

III.6 THE COMMITTEE ON THE RIGHTS OF THE CHILD (CRC)

Children, their welfare and their rights have been a central concern of the UN since its creation in 1945. One of the first acts of the UN General Assembly was to establish, on 11 December 1946, the United Nations Children's Fund (UNICEF) which remains until today the main pillar of international assistance to children. Also, the provisions of the Universal Declaration of Human Rights (see Article 25, para. 2, in annex VI.2) and those of the 1966 International Covenants on Human Rights recognize that children's rights must be protected (see Articles 24 and 23, para. 4, of the International Covenant on Civil and Political Rights and Article 10 of the International Covenant on Economic, Social and Cultural Rights).

The first standard setting UN instrument exclusively devoted to the rights of children was the 1959 Declaration of the Rights of the Child. Affirming that "mankind owes to the child the best it has to give", the Declaration offered a solid moral framework for the rights of the child. 30 years later, the Convention on the Rights of the Child was adopted on 20 November 1989. 61 countries, a record number, signed the Convention on the first day it was opened for signature, on 26 January 1990.

The Convention entered into force on 2 September 1990. As of 11 January 2010, the number of States parties totaled 193 (for details see annex VI.3) – an astonishing high number – reaching almost universal ratification. Among the UN Member States, only Somalia and the United States did not yet ratify the Convention. However, it should be also noted that about 70 States parties have made reservations or declarations when ratifying the Convention.

The Convention is the most complete statement of children's rights ever made; it goes further than the 1959 Declaration by making States which ratify the Convention legally accountable for their actions towards children. Given the increasing share of children in the world population, especially the growing number of children among the victims of hunger, war and refugees and, moreover, among the victims of forced labor, slavery and prostitution, the States parties are confronted with high expectations on the realization of the rights of the child.

The Convention is a universally agreed set of non-negotiable standards and obligations; it spells out the basic human rights that children everywhere and without discrimination have: the right to survival; to develop to the fullest; to protection from harmful influences, abuse and exploitation; and to participate fully in family, cultural and social life. The Convention protects children's rights by setting standards ("benchmarks") in health care, education, and legal, civil and social services.

The Convention defines as a child all human beings below the age of 18 years (Article 1); it recognizes the child being entitled to a full array of rights. This changes the nature of the States' responsibilities by turning them into legal obligations: "For most States this evolution from welfare motivated measures to ones based on legally recognized rights requires a fundamental change of legislation, policies, programmes and institutions, but even more importantly, of mentalities and beliefs" (DAVID, Paulo, p.260).

Two Optional Protocols

The Committee also monitors the implementation two Optional Protocols to the Convention, on the involvement of children in armed conflicts and on the sale of children, child prostitution and child pornography, were adopted in January 2000 to strengthen the provisions of the Convention in these areas. They entered into force, respectively on 12 February and 18 January 2002.

The discussion of the first Optional Protocol on the involvement of children in armed conflicts revealed disagreements on the age limit. According to Article 38, paras. 2 and 3, of the Convention children who have not yet completed the age of 15 may not be recruited into their armed forces nor participate in hostilities. During the negotiations the compromise proposal to raise the age limit consistently to 17 years as well as the suggestion of a minimum age of 18 years for participation in armed conflicts and the recruitment of conscripts and the minimum age of 17 years for the recruitment of volunteers failed.

The achieved compromise, an age limit of 18 years, is expressed in the wording of Article 1 of the Optional Protocol: "States parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities". In consequence, children under 18 years of age may belong to the armed forces. Compared with Article 38, para. 3, of the Convention, the age at entry of voluntary recruited persons into the armed forces raises from 15 to 16 years and a number of procedural safeguards have to be recognized, for instance the volunteers may not take part in direct hostilities insofar they have not yet reached the age of 18 years.

As at 11 January 2010, the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts had been ratified or acceded to by 131 States parties. The Optional Protocol on the sale of children, child prostitution and child pornography had been ratified or acceded to by 135 States parties. In contrast to the Convention it is marked by detailed modalities of accomplishment and control.

