

The Role of the Committee on the Rights of the Child

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ABSTRACT

The Committee on the Rights of the Child was established under Article 43 of the Convention on the Rights of the Child of 1989. According to Articles 43-45 of the Convention, the Committee on the Rights of the Child is treaty-based.

The Committee should operate strictly within the express competences established by the Convention and the Optional Protocols. This is a condition for the legality of the Committee's actions. There is no room for "presumed competencies".

The Committee can only deal with matters that are referred to it under the provisions of the Convention. Therefore, the Committee cannot interfere in matters that fall within the sovereign competence of a State Party to the Convention. Moreover, the Committee is not an authoritative body over the States Parties to the Convention. Even in matters assigned to it by the Convention. Dialogue and advice are the way it operates.

The Committee on the Rights of the Child is an important body that protects the rights of children. It has considerable authority as a treaty-based body. Although the Committee does not have "executive" competencies, it significantly influences the application of the law. This can be seen, for example, in the introduction of subsequent provisions of the Convention and Optional Protocols in various countries. This influence is particularly evident in the application of laws. The General Comments issued by the Committee play an important role in stabilising the protection of children's rights. They create significant standards for legal protection. Owing to the various activities described above, the Committee on the Rights of the Child contributes to spreading legal awareness in individual countries and internationally.

KEYWORDS

Child rights, Committee on the Rights of the Child, human rights, United Nations, conventions, international law, child's best interest, child protection

1. Introduction – legal framework

The Committee on the Rights of the Child was established under Article 43 of the 1989 Convention on the Rights of the Child.¹ However, this does not mean that the

1 The Convention was adopted by the United Nations General Assembly on 20 November 1989.

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issue of child rights protection was not subject to international legal regulations. The Convention on the Rights of the Child directly refers, in the Preamble, to the most important international legal acts enacted earlier. These acts directly concern the legal protection of children and humans. They should be indicated here first, as they are the “background” of the Convention on the Rights of the Child. These are legal frameworks for child protection under international law and directly determine the legal and institutional position of the Committee on the Rights of the Child. Invoking the provisions of specific legal acts involves the direct application of these provisions together with the Convention on the Rights of the Child. Simultaneously, the listed provisions do not exhaust the legal frameworks that define the principles of the Committee on the Rights of the Child. Therefore, the following legal acts invoked in the Preamble to the Convention on the Rights of the Child and other important acts of international law² should be considered.

1. The Convention on the Rights of the Child refers in its Preamble to the following legal acts:
 - Geneva Declaration of the Rights of the Child of 1924³
 - Declaration of the Rights of the Child⁴
 - Universal Declaration of Human Rights
 - International Covenant on Civil and Political Rights⁵
 - International Covenant on Human Rights
 - International Covenant on Economic, Social and Cultural Rights⁶
 - Declaration of Social and Legal Principles (Beijing Principles)
 - Declaration on the Protection of Women and Children in Emergency and Armed Conflict
2. International law acts whose provisions concern the protection of child rights and the Committee on the Rights of the Child:
 - International Agreement on Combating Trafficking in Living Goods⁷
 - International Convention on Combating Trafficking in Living Goods⁸

2 Owing to the limitation of the subject of considerations to acts of international law, the Charter of Family Rights *presented by the Holy See to all persons, institutions and authorities interested in the mission of the family in the contemporary world*, issued in Rome in 1983, is not considered here. An interesting attempt to compare the Charter of Family Rights with acts of international law, in the context of protecting the rights of the child, is undertaken, e.g.: Ildikó, pp. 33–40.

3 Adopted by the General Council of the International Child Welfare Union on 13 February 1923, and then incorporated (adopted) by the General Assembly of the League of Nations on 16 November 1924. Expanded and supplemented by the International Child Welfare Union in 1948, and since then called the Charter of Children's Rights.

4 Adopted by the United Nations General Assembly on 20 November 1959.

5 Enacted under United Nations General Assembly resolution 2200A (XXI), opened for signature in New York on 19 December 1966.

6 Adopted at the United Nations conference in New York, under resolution 2200/XXI of the General Assembly, opened for signature in New York on 19 December 1966.

7 Adopted in Paris on 18 May 1904.

8 Adopted in Paris at the Second Conference from 18 April to 4 May 1910.

- International Convention on the Suppression of the Traffic in Women and Children⁹
- International Convention on the Suppression of the Circulation of and Traffic in Obscene Publications¹⁰
- Final Act of the International Conference on the Suppression of the Circulation of and Traffic in Obscene Publications¹¹
- Convention on Certain Questions Relating to the Conflict of Nationality Laws and Protocol on Statelessness¹²
- Convention for the Facilitation of the International Circulation of Films of an Educational Character¹³
- Protocol Amending the Convention for the Suppression of the Traffic in Women and Children, concluded at Geneva on 30 September 1921, and the Convention for the Suppression of the Traffic in Full-Grown Women, concluded at Geneva on 11 October 1933¹⁴
- Convention on the Recovery Abroad of Maintenance¹⁵
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery¹⁶
- Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages¹⁷
- International Convention on the Elimination of All Forms of Racial Discrimination¹⁸
- International Convention on the Suppression and Punishment of the Crime of Apartheid¹⁹
- Convention on the Elimination of All Forms of Discrimination Against Women²⁰
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict²¹
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography²²

9 Signed in Geneva on 30 September 1921.

10 Signed on 12 September 1923, in Geneva.

11 The conference convened at the invitation of the Government of the French Republic, gathered in Geneva on 31 August 1923, under the auspices of the League of Nations.

