

Review Article

The Role of the Committee on the Rights of the Child in Guiding and Monitoring the Right of the Child to Health Care and the Right to Protection from Abuse and Neglect

Jaap Doek^{1*}, Lothar Krappmann², and Yanghee Lee³

¹*Emeritus professor of Law (Family and Juvenile Law), VU University (Vrije Universiteit) in Amsterdam, Netherlands*

²*Center of Adaptive Behavior and Cognition, Max Planck Institute for Human Development, Germany*

³*Department of Child Psychology and Education, Sungkyunkwan University, South Korea*

***Corresponding author**

Jaap Doek, Emeritus professor of Law (Family and Juvenile Law), VU University (Vrije Universiteit) in Amsterdam, Netherlands, Tel: 3171 5276056; Email: jaap@jaapedoek.nl

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Abstract

This article illuminates the important role of the Committee on the Rights of the Child in monitoring the progress made and identifying remaining difficulties in the implementation of the Convention on the Rights of the Child (CRC) in each of its 196 States parties, providing them after the examination of their reports with specific recommendations in the Concluding Observations (CO's). Furthermore attention will be given to the Days of General Discussion and General Comments, activities developed by the Committee meant to provide all States parties with guidance in their efforts to implement the CRC. The article presents concrete examples of these activities of the Committee regarding the right of the child to the highest attainable standard of health and the right of the child to freedom from all forms of violence. It concludes with some final observations on the role of the Committee during the past 30 years and for the years to come.

INTRODUCTION

On 20 November 1989 the UN General Assembly [1], adopted the Convention on the Rights of the Child¹. This Convention (CRC), entered into force on September 2, 1990 and is now ratified by 196 States². The governments of all these States have the obligation to respect and ensure the rights in the CRC to each child within their jurisdiction without discrimination of any kind and are thus responsible for the implementation of the CRC. It is the role of national parliaments and national institutions such as the National Ombudsperson, the National Human Rights Institution and non-governmental organizations to monitor and regularly assess the performance of the government in its implementation of the CRC. In addition to this national monitoring, international

committees are established (for each human rights treaty) to complement the monitoring at the national level. For the CRC, a Committee has been established (hereafter: the Committee) [2], for the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken under the Convention on the Rights of the Child in accordance with article 43, para. 1 of the CRC. This examination activity of the Committee is also known as its monitoring role. In order to make this examination possible States Parties have to submit regularly reports on the measures they have adopted which give effect to the rights recognized in the CRC (art. 44, para. 1). The examination of the progress made is not only based on reports from States Parties but also from UN agencies, in particular UNICEF and national and international NGOs. The final result of this examination, after a public meeting of a delegation of the reporting State and the Committee, is a document known as the Concluding Observations (COs) [3]. In the COs the Committee

1 General Assembly Resolution 44/25 of 20 November 1989

2 Entering into force after 20 States had ratified the CRC (see art. 49 CRC). The USA is the only State that has not ratified the CRC, but signed it to express its compliance without accepting the obligations.

recognizes the progress made in the individual State party under consideration and expresses its concerns followed by specific recommendations for addressing these concerns. In the first part of this article we will pay attention to this monitoring process of the CRC and recent changes in this process (see section 2 and subsections 2.1 and 2.2).

The CRC Committee is not only monitoring, but also guiding States parties in their efforts to implement the CRC. This guiding role is expressed in the regular organization of Days of General Discussion (DGDs) [4], and the issuing of General Comments (GCs), by the Committee. The monitoring role of the Committee focuses on the situation in the reporting State and the recommendations made by the Committee in its Concluding Observations are meant for that State, while the results of the DGDs and the GCs are meant as guidance for all States parties. This article will provide information on the developments in this guiding role of the Committee (see section 3 and subsection 3.1 Days of General Discussion and Subsection 3.2 General Comments).

The implementation of the rights of the child enshrined in the CRC is not only a matter of (the governments of) States parties but also of the civil society. This means, *inter alia*, that all individuals engaged in the upbringing of, the care for and the protection of children including e.g. parents and professionals and volunteers working in the field of education, health care and child protection should contribute to and comply with the rights of the child. In that regard General Comments are of specific importance also for all who work for and with children. In section 4 of this article we will devote our attention to the rights of the child in the practice of health care, taking into account General Comment No 15 (2013) [5], on The right of the child to the enjoyment of the highest attainable standard of health (Article 24)

In section 5 and 6, the focus will be on the various forms of violence against children, more specifically on article 19 CRC and child abuse and neglect. First attention will be given to General Comment No 13 (2011) [6], of the CRC Committee on the right of the child to freedom from all forms of violence which contains observations and recommendations relevant for all States parties to the CRC. In section 6, examples will be given of the country specific recommendations for prevention of and intervention in (suspected) cases of child abuse and neglect. In the final section the impact of COs and GCs on child-rights implementation will be discussed and some hints will be given, who from the child-rights practice is disseminating these documents and their messages.