Initial reports of States parties are due two years after the date of the entry into force of the Optional Protocols with comprehensive information on the measures taken to implement the provisions of the protocols. Subsequent reports have to be submitted every five years. Detailed guidelines regarding the form and content of the initial reports to be submitted by the States parties have been adopted on 3 October 2001 respectively on 31 January 2002 by the Committee.

Article 43: The Committee on the Rights of the Child

Article 43 of the Convention provides for the establishment of a Committee consisting of ten experts who serve in their individual capacity and are elected for a four-year term. All States parties to the Convention may nominate candidates. An amendment to Article 43, para. 3, of the Convention increasing the membership of the Committee from 10 to 18 reached the required number of 128 ratifications (a two-thirds majority of States parties) so that it entered into force on 18 November 2002.

Since 1995, the Committee normally meets three times a year, in January, May

and September in Geneva. It examines the progress made by States parties in achieving the realization of the obligations as laid down in the Convention and the two Optional Protocols. Each session comprises a three-week period for scrutiny of States parties' reports with an additional week at each session for the pre-session working group.

Article 44: States Reporting System

States parties must submit to the Committee, through the Secretary-General (see chart 16), reports on the measures undertaken for the implementation of the rights recognized in the Convention and on the progress made on the enjoyment of those rights; the first report is to be submitted within two years of the entry into force of the Convention of the State party concerned, and thereafter every five years. The Committee examines between 10 and 12 Convention (and Optional Protocol) reports.

As at 27 December 2007, the Committee had received a total of 426 reports. However, a considerable delay of the States parties in their reporting obligations can be observed. At its 59th session in 2004, the UN General Assembly decided to allow the Committee to meet in two parallel chambers on a temporary basis during 2006 in order to decrease the existing backlog of reports. The Committee found the two-chamber system most effective in reducing the backlog of reports pending consideration. As the Committee receives over 50 reports per year it is inevitable that the backlog will continue again. On 6 June 2008 the Committee requested the General Assembly again to work in two chambers as from October 2009 until January 2011.

At its 38th session in January 2005, the Committee decided to consider the situation of children's rights in a State in the absence of the initial report if the State party concerned would not report within one year after having received the letter requesting the submission of the report.

In September 1999, the Committee decided to reintroduce the role of a country rapporteur; it also decided to give high priority to the drafting of general comments based on the principles and provisions of the Convention. In order to guide States parties in the preparation of their initial reports, the Committee has adopted General Guidelines regarding the form and the content of these reports; it also produced more detailed guidelines for the periodic reports by States parties which require a more rigorous reporting process.

The reports shall indicate factors and difficulties which affect the degree of fulfillment of the obligations under the Convention; they shall also contain sufficient information to provide the Committee with a comprehensive understanding of the implementation of the Convention in the country concerned. Article 44 also provides that States parties shall make their reports widely available to the public in their own countries.

All competent organizations may be invited to take part in the Committee's discussions, to submit their views and to be consulted (Article 45 of the Convention). These bodies include ILO, WHO, UNESCO, UNICEF, UNHCR as well as a wide range of NGOs. Moreover, several steps have been taken towards a comprehensive approach to the rights of the child: "UNICEF now has taken on the Convention as a guide for its country programming. UNHCR

has produced guidelines on the rights of the child for field offices; ILO has given more emphasis to the issue of child labour; WHO has programmes that relate to the Convention as has UNESCO, which also has produced some information materials on child rights" (HAMMARBERG, p. 30).

Every two years, the Committee submits to the General Assembly a report on its activities (see references). It can make suggestions and general recommendations which are also submitted to the States parties and, together with comments from the States parties, if any, to the General Assembly. The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies to special issues concerning the rights of the child. 1996 experts drew up the so-called Machel Report, a study on the situation of children in armed conflicts. 2002 the Committee recommended to prepare another study of experts on violence against children which was approved by the 57th General Assembly. In February 2003, the Secretary-General assigned an expert to undertake this world-wide analysis.

