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ISSUES OF MONITORING AND ENFORCEMENT OF THE CONVENTION OF THE RIGHTS OF THE CHILD

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Shahnoza K.Ganibaeva

PhD In International Law Associate Professor Of The Training Law Center Under The Ministry Of Justice Of The Republic Of Uzbekistan

ABSTRACT

This article deals with issues of the United Nations Committee on the Rights of the Child, to explore how to monitor and evaluate States Parties' compliance with the obligations they undertook when they ratified the UN Convention on the Rights of the Child (CRC). Grounded in this work to provide a conceptual framing of the Convention, through the identification of the attributes of each child's right that provides the basis for the development measure to implement and enforcement. By contrast, children's rights are a set of universal standards in formal entitlement to their fulfilment and corresponding obligations on those providing that guarantee. They can be measured both in terms of actions undertaken by duty bearers on behalf of children and the consequent impact of those actions in ensuring the realization of the rights in the CRC.

KEYWORDS

Children, children's rights, monitoring, implementation, enforcement, CCPR, CESCR, ESC, CEDAW, UNICEF, ILO, WHO, UNESCO, UNCHR, Convention of the Rights of the Child (CRC), Committee on the Rights of the Child, NGO, Concluding Observations, Optional Protocols.

INTRODUCTION

Children, as much as adults, are covered by the existing human rights treaties, for example the two UN

Covenants on Civil and Political Rights (CCPR) and on Economic, Social and Cultural Rights (CESCR).

Moreover, there are special provisions in these and other treaties relating to children in particular, by implication or even explicitly. For instance, the CESC recognizes in Article 13 the right of everyone to education. It prescribes, inter alia, that primary education shall be compulsory and available free to all. Similarly, the provisions on the right to health for everyone in Article 12 of the CESC also entail that governments should take steps to reduce infant mortality and provide for the healthy development of the child. Additionally, Article 10(3) of the CESC addresses in the question of economic and social exploitation of children and child labor. On a regional level, Article 7 of the European Social Charter (ESC) contains similar, although somewhat more detailed, norms. More concrete regulations, relating to child labor are codified in the conventions adopted by the International Labor Organization (ILO), in particular in the Minimum Age Convention (No. 138).

Discrimination of girls is indeed one aspect of the Convention on the

Elimination of All Forms of Discrimination against Women (CEDAW). One obligation expressed therein is that measures should be taken to reduce female drop-out rates in the schools (Article 10(f)). The CEDAW also contains provisions aiming at protecting the woman as a mother during and after pregnancy. Family education should, according to Article 5(b) of the CEDAW, make clear 'the common responsibility of men and women in the upbringing and development of their children, it being understood that the interest of the children is the primordial consideration in all cases.

THE MAIN FINDINGS AND RESULTS

In the late 1970s, it was decided within the United Nations to draft a specific convention on children's rights. In 1989, after 10 years of drafting, a comprehensive list of human rights relating to children was adopted. The text of the CRC includes child related provisions from other human rights treaties, as well as novel aspects about the survival, protection and development of children, and provisions for other rights including the right to participation.

By the way, a first international text legally persuasive in the field, the convention and its protocols impose obligations on the States, which ratified them. Consequently, therefore, the state parties are required to respect and to enforce all the method is which dedicate these judicial instruments. Therefore, they respect the rights of the children, particularly across their institutions of protection and maintenance of childhood.

In other words, they also have to establish a protective border for all children on their territory, being part or not of this jurisdiction. Although this will assure the respect of all their fundamental rights.

By its very nature the Convention of the Rights of the Child (CRC) supports the position that all rights are indivisible, interdependent and interrelated. This has been further amplified by the holistic approach the Committee on the Rights of the Child has taken in its monitoring activity.

Most Articles of the Convention have elements of protection, participation and development; they are kin to both of the Covenants. Additionally, the Convention involves UN bodies and non-governmental organization (NGO's) in the monitoring and implementation efforts.