THE MONITORING ROLE OF THE CRC COMMITTEE

As mentioned before, in addition to the monitoring of the implementation of human rights at the national level, a practice of monitoring this implementation at the international level has been established. In order to make this monitoring possible States parties to human rights treaties have the obligation to report regularly about their implementation performance to a Committee established in the context of each treaty. The reports are discussed in a meeting of the Committee concerned and the delegation of the State party. Based on this discussion, also qualified as a constructive dialogue, the Committee issues comments and recommendation. A rather intense discussion takes place regarding the nature of these comments and

recommendations: should they focus on the further developments of human rights in general or on the progress and deficiencies in the individual State party that submitted the report? [7-9]. Further development shows that two different categories of comments and recommendations can be distinguished: one is addressed to the individual State party in the Concluding Observations issued after the examination of the report of that State Party; the other category is meant for all States parties and can be found in the General Comments based on the Committee's competence and observation and in the reports of the Days of General Discussion, which are open meetings of the Committee with the professional public³

Guidelines for reporting

The timely and adequate reporting by States Parties is obviously a key condition for an effective monitoring of the progress a State party has made in the implementation of the CRC. According to article 44, para.1, States Parties have to report within two years after the CRC entered into force for the country concerned (see for entering into force article 49 CRC), and thereafter every five years.

The Committee provided the States parties (already in 1991) [10], with guidelines for the reporting (Committee on the Rights of the Child, 1991) [10]. Rather new in the world of human rights reporting was the fact that the Committee recommended States parties not to report per article but per clusters of articles as established by the Committee.

This format still exists but has undergone some changes reflecting increased attention to special endangerments of children's rights. The issue of child abuse and neglect remained a priority for the Committee. This is demonstrated by giving more weight to the issue in the State party reporting guidelines: Information on child abuse and neglect was included in the State party reporting guidelines from the very outset. It was spread across the clusters Family Environment and Alternative Care, Disability, Basic Health and Welfare and Special Protection Measures. About ten years ago, based on the accumulated monitoring experience of the Committee, all provisions of the Convention referring to violence against children were separated into an entirely new and consolidated cluster in the latest reporting guidelines for Periodic State party reports (Committee on the Rights of the Child, 2015b) [11].

Under the new cluster Violence against Children of the State Party reporting guidelines States parties have to submit in their reports information about:

- Abuse and neglect (art. 19)
- Measures to prohibit and eliminate all forms of harmful practices, including FGM and early and forced marriages (art. 24, para. 3)
- Sexual exploitation and sexual abuse (art. 34)
- Torture and other cruel, inhuman or degrading treatment or punishment, including corporal punishment (art. 37

³ The Concluding Observations of the Committee, its General Comments and the Reports of the Days of General Discussion can be found and downloaded from Webpages of the UN Office of the High Commissioner of Human Rights shared at the end of the list of references.

(a) and 28, para. 2)

- Measures to promote the physical and psychological recovery and social reintegration for child victims (art. 39)
- Availability of helplines for children

The new cluster on Violence against Children was a direct consequence of the Committee's General Comment No. 13 on the Right of the Child to Freedom from all Forms of Violence (Committee on the Rights of the Child, 2011) [2].

Concluding Observations

The whole reporting and monitoring process is meant to produce concrete recommendations to the reporting State party under review providing it with guidance and encouragement for further and progressive implementation of the CRC, in particular by the Concluding Observations (COs). The quality of the COs is dependent to a large degree on the quality of the information provided to and/or collected by the Committee. The content is country specific and the number of recommendations is quite high (often more than 70). Usually quite a number of recommendations in the CO address in detail different forms of violence children are confronted with. State parties are explicitly required to indicate in their next report, in which way they dealt with the recommendations made in the CO issued after the examination of the previous report.

The recommendations made in the Concluding Observations are non-binding. Their implementation is depending on the willingness of the State party to give them proper follow-up. National NGOs, other civil society organizations (e.g., professional groups) and UN agencies, in particular UNICEF, have a critical role with regard to submitting reports to the Committee and campaigning for and supporting implementation of the recommendations. We believe without the lobbying and mobilization of communities and media undertaken by these stakeholders the COs would not have had the impact they created in many countries.