12 Signed in The Hague on 12 April 1930.

13 Signed in Geneva on 11 October 1933.

14 Signed in Lake Success on 12 November 1947.

15 Prepared in New York on 20 June 1956.

16 Signed in Geneva on 7 September 1956.

17 Adopted by the United Nations General Assembly on 7 December 1962, and opened for signature in New York on 10 December 1962.

18 United Nations - opened for signature in New York on 7 March 1966.

19 Adopted on 30 November 1973, by United Nations General Assembly resolution 3068 (XXVIII).

20 Adopted by the United Nations General Assembly on 18 December 1979.

21 Adopted in New York on 25 May 2000.

22 Adopted in New York on 25 May 2000.

- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime²³
- International Convention for the Protection of All Persons from Enforced Disappearance²⁴
- Optional Protocol to the Convention on the Rights of the Child on a communications procedure²⁵

The Convention on the Rights of the Child of 1989 refers in its Preamble to human (child) rights, as stated in the aforementioned legal acts (conventions). According to the provisions of these Conventions, human rights must be understood in a realistic (natural law) manner. This means that every human being (or child) has inalienable rights, regardless of executive, judicial, or legislative authority. These rights belong to every human being because of their inherent dignity (natural law).²⁶ Any other understanding of human rights²⁷ always leads to the denial and violation of these rights. This note is necessary because there is currently a discussion, also in the Committee on the Rights of the Child, which undermines the objective nature of human rights. However, this issue is not the subject of this chapter. It belongs to the philosophy of law. Nevertheless, it cannot be ignored that any attempt to separate the acts of international law cited here from their natural law sources and foundations leads directly to the relativization and anarchisation of law. Consequently, instead of the objective legal protection of children's rights postulated in these acts, in the practice of applying the law, either every "protected" child right is directly denied or legal protection is overpowered in favor of ideological disputes.

The Preamble refers to the foundation, which is "inherent dignity" and "the value of the human individual", "the family as the fundamental unit of society and the natural environment for the growth and well-being of all its members, especially children". It emphasises that 'the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love, and understanding' and that 'the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth'. This foundation is the reason, principle, and basis for the application of the Convention and the legal existence of the Committee on the Rights of the Child. This is the most important interpretative criterion. However, according to Article 1 of the Convention, 'a child refers to every human being below the age of 18 years, unless under the law applicable to the child, majority is attained earlier'.

23 Adopted by the United Nations General Assembly on 15 November 2000.

24 Adopted on 20 December 2006, during the 61st session of the United Nations General Assembly.

25 Protocol adopted at the United Nations General Assembly on 19 December 2011.

26 Cf. Araujo, 2010, pp. 197–222.

27 E.g. Marxism, legal positivism.

According to Articles 43-45 of the Convention, the Committee on the Rights of the Child is a treaty body.

The Committee operates within the competencies and objectives set by the Convention and the Optional Protocols. The legality of the Committee's actions lies in implementing the competencies assigned in the Convention. There is no room for "presumed competencies". In some cases, the Committee's activities, such as "law-making" (General Comments), may appear controversial. However, the Committee does not have legislative competencies in the strict sense. Such competency violates the sovereignty of States Parties to the Convention. However, there are situations where the Committee usurps the right to "binding" interpretation of the Convention's provisions. There is an ongoing discussion on this issue in legal science.²⁸

The Committee on the Rights of the Child can only deal with matters to which the States Parties to the Convention have agreed. Provisions of the Convention define these issues. The Committee may not interfere with matters that fall within the sovereign competence of the State Party to the Convention. It is not an authority or court in relation to the States. It solves these problems through dialogue and communication.²⁹

Various scientific disciplines are interested in protecting children's rights. The issue of children's rights is considered a new field of science.³⁰

2. Membership, Composition

The Committee on the Rights of the Child was established pursuant to Article 43.1 of the Convention on the Rights of the Child (hereinafter the Convention).

The Committee comprises eighteen experts. Members of the Committee are elected by States Parties from among their nationals based on geographic distribution and principal legal systems (Article 43.2 of the Convention).

Members of the Committee are elected by secret ballot from a list of persons nominated by States Parties. Each State may nominate one person from among its nationals (Article 43.3 of the Convention).