The Role of NGOs

NGOs participated already in the drafting of the Convention: a proposal of 28 NGOs, supported by UNICEF, influenced as a common point of view of a number of highly different NGOs the elaboration process – even though it was not submitted to the Human Rights Commission as an official UN document. The NGOs' activities prior to and during the sessions of the Working Group can be seen as model for the engagement of NGOs.

According to Article 45 the Committee may integrate "other competent bodies", i.e. Intergovernmental organizations and NGOs in order to provide "expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates".

The Committee has engaged NGOs as critical actors in promoting and monitoring children's rights; they are actively encouraged to submit "alternative" reports which provide the Committee with a fuller and often more critical analysis of the state of children's rights in a given country. Encouraging NGOs to submit reports has promoted the creation of national coalitions which present information on behalf of the national NGO body as a whole.

The interaction process with NGOs is institutionalized through the pre-sessional working group which meets in private; no States parties representatives are allowed to attend, no public record of the discussion is produced. NGOs, and in particular national coalitions of NGOs, which have submitted written reports, are invited to attend the meetings. A three-hour session is allocated to each State party report. NGOs are invited to comment on the State party report and the process of its production (including to what extent NGOs were consulted in its preparation).

Introducing an Individual Complaints Procedure?

The Convention has no mandate to accept and review individual complaints. Members of the Committee indicated two options. On the one hand, the Committee recommended children or their representatives to refer to other treaty bodies, namely Human Rights Committee (see section III.2), CERD (see

section III.3), CAT (see section III.5), or CEDAW (see section III.4). Furthermore, references can be made to the special procedures of the Human Rights Council, including the mechanisms for urgent actions and appeals, including the Special Rapporteurs on the Sale of Children, Child Prostitution and Child Pornography; on Torture; on Extrajudicial, Summary or Arbitrary Executions or the Working Group on Arbitrary Detention.

On the other hand the Committee suggested further efforts in order to draw up an individual complaints procedure within the scope of an optional protocol to the Convention. This initiative is supported by NGOs on the national as well as international level (for instance, World Vision Canada, amnesty international). Among the reasons given stress was laid on the possibility of an supplementary examination of issues by the Committee, the strengthening of the children's individuality and legal personality, the victim's potential indemnity and the growing public attention and appreciation of the Convention. In order to further elaborate on this issue, the Human Rights Council decided to set up an Open-ended Working Group on an optional protocol to the Convention on the Rights of the Child to provide such a communication procedure (see chart 5).

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Part II deals with the reports by States parties under Article 44 of the Convention with references to the document symbols of the concluding observations published as separate documents. The annexes contain three general comments: No.8 (2006): The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment; No.9 (2006): The right of children with disabilities; No.10 (2007): Children's rights in juvenile justice.

UNITED NATIONS / GENERAL ASSEMBLY: Report of the Committee on the Rights of the Child. New York: UN, 2006, 59 (GAOR Sixty-first Session. Supplement No. 41 (A/61/41)) (also available in other official languages of the UN).

In Part III the States reports are summarized; in annexes II and III general comments No. 6 (Treatment of unaccompanied and separate children outside their country of origin) and 7 (Implementing child rights in early childhood) are reproduced.

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E-Resources

General:

<http://www2.ohchr.org/english/bodies/crc/index.htm>

General Comments:

<http://www2.ohchr.org/english/bodies/crc/comments.htm>

States reports:

<http://www2.ohchr.org/english/bodies/crc/sessions.htm>

Handbook on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography.

http://www.unicef-irc.org/publications/pdf/optional_protocol_eng.pdf

Annual reports of the Special Rapporteur on the sale of children, child prostitution and child pornography:

<http://www2.ohchr.org/english/issues/children/rapporteur/annual.htm>