THE GUIDING ROLE OF THE COMMITTEE

In addition to the country specific monitoring of the progress made in the implementation of the CRC, the Committee adopted two practices for the purpose of providing all States parties with general guidance for a better understanding of the meaning of the human rights of children and for more targeted and effective implementation of rights: the regular organization of Days of General Discussion (DGD), and the issuing of General Comments (GCs). Among the themes of DGDs and/or GCs were the rights to health care and education and the rights of vulnerable groups of children such as children in armed conflict, children with disabilities, indigenous children and children in street situations, and more recently the changes of children's life conditions due to the destruction of ecosystems and expanding digitalization, or crosscutting issues such as the enjoyment of child rights in early childhood or the impact of the business sector on children's rights. Often the outcomes of DGDs stimulated the Committee to initiate the preparation of a General Comment as e.g. the two DGDs on violence against children in 2000 and 2001.

Days of General Discussion (DGDs)

Already at its first session the Committee decided to include in its Rules of Procedure the possibility to devote one or more meetings of its regular sessions to a general discussion on one specific article of the Convention or a related subject to enhance deeper understanding of the content and implications of this provision of the Convention. The first DGD took place in 1992 and was devoted to children in armed conflict and was followed by many other DGDs organized every year and since 2012 every two years. Initially the function of the DGDs was to draw the attention of States parties to the Convention to specific topics while providing them with information and recommendations on how the CRC should be implemented. Soon DGDs became a meeting place of the child-rights community at which, besides keynotes and lively discussions, much information was exchanged and cooperation arranged among participants and organizations.

Two of the DGDs had a very visible and lasting impact regarding violence against children. The 1992 DGD on children in armed conflict led as recommended by the Committee to the UN Study on that topic carried out under the leadership of Graça Machel (United Nations, 1994) [12]. According to article 45(c), the Committee may recommend to the General Assembly to request the Secretary General to undertake on its behalf studies on specific issues relating to the rights of the child. The concerning observations of the study resulted in the appointment in 1995 of Mr. Olara Otunu as the Special Representative of the UN Secretary General on children in armed conflict (since April 2017 Virginia Gamba), and the drafting and adoption of the Optional Protocol to the CRC on the involvement of children in armed conflict (adopted by a Resolution of the UN General Assembly, A/RES/45/263, of 25 May 2000), which is currently ratified by 167 States. Children in armed conflict is the only children's rights topic that is a permanent part of the agenda of the Security Council and dealt with by a working group of that Council.

State violence against children was discussed in 2000 and violence against children within the family and school in 2001. The reported extent and attributes of violence were alarming. Consequently, the Committee decided that it was time to conduct a Global Study on Violence against children and recommended the UN General Assembly to request the UN Secretary General to undertake such a study. Henceforth, a study was carried out under the leadership of Paulo Pinheiro and the report of this study was presented to the UN General Assembly in 2006. It contains a thorough outline of the alarming extent of violence against children with general and specific recommendations for the prevention and intervention against violence against children in family, school, institutions, at the work place and in the community (United Nations, 2006) [13]. Also, with regard to the massive violence against children, the UN Secretary General appointed in May 2009 Marta Santos Pais as the Special Representative on violence against children (since May 2019 Najat Maalla M'jid), with the mandate to call on Governments worldwide to strengthen their efforts undertaken to protect children against these grave violations of their well-being, development and, too often, their health and lives.

General Comments

"What, after all, could be the jurisprudential value of a mere

'comment', and an explicitly 'general' one at that", wondered Philip Alston. He called this designation a misleading term since these statements are "one of the potentially most significant and influential tools available to each of the United Nations human rights treaty bodies" [7]. Thus, some further explanation seems to be appropriate to attract the attention to these documents.

Article 45 (d) CRC authorizes the Committee to make "suggestions and general recommendations", which it can transmit to the State Party concerned and also to the General Assembly. This has served as the legal basis for the issuance not only of COs but also of General Comments. Up to the end of the year 2021 the Committee has issued 25 GCs available from the website of the Committee and is preparing a GC on Children's rights and the environment with a special focus on climate change.

In order to provide better understanding of what exactly General Comments are, we explain some of their features:

- GCs are an important tool for the Committee to promote better understanding of the CRC and to provide States parties with information and guidance for the implementation of one or more articles of the CRC, particularly because some articles are phrased in rather general terms and in need of some specific explanation (more about these two functions hereafter when we present the GC 13).
- Some of the GCs focus on the interpretation and implementation of a specific article or articles, others focus on the rights of specific groups of children, e.g., vulnerable children, or deal with specific crosscutting issues, e.g., health.
- GCs provide an opportunity to explain how the rights enshrined in the Convention of 1989 can guide the consideration of children's rights with regard to changing life circumstances and challenges, which are new or were not yet seen to be relevant when the CRC was drafted.
- The views and recommendations in GCs are non-binding and cannot create new rights and obligations. However, the Committee, elected by all States parties, has the mandate to monitor the implementation of the CRC and is as such an authoritative body. It may thus be expected that States parties take the GCs into account in their implementation of the CRC and their responses to new challenges to theory and practice in the human rights system. In this regard NGOs and UN agencies can and should play an important role in making all relevant stakeholders aware of the content of GCs and advocate for the necessary follow-up.