Elections to the Committee are held every two years. At least four months before each election, the Secretary-General of the United Nations sends a letter to the States Parties, asking them to submit the names of nominated individuals within two months. The Secretary-General then prepares a list of all nominated persons, arranged in

28 More: Stadniczeńko, pp. 71-78, 2019.

29 More: Michałowska, p.123, 2016.

30 Various theories in this regard, including: Kehily, 2008, pp. 15-16; Qvortrup, 1993, p. 113; Durkheim, 1926, p. 49; Śliwowski, 2007, pp. 83-84; James and Prout, 1990, pp. 8-9; Bourdieu, 1986, pp. 69-72; Znaniecki, 1973, p. 47; Goffman, 1963; Goffman, 1974, p. 181; Qvortrup, 1994, pp. 5-6.; Garbarino, Kostelny and Dubrow, 1991; Garbarino et al., 1992; Garbarino, 1995; Garbarino, 1999; Garbarino, 2006; Bowlby, 1969; Casas, 2000, p. 8; Jamrozik and Sweeney, 1966, p. 17; Jaworski, 1973; Veerman, 1991; Lewin, 1993, pp. 66-69; Smolińska-Theiss, 2013; Lewowicki, 1994; Cornock and Montgomery, 2011, pp. 3-19.

alphabetical order, indicating the State by which they were nominated, and submits this list to the States Parties to the Convention (Article 43.4 of the Convention).

Elections are held at meetings of the States Parties, convened by the Secretary-General at the headquarters of the United Nations. At these meetings, the quorum is two-thirds that of the States Parties. Those who receive the highest number of votes and an absolute majority of the votes of the present and voting representatives of the States Parties are elected (Article 43.5 of the Convention).

Members of the Committee are elected for a term of four years. They may be re-elected. The term of five of the members elected in the first elections expires after two years. These five members are selected by lottery by the chairperson of the meeting (Article 43.6 of the Convention).

In the event of the death of a Committee member, their resignation, or their declaration that they cannot perform the duties of a Committee member for any other reason, the State Party that nominated the member shall, with the consent of the Committee, appoint another expert from among its nationals for the remainder of the term (Article 43.7 of the Convention).

The Committee on the Rights of the Child adopts its procedures. It also elects its officers for a period of two years (Article 43.8-9 of the Convention).

Committee meetings are held at the headquarters of the United Nations or at another convenient location determined by the Committee. The Committee generally holds annual meetings. The duration of the Committee's meetings is adopted, when necessary, at a meeting of the States Parties, with the consent of the General Assembly (Article 43.10 of the Convention).

The Secretary-General of the United Nations provides the necessary staff and conditions for the Committee's effective work (Article 43.11 of the Convention).

Members of the Committee receive honoraria from United Nations funds for the duration and on terms determined by the Assembly (Article 43.12 of the Convention). The detailed election procedures are included in the Rules of Procedure of the Committee on the Rights of the Child.³¹

3. Rules of Procedure

Detailed solutions are provided in the Optional Protocol to the Convention on the Rights of the Child on communications procedures (hereinafter the Protocol).

According to Article 1 of the Protocol, the Committee is competent only in matters concerning the States Parties to the Convention.

The general principles guiding the Committee are set out in Article 2 of the Protocol. The Committee is guided by the principle of the best protection of the child's interests. It also considers the rights and views of the child, assigning due weight to the child's views according to their age and maturity.

31 Principles 19–22, CRC/C/4 Rev.3.

The Committee operates based on the rules adopted in the procedure. Rules governing this procedure must consider these principles. The rules of the procedure should protect the child from manipulation by people acting on their behalf. The Committee may refuse to examine a complaint if it does not serve the child's best interests (Article 3 of the Protocol).³²

The official languages of the Committee are the official languages of the United Nations: Arabic, Chinese, English, French, Russian, and Spanish. The working languages of the Committee are English, French, Spanish.³³ The Committee's decisions are issued in the Committee's official languages. Official documents are prepared in the working languages.

The Committee meets two types of sessions: ordinary and special. Ordinary sessions are conducted in January, May, and September. Special sessions are convened based on the decision of the Committee or that of the Committee's chairperson, at the request of the majority of the Committee members or at the request of a State Party. Special sessions are convened as soon as possible.³⁴

Committee sessions can be either public or private. They are usually public unless the Committee decides otherwise.³⁵ Representatives of report authors and representatives of bodies, institutions, and organisations whose statutory activities concern the protection of child rights participate in the sessions.

4. Working Methods

The chief working methods of the Committee on the Rights of the Child include state reporting, individual complaints, interstate complaints, urgent interventions, complaints about systematic violations (Inquiry Procedures), General Comments, Open Letters and Statements, thematic discussions and conferences, and civil society participation. According to Article 16 of the Protocol, the Committee submits a report on its activities undertaken under the Protocol to the General Assembly of the United Nations. The Committee must do it every two years, (Article 44.5 of the Convention).

4.1. State reporting

The Convention on the Rights of the Child imposes the obligation to submit periodic reports on the implementation of the Convention (Article 44 of the Convention). The first report is submitted two years after the ratification of the Convention by a particular State, and subsequent reports are submitted every five years. The reports should contain information that provides the Committee with full knowledge of the

32 Committee regulations: Rules of Procedure under the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, 16 April 2013 (CRC/C/62/3), The Rules of Procedure of the Committee on the Rights of the Child, 16 April 2013 (UN Doc. CRC/C/4 Rev.3).

