to safeguard and reflect the dignity of those harmed by sexual abuse: e.g., it acknowledges that information about a possible delict may come from multiple sources, including hearsay or even anonymous accounts (no. 11); that failure of competent authorities to investigate an allegation constitutes a delict (no. 21); that those reporting alleged misconduct are to face no prejudice, retaliation, or discrimination (no. 44); that the good name of all persons involved must be appropriately protected during the preliminary investigation (no. 44); that those claiming to be harmed and their families should be welcomed, heard, supported, and provided with appropriate and necessary spiritual, medical, and psychological help (no. 55); etc.

The Current Universal Legislation to Safeguard the Infinite Dignity of Minors

The Church has progressively developed measures to safeguard minors (and, eventually, vulnerable adults) against sexual abuse in the modern era. These measures reflect and underscore the infinite dignity of the human person. The developments are now contained in the revised penal law of the two law codes governing the Church; with slight variations in terminology, Pope Francis has codified fundamentally uniform penal law for the universal Church.

Book VI (“Penal Sanctions in the Church”) of the *Code of Canon Law* was revised by Pope Francis on 23 May 2021.³⁰ The delicts of sexual abuse are in canon 1398, situated in Title VI that identifies “Delicts against Human Life, Dignity, and Freedom.”³¹ The legislator consciously inserted the term “Dignity” in this Title, and then deliberately placed the delict on sexual abuse of minors and vulnerable adults among these canons in order to focus and to underscore that such abuse is violates the dignity of the person. As mentioned near the beginning of this study, in the 1983 Code, canon 1395 § 2 (on some sexual abuse acts of only

³⁰ The penal law of the *CIC* (Book VI) was revised by: POPE FRANCIS, Apostolic Constitution *Pascite gregem Dei*, 23 May 2021, in: *Communicationes* 53 (2021) 9-12; (English): https://www.vatican.va/content/francesco/en/apost_constitutions/documents/papa-francesco_costituzione-ap_20210523_pascite-gregem-dei.html [24 March 2025].

³¹ Canon 1397 (the only other canon in Title VI) establishes *four* other delicts against human life, dignity, and freedom: (1) homicide; (2) kidnapping by force or fraud; (3) detaining, mutilating, or gravely wounding a person; (4) procuring a completed abortion.

clergy) had been situated in “Title V: Delicts against Special Obligations” where the delict focused on the cleric’s violation of chastity. Transferring elements of canon 1395 § 2 into the new canon 1398 § 1, in “Title VI: Delicts against Human Life, Dignity, and Freedom,” shifts the focus of the delict to the violation of the dignity of the human person (not clerical chastity). Juan Ignacio Arrieta, Secretary of the Dicastery for Legislative Texts that drafted the revised Book VI, comments that “this subject matter [of canon 1398] was intentionally taken out of the title that dealt with the special obligations of clerics and religious in the area of chastity, bringing it to this Title VI. The intention was to differentiate it from the conduct against the virtue of chastity in order to emphasize the aspect of it being an attack against the dignity of the person, which the crime of the abuse of minors specifically involves.”³²

Canon 1398 identifies the several delicts of sexual abuse of minors and vulnerable adults by clergy, members of institutes of consecrated life and societies of apostolic life, and other “lay church leaders” (i.e., lay persons with a church dignity, office, or function):

“Canon 1398 §1. A cleric is to be punished with privation of office and other just penalties, not excluding dismissal from the clerical state if the case warrants it:

1° who commits a delict against the sixth commandment of the Decalogue with a minor or with a person who habitually has the imperfect use of reason or with a person for whom the law recognizes equal protection; 2° who recruits or induces a minor or a person who habitually has the imperfect use of reason or a person for whom the law recognizes equal protection, to show himself or herself pornographically or to participate in pornographic exhibitions, whether real or simulated;

3° who immorally acquires, possesses, exhibits, or distributes, by any means and using whatever technology, pornographic images of minors or of persons who habitually have the imperfect use of reason.

§2. A member of an institute of coecrated life or society of apostolic life, and any member of the faithful who has any dignity or who fulfills an office or function in the Church, if the person commits the delict mentioned in §1 or in can. 1395 §3,³³ is to be punished according to the norm of can. 1336 §§2-4, with other penalties also added according to the gravity of the delict.”

³² ARRIETA, Juan Ignacio, A Presentation of the New Penal System of Canon Law, in: *The Jurist* 77 (2021) 262-263.

³³ Canon 1395 §3: “A cleric who by force, threats, or abuse of his authority commits a delict against the sixth commandment of the Decalogue, or who compels someone to perform or submit to sexual acts, is to be punished with [just penalties, not excluding dismissal from the clerical state if the case so warrants].”