Unfortunately, there is no systematic follow-up, in particular, evaluation regarding the degree by which States parties and their institutions and facilities for children use the recommendations made in GCs.

THE RIGHT TO THE HIGHEST ATTAINABLE STANDARD OF HEALTH, ARTICLE 24 CRC AND GC NO 15

Although the focus of this article is very much on the right to protection from child abuse and neglect as forms of violence against children, it seems appropriate to pay some attention to some other rights in the CRC and more specifically to the right to health which is an important matter in the practice of pediatricians and others working with and for children. In article 24 States parties recognize the right of the child to the enjoyment of the highest attainable standard of health and that includes the right to facilities for the treatment of illness and to rehabilitation of health. To achieve progressively the full realization of these rights States parties shall take appropriate measures specified in article 24 such as reducing infant and child mortality, development of primary health care, appropriate pre-natal and post-natal care for mothers. It goes beyond the scope of this article to discuss in details all these measures and the many aspects of the right to health [14]. We like to draw the attention to the importance of the general principles of the CRC as identified by the CRC Committee which are art. 2, non-discrimination, art. 3 (1) on the role of the best interests of the child, art.6 on the right to life, survival and development and art. 12 on the right to be heard. Due to space limitations, we shall focus on what the best interests and the right to be heard and the evolving capacities of the child (mentioned in article 5 CRC), mean for the practice of professionals and volunteers working for the health of children as explained by the CRC Committee in different General Comments.

Article 3, para 1 requires that in all actions affecting children their best interests shall be a primary consideration and this principle must be observed in all health-related decisions concerning individual children or children as a group. The best interests of an individual child should be based on her/his physical, emotional, social and educational needs, age, sex, relationship with her/his parents and caregivers, and her/his family and social background and after having heard her or his views according to article 12 (GC 15, para 12) [4]. Obviously, the CRC does not specify which action in a concrete situation, like e.g. a medical treatment, is in the best interests of the child. However, the CRC Committee has specified in GC No 14 which elements should be taken into account when assessing the best interests of the child such as inter alia the views of the child, the identity of the child, the importance of preservation of the family environment and of care, protection and safety of the child (GC No 14 para 52 – 79) [15]. The Committee also observed (GC No 14 para 77) [15], that the child's right to health and her/his health condition are central in assessing the best interests of the child. However, if there is more than one possible treatment for a health condition or if the outcome of a treatment is uncertain, the advantages of all possible treatments must be weighed against all possible risks and side effects.

The right of the child to be heard and to have her/his views given due weight is apparently an important factor also in the context of health care and medical treatment. Article 12, para 1 CRC states that 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 given due weight in accordance with the age and maturity of the child. Various issues emerge from this provision: when is a child capable of forming her/his own views? The Committee views that States parties should assume that the child has that capacity and recognize that the child has the right to express them. It underscores the fact that article 12 does not set an age limit and States parties should not introduce age limits. In GC No 7 [16], the Committee observes “even the youngest children are entitled to express their views, which should be given due weight in accordance with the age and maturity of the child. Young children are acutely sensitive to their surroundings and very rapidly acquire understanding of the people, places and routines in their lives, along with the awareness of their own unique identity. They make choices and communicate their feelings, ideas and wishes in numerous ways, long before they are able to communicate through the conventions of spoken or written language.” (GC No 7 para 14) [16].

There is one issue worth mentioning: how much weight should be given to the views of the child? In the context of health care and/or treatment it amounts to the question whether the child’s consent is necessary in addition to the consent of the parents or whether the child’s consent alone is enough for a medical treatment. The exact meaning of maturity and age for deciding on the weight that should be given to the views of the child is not clear. The Committee makes a reference to the concept of “evolving capacities” mentioned in article 5 and observes that “as the child matures his or her views shall have increasing weight in the assessment of his or her best interests” (GC No 14 para 44) [15]. The Committee is rather concrete on the issue of consent regarding adolescents. “(..) if the adolescent is of sufficient maturity, informed consent shall be obtained from the adolescent her/himself while informing the parents if that is in the best interests of the child (GC No 4, para 28) [17]. But it means that the medical professionals have to assess/decide whether the adolescent is of “sufficient maturity”. In this regard it is important to note that the Committee welcomes the introduction in some countries of a fixed age at which the right to consent to a medical treatment transfers to the child and encourage States parties to consider introduction of such legislation. Children above such fixed age can give consent without the need for a professional assessment of the capacity to consent (GC No. 12 para 102) [18]. Furthermore, States parties should introduce legislation or regulations to ensure that children have access to confidential medical counseling and advice without parental consent, irrespective of the child’s age, where this is needed for the child’s safety or well-being (GC No 12 para 101) [18]. More specifically, States parties must protect the confidentiality of HIV test results consistent with the obligation to protect the right to privacy of children (art. 16 CRC) and information about the HIV status of children may not be disclosed to third parties including parents without consent of the child (GC No 3 para 21) [19]. We assume that exceptions to this rule are possible depending on the circumstances. For instance if a child decided to be tested for COVID 19 and the outcome is positive the doctor or the health service that did the test should inform the child that the result of the test will be shared with her/his parents.