33 Principle 34, CRC/C/4 Rev.3.

34 Principle 3, CRC/C/4 Rev.3.

35 Principle 39, CRC/C/4 Rev.3.

Convention's provisions in a given country. A State Party that has submitted a comprehensive initial report to the Committee is not required to repeat the information in subsequent reports.

The Committee may request additional information from the States Parties. The States Parties are obliged to make reports available to the public in their countries.

After reviewing reports on the implementation of the Convention, the Committee on the Rights of the Child (a team of experts) makes general recommendations based on the information received. The Committee's suggestions and general recommendations are communicated to the concerned State Party and made known to the General Assembly. Comments from the States Parties are also made known.

The Committee on the Rights of the Child has adopted principles regarding these reports. These reports include the following:

- Information about measures adopted to harmonise national law and policy with the provisions of the Convention;
- Information on actions taken to promote and observe the Convention;
- Information on the implementation of general principles concerning the welfare of the child;
- Information on the implementation of specific provisions, that is, specific rights, civil liberties, and rights related to the family environment;
- Information on measures taken in specific situations, such as protection of the disabled, refugees, minorities, and children in conflict with the law; protection against drug addiction and alcoholism; protection against exploitation of children for prostitution and pornography; and protection against illegal trafficking of children.

The acceptance and assessment of a State Party's government report by the Committee on the Rights of the Child involves the acceptance of the government report. The Committee may submit proposals to the selected non-governmental organisations of a country to comment on the report. This could also serve as a proposal for writing alternative reports.

Furthermore, the Committee may meet with relevant non-governmental organisations and representatives of relevant international organisations to discuss comments on the report.

The Committee then meets with members of the government of the State Party to the Convention. The discussion on the report of a given State Party concludes with the Committee on the Rights of the Child developing concluding observations. After adoption, the Committee on the Rights of the Child issues a resolution and submits it to the State Party.³⁶

36 Overview of the Reporting Procedures, Committee on the Rights of the Child, 24 October 1994 (UN DOC.CRC/C/33), p. 19.

4.2. Individual Complaints, Urgent Intervention, and Complaints of Systematic Violations (Inquiry Procedures)

Under the Optional Protocol on notifications, the Committee on the Rights of the Child can receive and consider individual and interstate notifications of violations of children's rights.

The Committee can offer assistance to the parties involved in achieving an amicable resolution (Article 9 of the Protocol). An agreement can be reached at any stage of the case examination. The signing of an agreement closes the examination of notifications under this Protocol. The Committee may request that a State Party apply interim measures (Article 6 of the Protocol) necessary to prevent potential irreversible harm to the victim or victims of the alleged violation.

The procedure for submitting individual notifications is determined by Articles 5-11 of the Optional Protocol.

Notifications can be made by persons or groups of persons under the jurisdiction of the State Party or on behalf of a person or group of persons claiming to be victims of a violation by the State Party of any of the rights mentioned in the Convention; the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography; the Optional Protocol to the Convention on the involvement of children in armed conflicts; and other international conventions concerning the welfare of the child. Individual complaints can be submitted when the State is party to the aforementioned legal acts.

Submitting a complaint requires, in principle, the consent of the concerned persons.

At any time after receiving a notification and before issuing a decision on the merits of the case, the Committee may transmit to the State Party concerned, for urgent consideration, a request to apply such interim measures as may be necessary in special circumstances to avoid potential irreversible harm to the victim or victims of an alleged violation.

The Committee's use of such competence does not constitute a decision on the admissibility or merits of the notification.

The requirements for notification are contained in Article 7 of the Protocol, and the Committee will consider a notification inadmissible if:

- a) the notification is anonymous;
- b) the notification is not in written form;
- c) the notification constitutes an abuse of the right to submit such notifications or is incompatible with the provisions of the Convention or the Optional Protocols to the Convention;
- d) the same case was or is being examined by the Committee or was or is being considered under another international procedure of investigation or resolution;
- e) not all available domestic remedies have been exhausted; this rule does not apply in the case of unjustified delays in the appeal process or a lack of likelihood that the procedure will result in an effective solution;

- f) the notification is clearly unfounded or insufficiently substantiated;
- g) the facts that are the subject of the notification occurred before the Protocol came into force for the respective State Party, unless those facts continued after that date;
- h) the notification was not submitted within one year of exhausting domestic remedies, except in situations where the author could prove that it was not possible to submit the notification within this period.

The rules related to the submission of complaints are specified in Article 8 of the Protocol.

The Committee confidentially informs the respective State Party of every notification submitted to the Committee under the Protocol as soon as possible unless the Committee deems the notification inadmissible. Thereafter, the State Party submits to the Committee written explanations or statements about the case and any legal measures possibly applied. The State Party submits its position as soon as possible within six months.