This canon reflects many of the advances developed through extra-codal legislation after the promulgation of the 1983 Code:

The *four* categories of potential victims (depending on the specific delict) are:

1. minors
2. adults who habitually lack of the use of reason and are equated with minors (*CIC*, c. 99)
3. adults who habitually have the imperfect use of reason
4. adults for whom the law recognizes equal protection – that is, “vulnerable adults”³⁴

The delicts of sexual abuse (depending on the status of the victims) are:

1. to perform an act against the sixth commandment of the Decalogue
2. to recruit or induce persons to show themselves pornographically or to participate in pornographic exhibitions, whether real or simulated
3. to immorally acquire, possess, exhibit, or distribute, by any means and using whatever technology, pornographic images.

The *four* categories of potential offenders are:

1. clerics
2. members of institutes of consecrated life
3. members of societies of apostolic life
4. lay persons who fulfill a church office or function.

Sexual abuse is a delict against human life, dignity, and freedom: it is no longer considered as a delict against the special obligation of clerical chastity. The delict is “victim-focused” and it intends to prevent various kinds of sexual abuse by all “leaders” in the Church. All such abuse by those with church leadership “power” violates infinite human dignity with a particular gravity and intensity. The delicts can be prosecuted for 20 years (if perpetrated by a cleric)³⁵ or 7 years (if perpetrated by others identified in canon 1398 § 2) (c. 1362 § 1, 2 °) – thereby, allowing even a longer period of time for victims to address the violation of their human dignity.

³⁴ “Vulnerability” has multiple denotations and connotations. Canonical jurisprudence will need to define its meaning in relation to penal law on sexual abuse, in dialogue with other disciplines. See: ARRIETA, *A Presentation of the New Penal System*, 263-264; Dicastery for Legislative Texts, *Penal Sanctions in the Church: User Guide for Book VI of the Code of Canon Law*, 31 May 2023, Vatican City, 2023.

³⁵ According to the current *DDF Norms*, the delict of clerical sexual abuse of a minor can be prosecuted for a period of 20 years *after the victim turns 18 years old* (Art. 8 § 3).

The penal law in the *Code of Canons of the Eastern Churches* was revised by Pope Francis on 20 May 2023.³⁶ The delict of sexual abuse is in *CCEO* canon 1453 §§4-5, 7 situated in Title XXVI (“Penal Sanctions in the Church”):

“Canon 1453 §4. A cleric who by force, threats, or abuse of authority commits a delict against chastity, or who compels someone to perform or submit to sexual acts, is to be punished with [appropriate penalties, not excluding deposition if the case so warrant].

§5. A cleric is to be punished with privation of office and other appropriate penalties, not excluding deposition if the case so warrants:

1° who commits a delict against chastity with a minor or with a person who habitually lacks the use of reason, or a person for whom the law recognizes equal protection;

2° who recruits or induces a minor or a person who habitually lacks the use of reason, or a person for whom the law recognizes equal protection, to show himself or herself pornographically or to participate in pornographic exhibitions, whether real or simulated;

3° who contrary to good morals, acquires, possesses, exhibits, or distributes, by any means or using whatever technology, pornographic images of minors or persons who habitually lack the use of reason.

§7. A religious or member of a society of apostolic life in the manner of religious and any lay person who has some dignity or who fulfills an office or function in the church, if he or she commits a delict mentioned in §§3-5 is to be punished with an appropriate penalty according to the gravity of the delict.”

The delicts of *CCEO* canon 1453 § 5 can be prosecuted for a period of 20 years (if perpetrated by a cleric)³⁷ or a period of seven years (if perpetrated by others identified in *CCEO* canon 1453 § 7) (*CCEO*, c. 1152 § 2, 2°). Subsequent to the revision of the penal law in each Code, a few other safeguarding measures were enacted.

On 11 October 2021, the CDF issued the third version of the *Normae de delictis Congregationis pro doctrina fidei reservatis*³⁸ that continue to reserve certain delicts of clerical sexual abuse of minors to the CDF. This revised article 6 adds that

³⁶ POPE FRANCIS, Apostolic Letter issued motu proprio *Vocare peccatores*, 20 May 2023, in: *AAS* 115 (2023) 383-393.

³⁷ See fn. 31, above.

³⁸ Congregation for the Doctrine of the Faith, *Normae de delictis Congregationis pro doctrina fidei reservatis*, 11 October 2021, effective 8 December 2021, in: *Communicationes* 53 (2021) 428-436 (Latin); 437-445 (Italian); (English): https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20211011_norme-delittiservati-cfaith_en.html [24 March 2025].

“ignorance or error on the part of the cleric regarding the age of the minor does not constitute an extenuating or exonerating circumstance.” It also adds the “exhibition” of pornography as a delict, corresponding to the revised penal law in both codes. The “allegations, processes, and decisions” about the delict are not subject to the pontifical secret (Art. 28).