Monitoring of the implementation of the CRC outside the State Party of the CRC is primarily carried out by the CRC Committee through the State Parties' reporting to and having dialogue with the Committee. There is no individual complaints procedure as with some of the other UN conventions. The Committee now has 18 members, all elected by the State Parties, which for this Committee is nearly the equivalent of the UN General Assembly.

According to Article 43(2) the members shall be "experts of high moral standing and recognized competence in the field covered by this Convention", and they «shall serve in their personal capacity» [1]. Independence is not expressly mentioned, and being a civil servant has not been a hindrance for election. This has been criticized by among others Amnesty [2]. However, the members of the Committee have agreed that they would refrain from participating in any aspect of the considerations of the reports submitted by their own State, except for correcting obvious mistakes as regards facts.

On concern of the UN Committee on the Rights of the Child, appointed to monitor the implementation of the CRC, has been the risk that it itself will be seen as role body responsible for monitoring the situation of children. The 1993 World Conference on Human Rights in Vienna expressed the same concern, recommending that human rights of children be regularly reviewed by all relevant organs and mechanisms of the United Nations system and by the supervisory bodies of the specialized agencies [3].

The Committee on the Rights of the Child has sought a catalytic role in relation to these other bodies. One positive example is the cooperation with the ILO. The latter has stepped up its efforts for combating hazardous child labor and the Committee on the Rights

of the Child, in turn, recommends governments to ratify the relevant ILO conventions and thereby be party to the ILO reporting system. At the time of writing there are also plans for improving the coordination between the various UN treaty bodies.

The International procedures designed to monitor the implementation of CRC are not very different from those established in relation to the other UN human rights treaties. The CRC provides for a reporting procedure, and, like other treaty monitoring bodies, the Committee has issued guidelines as to the contents and the structure of these reports. The consideration of the reports is followed by a public statement, 'Concluding Observations', with its findings and recommendations [4].

These discussions are prepared a couple of months in advanced during a preparatory 'Working Group' meeting. These preparatory discussions are closed but UN agencies and bodies take part as well as non-governmental organizations, if invited. The purpose of these discussions is to pull together all existing information about the status of children in the respective country for an assessment of the State party report. The immediate result is a 'List of Issues' sent to the government outlining questions for discussion. Nowadays the Committee wants written replies before the plenary discussion so that the oral dialogue can concentrate on the most essential points [5].

It is still too early to evaluate the procedures; the first State party reports were discussed in January 1993. Most of the reports have been detailed, informative and well in line with the reporting guidelines. Several UN agencies and bodies, for example UNICEF, ILO, WHO, UNESCO and UNCHR, have taken an active part in the work. The participation of NGO's has been

essential. The constraints so far have related to the unprecedented work load of the Committee.

The workings of the Committee are, though, not the most important aspect of the monitoring and enforcement efforts. The national procedures are more crucial, that is where the discussion could be sufficiently detailed and well informed to spur genuine improvements. In fact, much of the work of the Committee aims at encouraging a good national process. Another intended side-effect is the catalyzing of international organizations to integrate the principles and provisions of the Convention into their programs. In that, the Committee has an advocacy role not very different from the NGO community.

Naturally, the Committee also wants to set a good example for monitoring on the national level. The issues it raises with State party representatives will ideally have repercussion in the national discussions later on. It is already clear that the definition of the four general principles has affected the follow-up in several countries, as has the emphasis on non-discrimination and the General Measure of Implementation, including on Article 4. In the same spirit, the Committee has tried to develop its thinking on how to measure progress and initiated an internal discussion on economic and social indicators [6].

In the of health and education the Committee's discussions have benefited from the goals adopted at the World Summit; progress in achieving them is consistent with the Convention and reflects a political will for the rights of the child. Yet, the Committee is groping with fundamental problems on how to meaningful discuss government performance in relation to the Convention. For instance, it still lacks a technique for evaluating in a competent manner the official budgets and their provisions for children.