According to Article 9 of the Protocol, an attempt is made to achieve an amicable resolution. The Committee offers assistance to the parties involved in achieving an amicable resolution based on respect for the obligations contained in the Convention or the Optional Protocols to the Convention. An agreement reached under the auspices of the Committee concludes the examination of the notification.

The procedure for examining notifications is described in Articles 10-11. The Committee considers notifications as promptly as possible, provided that this information is communicated to interested parties. The Committee examines notifications (complaints) in closed sessions. It considers complaints in an expedited manner. It may request the State Party to apply interim measures.

In examining notifications regarding alleged violations of economic, social, or cultural rights, the Committee considers the adequacy of the measures adopted by the State Party.

Immediately after examining the notification (complaint), the Committee transmits its opinion on the notification along with any recommendations to the concerned State Party.

The State Party should consider the Committee's opinion along with any recommendations. It then presents a written response to the committee, including information on actions taken and planned. The State Party submits its position as promptly as possible within six months.

The Committee may request that the State Party provide additional information on any measures adopted by that State Party in response to the Committee's opinions or recommendations or as part of the implementation of an agreement. Information accepted and acknowledged by the Committee concludes the procedure.

Based on the provisions of the Optional Protocol concerning notifications (complaints), the Committee on the Rights of the Child may, in cases of identified violations of children's rights, request the State Party to:

- a) change domestic legislation inconsistent with the provisions of the Convention or the Optional Protocols;
- b) grant the complainant permission to leave the country;
- c) release a specific individual from prison or detention;
- d) commute the sentence;
- e) enable the complainant to file an appeal;
- f) provide appropriate medical care;
- g) ensure regular contact with children;
- h) provide the child (victim of the violation) with fair compensation;
- i) conduct an investigation and hold accountable those responsible for cases related to the violation of children's rights.

4.3. General Comments

General Recommendations issued by the Committee on the Rights of the Child are intended to facilitate the application of the provisions of the Convention on the Rights of the Child and create favorable conditions for international cooperation in the protection of children. The Committee on the Rights of the Child can make suggestions and general recommendations based on the information received in accordance with Articles 44 and 45 of the Convention.

These suggestions and general recommendations are communicated to the concerned State Party and made known to the United Nations General Assembly, along with comments from the States Parties.

General Comments are recommendations in which the Committee presents its positions on important issues related to the realisation of children's rights. These recommendations cover several topics. All the recommendations of the Committee are not discussed here. Many of these are available on the websites of the Committee on the Rights of the Child and the United Nations.

The discussed recommendations are the proposals. They are not legally binding on the States Parties to the Convention. These comments represent the views of the Committee members on various issues. Some recommendations are widely accepted, whereas others are controversial, leading to accusations of politicisation. It is important to remember the legal frameworks for the Committee's actions, as indicated in the introduction. These legal frameworks are essential and decisive criteria for evaluating the conduct of the Committee on the Rights of the Child.

Moreover, General Comments are treated as opinions of lawyers who are advisors to the Committee. Using such opinions is one of the many instruments used by the Committee, as listed in the Committee's Rules of Procedure.

The Committee on the Rights of the Child does not have the authority to issue binding interpretations of the Convention. There is no legal basis for this in any international legal act, including the Convention. However, opinions of lawyers with significant authority often influence the practical application of the law.

An example of a valuable recommendation by the Committee that is unfortunately relevant at present is the Recommendation on Children in Armed Conflict.³⁷ The Committee pointed out the need to improve the standards for protecting children from participation in armed conflict.

In General Comment No. 1 (2001),³⁸ the Committee discusses the “aims of education” contained in Article 29 of the Convention. The Committee states that the “aims of education” promote, support, and protect the fundamental values of the Convention, which are human dignity inherent in every child and their equal and inalienable rights.

The Committee urges States Parties to take the necessary steps to formally incorporate the principles contained in the Convention and Article 29 (1) at every level of legislation and into local curricula.

General Comment No. 2 (2002)³⁹ addresses ‘the role of independent national human rights institutions in the promotion and protection of children’s rights’, based on Article 4 of the Convention. The Committee encourages States Parties to establish independent institutions that support the implementation of the provisions of the Convention.

The Committee recognised that independent national human rights institutions (NHRI) should be anchored in the Constitution and have a legislative mandate. A “legislative mandate” refers to the ability to promote and protect human rights, considering the Convention on the Rights of the Child. The “appointment process” for national human rights institutions should be based on consultations, integration, and transparent actions. This process should be initiated and supported at all levels of government administration.

The Committee appeals for ‘providing legal protection measures in case of violations of children’s rights’. All national human rights institutions should be authorised to consider individual complaints and petitions, and to conduct investigations on behalf of or directly by children. They should have the power to summon and hear witnesses and access documents and places of detention (prison or pre-trial detention). They should also ensure the implementation of effective legal protection measures for children. The NHRI should have the authority to bring cases to court on behalf of children and intervene in court cases.

