

The Committee on the Rights of the Child as an International Monitoring Mechanism

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Abstract: The Convention of 1989 on the Rights of the Child led to the creation of the "Committee on the Rights of the Child", The latter is responsible for ensuring the respect and the protection of children's rights. Furthermore, this committee acts as an international supervisor, checking how well countries are following the settled rules in the Convention. At first, the committee's duties were quite limited and often criticized. However, things changed after a new protocol was introduced that allowed individuals to register complaints. This provided the committee more power and expanded its role.

Keywords:

Committee, Children's Rights, Complaints, convention, respect, protection.

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Introduction:

Concerns in children's rights from a legal perspective began to emerge at the international level through various declarations¹ This attention grew gradually until it led to the adoption of the Convention on the Rights of the Child² It set out a wide range of rights that all children should enjoy without discrimination, standing as a key achievement in international human rights law.

However, simply adopting an international agreement is not enough to ensure children's rights are upheld. Monitoring mechanism to track how well each country fulfills its commitments under the Convention, is also needed. That is why Article 43 of the Convention established the Committee on the Rights of the Child.³ This Committee was given both the role of overseeing how State Parties implement the Convention and the authority to receive periodic reports from them.

In essence, the Committee is the official body created by the Convention to protect and promote the rights it settled. To fulfill this role, it has been granted several responsibilities and powers. Furthermore its aim is not only to monitor compliance, but also to guide countries in improving their child protection systems.⁴

As one of the countries that adopted the Convention; on December 19, 1992; Algeria is also committed to cooperating with the Committee. This cooperation is carried out mainly through national reports, which represent the country's progress in protecting and promoting children's rights.⁵

Given this background, two key questions arise: What is the legal framework governing the work of the Committee on the Rights of the Child? And how effective is it in practice?

To address this issue, we followed an analytical method. First, we examined the limited scope of the Committee on the Rights of the Child's mandate, and second, we explored the expansion of its responsibilities.

TITLE 1 :The Limited Mandate of the Committee on the Rights of the Child

To facilitate the work of the Committee, the 1989 international Convention outlined its composition, the method for choosing its members, and the powers awarded to it within the scope of its duties. This section will explain those aspects, noting that the powers discussed here are those specified in Articles 44 and 45 of the aforementioned Convention; that is, before

1- Adami, R. Kaldal, A. & Aspán, M. (Eds.). The rights of the child: Legal, political and ethical challenges. (vol.7). Brill | Nijhoff. (2023). P3.

أنظر كذلك: هاني محمد كامل المناييلي، حقوق الطفل بين الواقع والمأمول، المكتبة العصرية، مصر، 2010، ص 37 وبعدها.

² - Adopted and opened for signature, ratification and accession by the United Nations General Assembly on November 20, 1989, under Resolution 44/25. The Convention entered into force on September 2, 1990, in accordance with Article 49, and was later completed by three Optional Protocols.

³ - hereafter referred to as the Committee.

⁴ - فاطمة شحاتة أحمد زيدان، مركز الطفل في القانون الدولي العام، دار الجامعة الجديدة، مصر، 2007، ص 631.

⁵ - للمزيد أكثر حول ملاحظات حول بنود الاتفاقية أنظر: وسيم حسام الدين الأحمد، حماية حقوق الطفل في ضوء أحكام الشريعة الإسلامية والاتفاقيات الدولية، منشورات الحلبي، لبنان، 2009، ص 115 إلى 118.

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the adoption of the third Optional Protocol. Due to this limitation, the Committee's mandate was partially restricted.

First Subtitle: Composition of the Committee on the Rights of the Child

The Committee was established according to Article 43 of the Convention on the Rights of the Child. In paragraph one of the article it is stated the Committee's purpose is to examine the progress made by State Parties in fulfilling their commitments under the Convention, by means of various allocated responsibilities.

The Committee was composed of ten (10) experts recognized for their high moral standing and proven competence in the field of children's rights. However, on December 12, 1995, an amendment increased the number of Committee members to eighteen (18) expert.

It is crucial to note that while these experts are elected by State Parties, they serve in their personal capacity. The creators of the Convention deliberately chose not to form the Committee as an intergovernmental body, but rather as a panel of independent experts. This means that Committee members do not represent their governments and are not subject to governmental commands. Their role is to represent the Committee itself and ensure the implementation of the Convention's principles. This approach has been widely appreciated by legal scholars, as it contributes to the creation of an independent monitoring mechanism with a high degree of objectivity.⁶

The first election of Committee members is conducted no later than six months after the Convention enters into force. Thereafter, elections are held every two years. Four months before each election, the Secretary-General of the United Nations sends a letter to all State Parties inviting them to submit nominations within two months. The Secretary-General then communicates the list of candidates to the State Parties. The election is held at the United Nations headquarters, and a quorum is reached with the presence of two-thirds of the State Parties. Besides, members are elected by a majority of votes and an absolute majority of those present and voting.⁷

The Committee members serve a four-year term, and members may be re-elected if renominated. However, the terms of five members end after two years, and these members are selected by random selection.