In conclusion: In the practice of health care for children, the best interests of the child have to be a primary consideration. It is a difficult task of medical professionals like family doctors and pediatrician to decide what, in a concrete situation, the best interest of the child actually is. Various factors may play a role, but under the CRC the views of the child are of critical importance. According to the CRC Committee the evolving capacities of the child may result in a transfer of the right to decide on a treatment from the parents (or other caregivers) to the child. This implies that the child’s view is decisive for starting or ending a treatment. It means that the view of the child can be in fact an end of life decision [20]. Finally the right of privacy of the child means that not everything related to her or his health have to be shared with her/his parents unless he/she gives consent for sharing the information or the doctor feels that this sharing is necessary in the best interests of the child.

THE COMMITTEE’S GENERAL COMMENT NO. 13 ON THE RIGHT OF THE CHILD ON FREEDOM FROM ALL FORMS OF VIOLENCE (2011)

When the alarming results of the World Study on Violence against Children [13,21], were published, it reinforced that these grave violations of children’s rights have to end radically. Already the participants of the DGD 2000 “State violence against children” had encouraged the Committee to issue a series of General Comments on the elimination of all forms of violence against children (Committee on the Rights of the Child 2000) [2].

Committee members, however, decided to wait until the results of the just mentioned World Study would be available in order to refer to its findings. After wide-ranging consultations with experts from research and practice, the Committee adopted General Comment No. 13 The right of the child to freedom from all forms of violence in the year 2011 (Committee on the Rights of the Child, 2011) [6]. The journal *Child Abuse and Neglect* supported the awareness of the General Comment by two articles which outlined the intentions and urgent call of the Committee to strengthen efforts in all fields of concern [22,23]. General Comment 13 of the Committee demonstrates the two functions of GCs: First, GCs shall promote better understanding of particular provisions of a human rights treaty, with the intention to promote adequate implementation of the respective right. Second, GCs also are indispensable instruments for strengthening the human rights system on the whole by reinforcing its underlying principles and also in consideration of new developments in science and technology as well as in society and culture.

First function: From the beginning of its monitoring work the Committee had worked hard to alert governments, institutions and persons responsible for children as well as the general public about the pervasive physical and psychological acts of violence against children including deaths of many children. The General Comment conveyed to the State parties and to all persons and institutions involved with children, the termination of violence is not a generous act of child friendliness but a legal obligation for all 196 States that ratified the Convention on the Rights of the Child.

The GCs of the Committee have their own worth alongside with scholarly legal commentaries as they do not only present legal

analyses and interpretations, but also refer to the Committee's experience with the vicissitudes of the implementation process reflected in the COs of the Committee. The COs also point to deficits, inappropriate measures, and futile efforts. The Committee, through its GCs, improves both understanding and implementation with respect to the realities of children's lives in their social and cultural contexts or special situations. Obviously, this objective is extremely important with regard to violence as there are wide-spread age-old ideas such as "reasonable corporal punishment" are a proven educational means or "a little chastisement" has never hurt. Such conceptions have to be categorically rejected, and this is the clear message of GC 13.

Second function: GC 13 on the right to freedom from all forms of violence also demonstrates that it is not enough to explain the elements of an article. The article must be put in the context of the human rights system. Preliminary deliberations made clear that it is an inadequate response to treat the child just as an object of protection devised from the perspective of the parent or an institution in charge. Child rights advocates talk of "child protection as it had been known" which could not prevent and inhibit that children are still abused in families, schools, service institutions physically and psychologically, that their misery remains underreported and that the implausible assurance of responsible persons is accepted despite clear indications of children's maltreatment [22].

Traditionally most legal systems have imposed on the state and its institutions strict limitations to intervene in child affairs when parents refuse to cooperate – disregarding that most acts of violence against children occur in the family and its context.