General Comment No. 4 (2003) discusses⁴⁰ ‘Adolescent health and development in the context of the Convention on the Rights of the Child’. The Comment relates to Article 6 of the Convention (the right to life, survival, and development) and Article 24 of the Convention (the right to health protection). The Committee pointed out that

37 Recommendation on Children in Armed Conflict, Committee on the Rights of the Child, 19th Session, September 1998 (UN DOC. CRC/C/80).

38 General Comment No. 1 (2001), 17 April 2001. CRC/GC/20.

39 General Comment No. 2 (2002), issued 13 November 2002, and adopted during the 32nd session of the Committee on the Rights of the Child from 13–31 January 2003. CRC/GC/2002/2.

40 General Comment No. 4 (2003), issued on 1 July 2003, and adopted during the 33rd session of the Committee on the Rights of the Child from 19 May – 6 June 2003. CRC/GC/2003/4.

everyone has the right to protection against discrimination, and States Parties are obliged to ensure that all human beings, including children, have the opportunity to freely enjoy the rights presented in the Convention.

Furthermore, parents or other persons responsible for children must ensure that adolescent children have the right to development so that they can fully enjoy their rights later. The Committee notes that under Article 12 of the Convention, every child has the right to respect, health protection, and proper development. To guarantee this right, public authorities, parents, and other adults working with children must create an environment based on trust.

The Committee reminds that States Parties have an obligation to provide appropriate legislative and administrative measures and procedures, providing three examples of ensuring rights: determining the minimum age for sexual consent, marriage, and the possibility of treatment without parental consent. Adolescents should have easy access to individual, judicial, and extrajudicial complaints. Adolescents should be guaranteed a proper legal process with respect to their right to privacy. The Committee calls on States Parties to protect young people from exploitation and violence. Further, it calls for protection against criminal activity. The Committee emphasises that education is about ‘developing to the fullest extent the personality, talents, and mental and physical abilities of the child’.

In this comment, the Committee addresses the problem of child and adolescent labour. It calls on States Parties to eliminate children’s exploitation. National laws should determine minimum permissible employment ages. Young people’s right to fair remuneration should be respected. Children and adolescents with disabilities should have equal educational and employment opportunities. The Committee recommends raising the minimum age of marriage to 18 years.

The Committee notes a high suicide rate among teenagers. States Parties should provide appropriate support to young people who struggle with mental health issues and illnesses. This includes, among other things, controlling access to alcohol and drugs.

General Comment No. 3⁴¹ concerns problems associated with HIV and AIDS. States Parties should identify the problem and implement mechanisms to prevent infections.

Furthermore, the Committee calls for action against the homelessness of children and adolescents. The Committee highlights the sexual exploitation of youths. It is the duty of States Parties to establish appropriate laws that prohibit sexual exploitation and illegal trafficking. In this regard, States should cooperate internationally.

The Committee reminds us that by ratifying the Convention on the Rights of the Child, a State undertakes a commitment to implement it. According to Article 4 of the Convention, a State Party should take ‘all appropriate legislative, administrative, and other measures’ to realise the rights expressed in the Convention. All national

41 General Comment No. 3 (2003), issued on 17 March 2003, and adopted during the 32nd session of the Committee on the Rights of the Child from 13–31 January 2003. CRC/GC/2003/3.

legislation must be consistent with the Convention. The Committee offers detailed recommendations on this issue. The Committee again calls on States to guarantee every child's right to life without discrimination. The Committee notes that the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights also apply to children and adolescents. Judicial procedures must protect these rights.

General Comment No. 6 (2005)⁴² discusses the issue of 'treatment of unaccompanied and separated children outside their country of origin'. The Committee warns about the increasing number of unaccompanied children. Reasons for this include persecution, international conflicts, civil wars, and child trafficking. The Committee defines 'separated children' as those separated from both parents or from their legal or customary caregivers. The Committee also clarifies the concept of 'country of origin' as the country of nationality or habitual residence in the case of a stateless person.

General Comment No. 7 (2005)⁴³ deals with 'realising the rights of the child in early childhood'. The Committee discusses the obligations of States Parties towards the youngest children. The Committee emphasises aspects of early childhood. The Committee stresses that children should have the same rights as other community members from the beginning of life. The Committee states that 'young children require special protection'. The Committee discusses issues affecting children's rights in early childhood. Examples include situations such as abuse, neglect (Article 19), family deprivation (Articles 20 and 21), refugee status (Article 22), disability (Article 23), harmful labour (Article 32), use of children in the production of illicit substances (Article 33), molestation and sexual exploitation (Article 34), child trafficking and kidnapping (Article 35), and deviant behaviour and law-breaking (Article 40). The Committee indicates the duties of States Parties in this regard.

General Comment No. 8 (2006)⁴⁴ discusses 'the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment' based on Articles 19, 28(2), and 37 of the Convention on the Rights of the Child. The Committee shows that a State Party to the Convention has an obligation to promptly prohibit all corporal punishment and all other cruel or degrading forms of punishment of children. The Committee proposed a way to achieve this goal. In this comment, the Committee paid much attention to proposals for solutions to protect children from all forms of violence. The Committee discusses the Convention's provisions for protecting children from violence.