Furthermore, the Committee adopts its own rules of procedure.⁸ Its meetings are held at the United Nations headquarters or any other location it may decide, and the Committee meets three times a year.

Second Subtitle: The Limited Mandate of the Committee on the Rights of the Child

Despite the various responsibilities devoted to the Committee under the Convention on the Rights of the Child, these have often been described as limited. The Committee's work was largely confined to receiving reports, demonstrating observations and recommendations, and engaging in commentary and discussions.

- فاطمة شحاتة أحمد زيدان، المرجع السابق، ص 632.

⁷ - Article 43, paragraphs 4 and 5 of the Convention on the Rights of the Child.

⁸ - which it has amended over several sessions.

1. Receiving Reports from State Parties to the Convention

One of the Committee's important functions is to examine reports submitted by State Parties on the measures they have taken to implement the Convention. The Committee may also demand additional information from states regarding the implementation of the Convention. These reports should identify any factors or challenges that affect the state's ability to complete its obligations under the Convention. Besides, they must also include enough information to give the Committee a comprehensive understanding of the Convention's implementation in the relevant country.⁹

In addition to the main Convention, the Committee is also responsible for receiving reports related to the implementation of its Optional Protocols, precisely: The Optional Protocol on the involvement of children in armed conflict¹⁰, and the Optional Protocol on the sale of children, child prostitution, and child pornography.¹¹

In the light of this, there are three types of reports submitted to the Committee on the Rights of the Child:

a- The Initial Report:

This report must be submitted in two years of the Convention's entry into force for the State Party concerned. It marks the first interaction between the state and the Committee and forms the basis for reviewing later periodic reports. The Committee has adopted general guidelines regarding the format and content of these initial reports.¹²

According to these guidelines, the initial report should include the information on how children are defined under domestic law, including the legal age of majority, education, employment, marriage, criminal responsibility, and alcohol consumption. Furthermore, the measures taken to ensure that national legislation aligns with the Convention should also be included. Legislative, judicial, administrative actions taken by the state and also copies of relevant legal texts, are also important elements in the report. Finally, detailed demographic data on children, including gender, age, location, and information on children under guardianship, etc should also be part in the report.¹³

b- The Periodic Report:

This report is submitted every five years and should not repeat information already provided in the initial report. To guide states in preparing these reports, the Committee has adopted general guidelines on the format and content of periodic reports. This type of report allows for comparison with the initial report and enables the Committee to refer back to the earlier submissions and recommendations. Moreover, the report helps the Committee formulate

⁹- Article 44 of the Convention on the Rights of the Child.

¹⁰- Article 8 of this Protocol.

¹¹- Article 12 of this Protocol

¹² ماهر جميل أبوخوات، الحماية الدولية لحقوق الطفل، دار النهضة العربية، مصر 2008، ص 364.

¹³ - نجوان الجوهري، الحماية الموضوعية والإجرائية لحقوق الطفل على المستوى الدولي والإقليمي، دار النهضة العربية، مصر، 2010، ص

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concluding observations and assess the attitudes and reactions of national authorities in response to its conclusions.¹⁴

Without a doubt, these periodic reports act as a monitoring mechanism that helps evaluate the advancements achieved by State Parties in implementing children's rights under the Convention. They also help identify weaknesses or gaps that may hinder the objectives for which the Committee was established.

c- Supplementary Reports and Information:

According to Article 44, paragraph 4 of the Convention, the Committee may request additional information from State Parties relevant to the implementation of the Convention. The aim of this is to provide the Committee with information not included in the periodic reports or to address urgent developments.

Those additional information may be particularly useful when the time gap between periodic reports is relatively long. Therefore, it is important to grant the Committee; as an international body; the right and the power to demand additional reports¹⁵.

2. The Committee's Observations and Recommendations:

In addition to receiving reports, the Committee may also engage in general comments and discussions on specific topics related to children. It can issue general recommendations and proposals concerning a State's implementation of the Convention and transmit them to the concerned State Party through the General Secretary, as well as to the General Assembly.

3. General Comments and Discussions on the Convention:

According to Article 77 of its Rules of Procedure, the Committee may draft general comments based on the provisions and articles of the Convention with the aim of promoting its implementation and assisting State Parties in completing their reporting obligations. These general comments are included in the Committee's reports to the General Assembly.

For instance, in 2001, the Committee adopted a general comment on Article 29/1 of the Convention, which addresses the aims of education. Additionally, the Committee may allocate one or more days during its regular sessions to discuss any article of the Convention or relevant topics.¹⁶

It is worth mentioning that the Convention on the Rights of the Child also addresses the Committee's relationship with specialized agencies. Article 45 outlines the cooperation between the Committee and specialized agencies, UNICEF, and other United Nations bodies; whether through inviting these organizations to provide expert consultation or submit reports related to the implementation of the Convention within their areas of activity.