Here are the words of the Committee from GC 13:

"It requires a paradigm shift away from child protection approaches in which children are perceived and treated as "objects" in need of assistance rather than as rights holders entitled to non-negotiable rights to protection." (CRC/C/GC/13, para. 59)

The Committee insists that the child, as a subject and rights holder, is included in all efforts to eliminate violence and to restore health and well-being in accordance with the Convention and its guarantees for dignity, safety, well-being, development and participation of the child. Thus, the Committee has used its GC not only to stop violence in all its forms, but also to remind State parties and civil society of the totality of rights incorporated in the Convention, which are assured to each and every child in all situations.

It is important to underscore this assertion in view of the abused child who looks so helplessly dependent on protection and support of others. This child has to be fully respected as subject and to not be re-victimized as an object of others' decisions, however well-intended they may be. GC 13 explicitly states:

"The child rights approach is holistic and places emphasis on supporting the strengths and resources of the child him/herself." (CRC/C/GC/13, para. 59).

So, the Committee uses its GC 13 to break up existing views that the child is just enjoying (some) human rights as a

beneficiary. The GC 13, like all other GCs, is an instrument to re-state the core message of the CRC that the child has the right to be actively involved even in situations of emergence.

Such fundamental considerations are rare in Concluding Observations of the CRC. In fact, COs would not be the best place for such reminders since such clarifications have to be communicated to all State parties. GCs are the proper place to outline and illuminate that not only is there the obligation to adequately implement each and every right enshrined in the Convention, but also the obligation to emphasize the common denominator of the different provisions: the respected child. Thus, the GCs contribute to generate a culture of living together, in which the child takes an active part in the life of family and community, and this is also the overriding aim of CG 13.

CHILD ABUSE AND NEGLECT IN CONCLUDING OBSERVATIONS – RECENT EXAMPLES

Since the reporting guidelines had included a separate cluster on Violence against Children, the Committee systematically addressed the different forms of violence listed under this cluster. We will present some examples of concerns and recommendations contained in COs made during the last few years, referring to State parties from the five geographical regions – Africa, Americas, Asia Pacific, Europe and Central Asia, and Middle East and North Africa – to illustrate how the Committee specifically reminds State parties to truly eradicate all forms of violence by adequate means and procedures.

Frequently and repeatedly the Committee has called State parties to adopt or to complement clear-cut, general and specific legislation to end all forms of violence against children. Such urgent appeals are found in all the COs gathered for this overview. The strenuous appeals of the Committee contributed to changes in the legislation and to the adoption of diverse measures as confirmed by findings reflected in Cos.

"The Committee notes the adoption of the Act on Parental Responsibility for the Education and Raising of Children (2011) [9], Prevention of Domestic Violence Act (2013), and its accompanying strategic plan (2014-2023), Education Act (2013) and Children's Rights Act (2015)." (Committee on the Rights of the Child, 2017; Tajikistan, CRC/C/TJK/CO/3-5, para. 21) [24].

The following quotations from COs can demonstrate that the Committee does not only issue general suggestions but puts the finger on what is specifically wrong and has to be terminated and remedied. Sadly, even after 30 years of the existence of the Convention, the Committee, while noting that corporal punishment has been banned in some settings, has to recommend corporal punishment be banned in all settings.

"The Committee recommends that the State party ensure that the prohibition of corporal punishment is adequately monitored and enforced in all settings." (Committee on the Rights of the Child, 2018a; Argentina, CRC/C/ARG/CO/5-6, para. 20) [25].

This language is found in many COs to States parties. The Committee has repeatedly recommended raising awareness, promoting non-violent positive forms of child-rearing and

discipline, and establishing mandatory reporting mechanisms as well as to prosecute perpetrators. For example, the Committee recommended that the State party Jamaica:

“(c) Promote positive, non-violent and participatory forms of child-rearing and discipline as an alternative to corporal punishment, and expand parenting education programs and training for school principals, teachers and other professionals working with and for children;

(d) Strengthen and expand its efforts through awareness-raising campaigns to inform the public in general about the negative impact of corporal punishment on children and actively involve children and the media in the process.” (Committee on the Rights of the Child, 2015a; Jamaica, CRC/C/JAM/CO/3-4, para. 31, c and d) [26].

The Committee points at many appropriate measures to eradicate abuse, exploitation, trafficking and other forms of violence against and torture of children e.g., in the CO to the State party Qatar:

“(a) Further strengthen awareness-raising and education programs – including campaigns – with the involvement of children, and formulate a comprehensive strategy for preventing and combating child abuse;

(b) Establish a national database on all cases of domestic violence against children, and undertake a comprehensive assessment of the extent, causes and nature of such violence;

(c) Promote community-based programs aimed at preventing and tackling domestic violence, child abuse and neglect, including by involving former victims, volunteers and community members, and providing them with training support;

(d) Take the necessary measures to ensure that child victims of trafficking, sexual exploitation and abuse are not treated as offenders.” (Committee on the Rights of the Child, 2017; Qatar, CRC/C/QAT/CO/3-4, para 23, a-d) [24].