42 General Comment No. 6 (2005), issued on 2 March 2007, and adopted during the 42nd session of the Committee on the Rights of the Child from 15 May – 2 June 2006. CRC/GC/2005/6.

43 General Comment No. 7 (2005), issued on 20 September 2006, and adopted during the 40th session of the Committee on the Rights of the Child from 12–30 September 2005. CRC/C/GC/7.

44 General Comment No. 8 (2006), issued on 2 March 2007, and adopted during the 42nd session of the Committee on the Rights of the Child from 15 May – 2 June 2006.

General Comment No. 9 (2006)⁴⁵ discusses “the rights of children with disabilities” in Articles 2 and 23 of the Convention on the Rights of the Child. The Committee proposes solutions and aid for States Parties to the Convention regarding the protection of the rights of children with disabilities. The Committee comprehensively discusses the provisions of the Convention on children with disabilities. In this comment, the Committee explains the definition of a person with a disability, ‘Persons with disabilities include those with long-term physical, mental, intellectual, or sensory impairments, which, in interaction with various barriers, may limit their full and effective participation in society on an equal basis with other citizens’. The Committee interprets the provisions of Articles 2 and 23 of the Convention. States Parties to the Convention are obligated to ensure that all children enjoy the rights protected by the Convention. This discrimination is unacceptable. All forms of violence, particularly violence caused by disabilities, were excluded. The Committee lists actions that should be taken by States. These actions include clear constitutional provisions prohibiting discrimination against persons with disabilities. Disability cannot be a reason for discrimination, particularly in the realm of legal provisions. States are obligated to effectively counteract violations of the rights of children with disabilities. It is also the duty of the State to guarantee access to the appropriate means of protection against discrimination. Such protective measures should be made available to children with disabilities, their parents, and legal guardians. Public awareness campaigns should be conducted in the States. Individual qualified persons should also be educated, considering the prevention and elimination of discrimination against children with disabilities. States are obligated to ensure dignified conditions for children with disabilities. States should implement mechanisms to facilitate the independence of such children.

General Comment No. 10 (2007)⁴⁶ deals with the problem of “children’s rights in the juvenile justice system”. This interpretation is based on Articles 37 and 40 of the Convention on the Rights of the Child. The Committee encourages States Parties to develop and implement a comprehensive policy for juvenile justice, aimed at preventing juvenile delinquency. The Committee calls for assistance from the Interagency Panel on Juvenile Justice, which includes representatives from the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Children’s Fund (UNICEF), the United Nations Office on Drugs and Crime (UNODC), and nongovernmental organisations. The Interagency Panel on Juvenile Justice was established under ECOSOC Resolution 1997/30. In this comment, the Committee broadly discusses the guidelines and recommendations concerning juvenile justice. The Committee calls for the implementation of alternative measures to respond to juvenile delinquency without resorting to judicial procedures. This interpretation

45 General Comment No. 9 (2006), issued on 27 February 2007, and adopted during the 43rd session of the Committee on the Rights of the Child, from 11-29 November 2006. CRC/C/GC/9.

46 General Comment No. 10 (2007), issued on 25 April 2007, and adopted during 44th session of the Committee on the Rights of the Child, from 15 January – 2 February 2007. CRC/C/GC/10.

thoroughly discusses the provisions in Articles 37 and 40 of the Convention. The Committee also urges the implementation of various international standards in juvenile justice, including the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (The Havana Rules). The Committee indicates that a comprehensive and sensible policy on juvenile justice must include the prevention of juvenile delinquency, interventions without resorting to judicial proceedings (alternative proceedings), interventions including judicial proceedings, the minimum age of criminal responsibility, the upper age limit in juvenile justice, and guarantees of a fair trial. Therefore, these conditions were necessary. To prevent juvenile delinquency, the Committee refers to the United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines) adopted in General Assembly Resolution No. 45/112 of December 14, 1990.

General Comment No. 14 (2013)⁴⁷ concerns ‘the right of the child to have his or her best interests taken as a primary consideration’. The Committee presents its opinion based on Article 3.1 of the Convention on the Rights of the Child. The Committee seeks a uniform interpretation of the principle concerning ‘the best interests of the child’. The Committee emphasises that respecting this principle is paramount in all actions concerning the protection of children’s rights. This principle expresses all fundamental values of the Convention on the Rights of the Child. The Committee reminds us that the Convention contains clear references to this principle in Articles 9, 10, 18, 20, 21, 37(c), and 40.2(b). This concept of “the best interests of the child” is used in the Optional Protocol to the United Nations Convention on the Rights of the Child on the sale of children, child prostitution, and child pornography (Preamble and Article 8 of the Protocol), and the Optional Protocol to the United Nations Convention on the Rights of the Child on a communications procedure (Preamble and Articles 2 and 3 of the Protocol). The Committee states that all rights and principles written in the Convention and the Optional Protocols refer to “the best interests of the child”. No right can be violated by an incorrect interpretation of ‘the best interests of the child’. According to the Committee, the realisation of this principle involves securing the physical, psychological, moral, and spiritual integrity of the child. These types of integrity are important for human dignity. The principle of best interests of a child has three meanings. First, a child’s best interests are paramount to all other interests. In the event of a conflict of interest, the cited best interests of the child should always be selected. This is a fundamental principle in decision making. The Committee calls this ‘the principle of substantive law’. This principle has a direct application and can be invoked before a court. Second, if a legal provision can be interpreted differently, the interpretation that best serves “the best interests of the child” should be adopted. Here, we address the general clauses. This is the basis for interpreting all rights guaranteed by the Convention and the Optional Protocols.