At the same time, the Committee has to be aware of the fact that the Convention, like the other UN human rights treaties, is defining individual rights. Though there is no procedure for individual complaints in relation to this Convention, the Committee cannot stay rested with only global trends. The answer has been to focus more on especially vulnerable groups of children and emphasize the aspect of non-discrimination. While welcoming a high general rate of, for instance, school attendance, the Committee tends to focus on those who drop out: who are they and what could be done to protect their rights?

Another factor of importance in the monitoring is the precise nature of the State party obligations [7]. The approach of the Committee has been to assume that the intention is to achieve results; it has therefore focused on the concrete situation of the children concerned and asked whether the rights set forth in the Convention are indeed reflected in their daily lives.

The CRC incorporates all human rights for children and could be seen as a reflection of the fact that all rights are indivisible interdependent and interrelated. The Convention requires, in most cases, governments to respect the defined rights; they contain obligations to protect children and in several Articles, especially those related to economic and social rights, they call on State parties to take measures in order to fulfil the needs.

The Convention is, like the other UN human rights treaties, based on the notion of rights for individuals. The overwhelming scope of the problems facing children, not least in the fields of health and education, tends to undermine the possibility of an individual case approach. However, on top of the information on trends and measures taken for general improvements in the circumstances for

children, the UN Committee seeks data about the situation of especially vulnerable groups of children. The emphasis on nondiscrimination is important in this context.

The CRC adds a legal dimension and a 'philosophy' about the rights of the child. Its principles about the best interests of the child, respect for the views of the child, the right to survival and development and about nondiscrimination are important.

In order to build a basis for a meaningful discussion about the degree to which a government has lived up to its obligations under the Convention, the UN Committee has found it necessary to start developing social, economic and other indicators as yardsticks of progress. This is an area in which further discussion is essential.

The problem of resource limitations is addressed in the Convention, itself. The rights to health care and education could be provided for progressively. However, governments – irrespective of their economic standard – should use their available resources to the maximum extent to meet the needs of children.

The evaluation of the concrete realization of that obligation is one of the challenges for the Committee on the Rights of the Child.

The basic approach of the monitoring procedures is constructive. One of the aims – and obligations – in the Convention is to develop international cooperation to mobilize resources for the promotion and protection of the rights of the child. Thereby, the Convention could also be an instrument for introducing the concept of rights in the development programs.

On the whole, it seems that the CRC has contributed to a renewed and

more positive discussion about economic, social and cultural rights in general. The above-mentioned decision at the 1993 World Conference on Human Rights in Vienna to recognize the importance of these rights was probably aided by the developments reflected by the World Summit for Children, the adoption of the CRC and the activities of the UN Committee on the Rights of the Child.

It is significant that UNICEF stated its support for this package of rights in Vienna thereby challenging governments which earlier had preferred to see these rights as 'ambitions' rather than genuine rights.

Governments that ratify the Convention or one of its Optional Protocols must report to the Committee.

In reviewing States' reports, the Committee looks at how well governments are setting and meeting the standards for the realization and protection of children's rights as outlined in the Convention or Optional Protocol. Along with this regular reporting, the Committee may request additional information or complementary reports.

CONCLUSION

In its reviews, the Committee provides implementation and improvement recommendations to each individual State, which it will review the next time the country is examined. It urges all levels of government to use the Convention as a guide in policy-making and legislation.

The Convention on the Rights of the Child of 20 November 1989 was one of the first international instruments to which the Republic of Uzbekistan acceded, with parliamentary ratification on 9

December 1992. Uzbekistan development of its National Plan of Action for Child Well-being, which aims to increase the Government's capacity to implement the Convention, and the establishment of the National Inter-sectorial Working Group (IWG) for Child Well-being for overseeing the implementation and monitoring of the Convention.

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