Moreover, the Committee often emphasizes that children have to be involved when solutions and redress have to be fleshed out. Easily accessible complaint mechanisms are an essential element of efforts to eradicate violence:

“(a) Speed up the establishment of child-friendly reporting, complaint and referral mechanisms for child victims of abuse, including in schools, and sexual exploitation, supported by staff trained on the specific needs of child victims.” (Committee on the Rights of the Child, 2019b; Japan, CRC/C/JPN/CO/4-5, para 24, a) [27].

Institutions obviously are precarious places for children as can be learned by the Committee’s concerns expressed in the CO passed on to the State party Argentina:

“(a) The unacceptable living conditions, maltreatment and abuse of, and violence against, children in alternative care centers, especially affecting girls and children with disabilities;

(b) The overcrowded and deficient living conditions in juvenile detention facilities and prisons, which can amount to

torture or cruel, inhuman or degrading treatment of children.” (Committee on the Rights of the Child, 2018a; Argentina, CRC/C/ARG/CO/5-6, para. 21, a and b) [25].

Particular attention is paid to vulnerable groups of children, who may be overlooked, if the focus is on majority children only. The following recommendation reminds the State Party Australia:

“(e) Aboriginal and Torres Strait Islander children continue to be disproportionately affected by family and domestic violence, including sexual violence, both as victims and witnesses, that there are significant gaps in the responses to such violence within these communities and about the limited involvement, leadership and participation of these communities in the development of solutions.” (Committee on the Rights of the Child, 2019a; Australia, CRC/C/AUS/CO/5-6, para. 29, e) [28].

In the CO transmitted to the State party Norway, the Committee presents a lengthy list of children with particular vulnerabilities to sexual abuse and exploitation, who should receive adequate assistance (Sami girls, girls with disabilities, children in poor households, children in households with high levels of drug consumption) (Committee on the Rights of the Child, 2018b; Norway, CRC/C/NOR/CO/5-6, para. 17, a) [29].

The Committee added Albino children to the list of children who are attacked, mutilated or killed. The CO delivered to the State party Mozambique recommends particular support for these children including by campaigns against superstitious beliefs (Committee on the Rights of the Child, 2019c, Mozambique, CRC/C/MOZ/CO/3-4, para 29) [30].

Another group of children suffering from severe maltreatment are the intersex children (LGBTI children), a group of children highlighted by several COs, e.g., the CO issued for the State party Islamic Republic of Iran which asks for ending cruel and degrading treatments of these children by electro shocks, administration of hormones and psychoactive medications (Committee on the Rights of the Child, 2016a; Islamic Republic of Iran, CRC/C/IRN/CO/3-4, para. 54) [31].

Traditions have served as excuses to continue committing abuse of children, in particular girls. The Committee has expressed its deep concern on such practices in many State parties including early and forced marriages, virginity testing, witchcraft, genital mutilation, polygamy, harmful initiation rites and intersex genital mutilation as enumerated in the CO to the State party South African, where many of these grave forms of violence still exist. Thus, the CO urges the State party to

“(d) Guarantee the bodily integrity, autonomy and self-determination of all children, including intersex children, by avoiding unnecessary medical or surgical treatment during infancy and childhood;

(e) Build the capacity of all professional groups working for and with children to prevent, identify and respond to incidents of harmful practices and to eliminate customary practices and rituals that are harmful to children;

(f) Ensure sanctions for perpetrators of harmful practices, including perpetrators of the abuse of *ukuthwala*, and provide effective remedies to the victims of harmful practices.”

[Committee on the Rights of the Child, 2016b; South Africa, CRC/C/ZAF/CO/2, para. 39, d-f) [32].

The COs mentioned here demonstrate the still pervasive prevalence and the manifold features of violence in the lives of large numbers of children in spite of the increased efforts to eradicate violence against children. Violence is not only applied as factual physical violence; observations of the Committee give evidence of the many forms, in which violence can destruct well-being, personality development and self-determined interests of children, even in cases in which no action is executed towards a child, e.g., by solitary confinement used to discipline a child (Committee on the Rights of the Child, 2017;Tajikistan, CRC/C/TJK/CO/3- 5, para 20, b) [24], or by public executions witnessed by children and affecting their mental health (Committee on the Rights of the Child, 2016a; Islamic Republic of Iran, CRC/C/IRN/CO/3-4, para 53) [31]. The COs of the Committee attest that violence dismisses the basic affirmation of the Convention that the child is respected as a human being in dignity and with rights and freedoms.