47 General Comment No. 14 (2013), issued on 29 May 2013 and adopted on 62nd session of the Committee on the Rights of the Child, from 14 January – 1 February 2013. CRC/C/GC/14.

The Committee calls this general clause “the principle of fundamental legal interpretation”. Third, if a decision is to be made in the application of the law that affects a child (children), then in making this decision: 1) the impact of this decision on the child (children) should be considered, 2) the justification for the decision must show that ‘the best interests of the child’ have been considered. The State Party to the Convention is obliged to explain how ‘the best interests of the child’ have been considered in making the decision, that is, what actions have been recognised as serving “the best interests of the child”. What were the criteria for the decision, and how was the child’s interest guaranteed compared with other solutions? The Committee calls this “the principle of procedural procedure”.

General Comment No. 22 (2017)⁴⁸ discusses the ‘general principles concerning the rights of children in the context of international migration’. In this comment, the Committee thoroughly discusses measures that should be applied to effectively protect the rights of children threatened by migration. Moreover, the Committee explains the legal provisions contained in the Convention and Optional Protocols in relation to international migration.

The previous section briefly discussed general comments from the Committee on the Rights of the Child. These comments are essential for the application of the law, as the provisions of the Convention and other international legal acts are general in nature. Therefore, supplementary clarifications regarding specific situations are necessary. Particularly interesting are the Committee’s interpretations of concepts such as the welfare of the child, customary norms, and the best interests of the child.

4.4. Open Letters and Statements

The Committee on the Rights of the Child prepares documents and presents its official positions on various issues.

For example, the Committee drafted a document titled *‘Working Methods concerning the Participation of Children in the Reporting Process of the Committee on the Rights of the Child’*.⁴⁹ In this way, the Committee addressed child organisations to which the definition of “competent bodies” (Article 45.a of the Convention) applies. The Committee stated that it is important to know the opinions of children.

The Committee also uses “open letters”, which are public calls for the respect of children’s rights, particularly in dramatic situations related to various conflicts and humanitarian crises.

4.5. Thematic Discussions and Conferences

An important part of the Committee’s work is organising conferences. It is worth mentioning that the “Day of General Discussion” is organised every year when the Committee explains and promotes selected provisions of the Convention on the Rights

48 General Comment No. 22 (2017), issued on 16 November 2017. CMW/C/GC/3-CRC/C/GC/22.

49 Working Methods for the Participation of Children in the Reporting Process of the Committee on the Rights of the Child, 16 October 2014 (CRC/C/66/2).

of the Child. These discussions are attended by representatives of States Parties to the Convention, international and national non-governmental organisations. Examples of topics for these conferences include: *The Impact of Armed Conflict on Children* (2018), *Children's Rights and the Natural Environment* (2016); *Digital Media and Children's Rights* (2014); *The Rights of All Children in the Context of International Migration* (2012); *Children of Incarcerated Parents* (2011); *The Right of the Child to Education in Emergency Situations* (2008); *Resources for the Rights of the Child – States' Responsibility* (2007); *The Right of the Child to be Heard* (2006); *Children Without Parental Care* (2005); *Implementing Child Rights in Early Childhood* (2004); *Rights of Indigenous Children* (2003); *Private Sector as Service Providers* (2002); *Violence Against Children in the Family and School* (2001); *State Violence Against Children* (2000).

4.6. Civil Society Participation

The participation of non-governmental organisations in the protection of children's rights and their cooperation with the Committee on the Rights of the Child require extensive discussion. Certain fundamental observations were made in international law. This issue is discussed extensively in a separate chapter of this book. Therefore, the above analysis appears sufficient at this point.

5. Concluding Remarks

The Committee on the Rights of the Child is an international body that is supposed to help protect the rights of children. Its legal basis is strong, because it is based on international treaties. However, the Committee does not have any authoritative competences over the States Parties to the Convention on the Rights of the Child, but the Committee's influence on the application of the law by these States is clear. An example is the successive implementation of the provisions of the Convention and the Optional Protocols in various countries. Despite the lack of authoritative competences of the Committee, its General Comments play a significant role and create important standards of legal protection for children. The Committee on the Rights of the Child contributes to the dissemination of these standards in the legal awareness of individual countries and the international community.

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