On 5 June 2022, the DDF issued a revised *Vademecum on Certain Points of Procedure in Treating Cases of Sexual Abuse of Minors Committed by Clerics*.³⁹ The revised version principally contains modifications that reflect changes in canon law since the first version of the *Vademecum*.⁴⁰

On 25 March 2023, Pope Francis issued a revised version of *Vos estis lux mundi*.⁴¹ It largely repeats the content of the first version of the same-named apostolic letter, but it inserts some significant modifications,⁴² *inter alia*:

- (a) “moderators of international associations of the faithful recognized or erected by the Apostolic See” are now potential offenders and mandated reporters;
- (b) vulnerable *persons* are now termed vulnerable *adults*, more appropriately;
- (c) among those “equivalent to bishops” are added clerics who are or have been the heads of a public clerical association with the faculty to incardinate, for acts committed *durante munere*, and lay faithful who are or who were moderators of international associations of the faithful recognized or erected by the Apostolic See, for acts committed *durante munere*;
- (d) it specifies that, when more than one ordinary is involved, “[u]nless the two ordinaries agree otherwise, it is the responsibility of the ordinary of the

³⁹ Dicastery for the Doctrine of the Faith, *Vademecum on Certain Points of Procedure in Treating Cases of Sexual Abuse of Minors Committed by Clerics* (version 2.0), 5 June 2022, in: *Communicationes* 54 (2022) 161-193; (English):

https://www.vatican.va/roman_curia/congregations/cfaith/ddf/rc_ddf_doc_20220605_vademecum-casi-abuso-2.0_en.html [24 March 2025]

⁴⁰ See a comparison of the two versions of the *Vademecum* prepared by AUSTIN, Brian T., F.S.S.P., <https://www.iuscangreg.it/pdf/DDF%202022%20-%20Vademecum%20-%20Tabellae%20comparativae.pdf> [24 March 2025]

⁴¹ POPE FRANCIS, Apostolic Letter issued *motu proprio Vos estis lux mundi* (version 2.0), 25 March 2023, in *Communicationes* 55 (2023) 48-58; (English): https://www.vatican.va/content/francesco/en/motu_proprio/documents/20230325-motu-proprio-vos-estis-lux-mundi-aggiornato.html [24 March 2025]

⁴² See a comparison of the two versions of *Vos estis lux mundi* prepared by AUSTIN, Brian I., *Vos Estis Lux Mundi – Tabellae Comparativae* (rev. 27 March 2023) (Italian): <https://www.iuscangreg.it/pdf/Austin%202023%20-%20VELM%20tabellae%20comparativae.pdf> [24 March 2025]; (English): <https://www.iuscangreg.it/pdf/Austin%202023%20-%20VELM%20tabellae%20comparativae%20-%20EN.pdf> [24 March 2025].

place where the events would have occurred to proceed according to law as provided for the specific case” (Art. 2 §3).

These modifications clearly do address even more effectively violations of the infinite human dignity of victims.

Conclusion

This study has demonstrated the developments in the universal penal legislation of the Catholic Church that promote a culture of safeguarding infinite human dignity against sexual abuse. Such promotion intends to persuade and promote a necessary and on-going conversion to safeguarding in the synodal Church.

Certainly, safeguarding measures will continue to be enhanced as the entire Church continues to ponder the infinite dignity of the human person. One can anticipate that awareness of infinite human dignity will certainly be “canonized” in providing more transparency for, and involvement of, victims in ecclesiastical procedures that investigate and prosecute sexual violations of that inherent dignity. Likewise, efforts to protect human dignity will rightly continue in conversations concerning the relation between artificial and human intelligence.⁴³ All such awareness and all such efforts further the good of each and all, in the Church and in all societies.

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⁴³ Dicastery for the Doctrine of the Faith / Dicastery for Culture and Education, *Note on the Relationship Between Artificial Intelligence and Human Intelligence Antiqua et nova*, 28 January 2025, nos. 62, 89, https://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_ddf_doc_20250128_antiqua-et-nova_en.html [24 March 2025].

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Short Bio

Monsignor Prof. Dr. John A. Renken is Full Professor of Canon Law and former Dean at Saint Paul University in Ottawa. He holds a Bachelor of Arts in Philosophy from Cardinal Glennon College in Saint Louis, Missouri (1975), a Master of Arts in Civil Law from the University of Illinois at Springfield (1988), and both a Doctorate in Sacred Theology, and a Doctorate in Canon Law from the Pontifical University of St. Thomas Aquinas in Urbe, Rome (1981). With extensive expertise in canonical penal law, he has served as promoter of justice, canonical advocate, and judge in various ecclesiastical tribunals.

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