SOME FINAL OBSERVATIONS

The reader may ask whether Concluding Observations and General Comments actually contribute to the progressive and full implementation of the rights of the child in all States parties to the CRC. The answer can be: they do contribute to that implementation, because they provide States parties with explanations of the meaning of articles of the CRC and with rather specific recommendations for their implementation. However, the actual impact of the Committee’s work depends very much on the commitment of States parties to give concrete follow-up to the Committee’s recommendations and on the activities of UN agencies and NGO’s. Regarding the right to health, considerable progress has been made in areas such as the reduction of infant and child mortality, the development of primary and preventive health care and the growing awareness of the dangers and risks of environmental pollution.

As for the prevention of violence against children, a reliable conclusion from the data is hard to draw since most data is self-reported and reporting attitudes differ and sometimes are biased. If more violence is reported, it could be regarded as a positive step as it can be an effect of more awareness, more concern and more motivation to stop violence. Anyway, it cannot be denied that 30 years after the adoption of the Convention and ten years after the Committee’s issuing General Comment No. 13, violence against children still is on an unacceptable high level [33-35].

The Committee would never claim that its monitoring

activities are the sole source of desired positive developments. There are many actors involved in the field: Governments, NGOs, social workers, courts and also parents and children themselves, and many of them base their work on children’s rights. They want to be sure that they fully have understood the implications of the rights, which children shall enjoy, and feel backed by authoritative statements of the Committee which confirm that they are on the right way when striving for the fulfilment of binding legal obligations.

The authors of this article compared the method in which violence issues were portrayed in the six State party reports reviewed in the first monitoring session of the Committee in 1993 with the description of violence issues in the most recent reports of the same six State parties more than 20 years later (Bolivia 1st and 4th, Egypt 1st and 3-4th, Russian Federation 1st and 4-5th, Sudan 1st and 3-4th, Sweden 1st and 5th, Viet Nam 1st and 5-6th; (see Annex 1). It is obvious that the new reports, contrary to some of the early reports, do not deny that violence against children exists in their countries. All of them take into account more aspects of violence against children. The reports present not only legal provisions but also various implementation approaches; they contain more data, although not enough; they indicate impeding factors and futile procedures and broaden their instruments which include legislation, specific programs, action plans and strategies. They also report the allocation of responsibilities and mention that children are included in planning and actions. NGOs often complain that described plans and measure have not become reality or are not enforced, but use them anyhow to confront governments with their own words and promises.

COs and GCs can contribute and have contributed to make the efforts of implementing the provisions of the Convention more substantial and targeted. They are often used by international and national NGOs, by UNICEF and by the Special Representative of the UN Secretary-General on Violence against Children and by the Special Rapporteur on sexual exploitation and abuse of children in their advocacy and lobbying for children when they fight for changes in legislation, for better prevention and more staff and resources. They also are an important source of child-rights based organizations which specialize on particular features of violence like the Global Initiative to End All Corporal Punishment of Children or ECPAT (End Child Prostitution and Trafficking).

Thus, after 30 years of the CRC it can be concluded, without any doubt, that the CRC Committee played and continues to play a very important role in the progressive realization of the rights of the child in general, and prevention from child abuse in particular. This role will become even more important because

Annexure 1: State Party Reports analyzed with regard to their presentation of violence against children

State Party	First report	Most recent report	Session of consideration
Bolivia	CRC/C/3/Add.2	CRC/C/BOL/4	52 nd Session (14 Sep - 02 Oct 2009)
Egypt	CRC/C/3/Add.6	CRC/C/EGY/3-4	57 th Session (30 May - 17 Jun 2011)
Russian Fed.	CRC/C/3/Add.5	CRC/C/RUS/4-5	65 th Session (13 Jan - 31 Jan 2014)
Sudan	CRC/C/3/Add.3	CRC/C/SDN/3-4	55 th Session (13 Sep - 1 Oct 2010)
Sweden	CRC/C/3/Add.1	CRC/C/SWE/5	68 th session (12 - 30 Jan 2015)
Viet Nam	CRC/C/3/Add.4	CRC/C/VNM/5-6	session not yet scheduled

the Committee shall increasingly engage itself, via its monitoring and guiding activities, in the efforts to contribute to achieving the Sustainable Development Goals (United Nations, 2015) [36], in particular the targets specifically focusing on children and their rights, to be achieved by 2030, such as target 5.3. "Eliminate all harmful practices such as child, early and forced marriage and female genital mutilation" and 16.2. "End abuse, exploitation, trafficking and all forms of violence against and torture of children".

It is regrettable that no funds in the budget of the United Nations are available which the Committee could use to initiate. Systematic studies of the impact of treaty bodies' COs and GCs, correct shortcomings and advise recommendable ways of distribution and application in the practice of child-rights implementation. More cooperation with academic institutions is also desirable which could host research and evaluation studies.

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