- ماهر جميل أحمد أبوخوات، المرجع السابق، ص 365.¹⁴

- فاطمة شحاتة أحمد زيدان، المرجع السابق، ص 638.¹⁵

¹⁶- Article 79 of the Committee's Rules of Procedure of Committee on right of the child.

TITLE 2: Expansion of the Mandate of the Committee on the Rights of the Child

Although the Committee's oversight role, which was established by the 1989 Convention and its two initial Optional Protocols, has realised many positive results, it has also been subject to criticism due to its limited scope. This fact led to the adoption of the Third Optional Protocol¹⁷, that expanded the Committee's mandate to include the ability to consider individual and inter-state communications, as well as conduct inquiries in cases of grave violations of children's rights as established in the 1989 Convention.

First Subtitle: Receiving Communications (Complaints):

The Third Optional Protocol introduced a mechanism for submitting complaints to the Committee, which is composed of two types:

1. Individual Communications (Complaints):

Children or their representatives are now permitted to submit complaints when their rights are disregarded. This marks a significant development by introducing an additional layer of oversight regarding children's rights. However, this mechanism is subject to a set of conditions and procedures.

In Article 7 of the Third Protocol eight cases in which complaints are inadmissible, were identified. Based on this article, the conditions for admissibility fall into three categories:

- Related to the complaint: It has to be in writing, submitted within one year after exhausting domestic remedies¹⁸, and must not constitute an abuse of the right to submit a complaint.
- Related to the complainant: The complaint must be filed by a child or their representative, and their identity must be disclosed.
- Related to the respondent State: The State must be a party to the Third Optional Protocol as well as to the Convention or Protocol whose provisions are claimed to have been violated.¹⁹

Once a complaint is submitted, the Committee may request additional information and may suggest a friendly settlement. If no settlement is reached, the Committee reviews the complaint as soon as possible based on the provided documents. Confidentiality is maintained, and sessions are closed. Finally, the Committee issues its views and may include recommendations and suggestions.²⁰

¹⁷- on December 19, 2011, and entered into force in 2014.

¹⁸- There are two exceptions to the deadline: If domestic procedures are excessively prolonged or unlikely to offer effective remedies.

¹⁹- These conditions are outlined in Article 1, paragraphs 2 and 3 of the Third Protocol.

²⁰- The procedures are outlined in the Third Protocol and its 2021 Rules of Procedure.

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2. Inter-State Communications:

The Third Protocol also empowers State Parties to submit complaints against other State Parties in case of failure to fulfill obligations under the Convention or its Protocols ; provided that both States have recognized the Committee's competence to examine such complaints.

If the Committee is deemed competent, it may request further information and attempt to facilitate a friendly resolution between the parties. If no resolution is reached, the Committee issues its findings, which are communicated to both States.

Second Subtitle: Conducting Inquiries:

This mechanism, introduced by the Third Optional Protocol, allows the Committee to conduct inquiries when it receives reliable information indicating grave violations of children's rights under the 1989 Convention and its Protocols. Since, this reflects growing international concern for child rights, its implementation is contingent on the concerned State's acceptance of this procedure.

Once it receives credible information, the Committee engages with the concerned State to discuss the allegations and provide comments. It may designate members to conduct an investigation and submit a report, which may include visiting the State's territory, subject to the State's consent.

Finally, the Committee issues comments and recommendations. The State must respond within six months of receiving them. Thenafter this period, the Committee may follow up on the measures taken and asks for additional information.

Conclusion:

The Committee on the Rights of the Child, introduced in the 1989 Convention on the Rights of the Child, represents an international institutional framework created to control the implementation of obligations undertaken by States Parties under the Convention. This constitutes a safeguard to ensure the optimal respect for children's rights.

The Committee's monitoring role is clear, and several positive aspects can be noted in this regard: The Committee consists of independent experts rather than representatives of governments, which means it is not subject to directives from State Parties. Moreover, the required specialization in the field of children's rights enhances its credibility.

The process of submitting, analyzing, and examining reports encourages States to improve their efforts in respecting children's rights.

The delivery of recommendations serves as a means to urge non-compliant States to align with expected standards (bearing political and moral weight). The method of discussion adopted by the Committee helps shed light on the actual status of children's rights, preventing it from remaining merely theoretical or legalistic; it bridges the gap between current realities and existing challenges.

The new powers devoted to the Committee under the Third Optional Protocol; namely the reception of individual and inter-State communications, as well as the power to conduct inquiries, represent significant developments in the field of children's rights and reflect the growing international legislative concern for this issue.

Nevertheless, despite these advantages, several shortcomings persist, highlighting the need for ongoing and proactive efforts to bridge these gaps and strengthen the protection of children's rights. Some of the most pressing challenges include the effectiveness of report submission. This largely depends on the responsiveness of States to their reporting obligations, whether these reports are accurate and truthful or, not?

Furthermore, the conditions for applying the mechanisms introduced under the Third Optional Protocol may hinder or limit the effectiveness of those mechanisms, for instance, the requirement that the concerned State be a party to the Protocol. Finally, there are no punitive measures or penal consequences for States that violate the Convention or fail to fulfill their obligations.