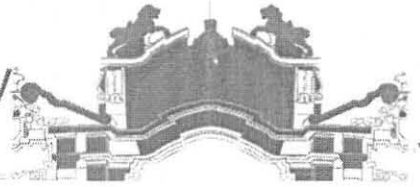




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ADDIS ABABA UNIVERSITY

SCHOOL OF LAW AND GOVERNANCE STUDIES

**STATUS OF CONCLUDING OBSERVATIONS OF
THE COMMITTEE ON THE RIGHTS OF THE
CHILD IN ETHIOPIA**

BY: ANTENEH GEREMEW

ADVISOR: DR. YITAYEW ALEMAYEHU

**A THESIS SUBMITTED TO SCHOOL OF LAW AND
GOVERNANCE STUDIES, ADDIS ABABA UNIVERSITY, IN
PARTIAL FULFILLMENT OF THE REQUIREMENTS FOR
THE AWARD OF MASTER OF LAWS IN HUMAN RIGHTS**

NOVEMBER 2015

DECLARATION

I, Anteneh Geremew, declare that this dissertation is my original work and has not been submitted to any other institution. I also declare that I have duly acknowledged sources I used in the dissertation.

Anteneh Geremew

Signature

Date


Feb 19/2016

I, Yitayew Alemayehu, the Advisor in this dissertation, have read the dissertation, confirm that the dissertation meets the number of words requirement and approve it for examination.

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Acronyms

ACRWC	African Charter on the Rights and Welfare of the Child
CCI	Council of Constitutional Inquiry
CoRC	Committee on the Rights of the Child
CEDAW	Convention on Elimination of All Forms of Discrimination against Women
CERD	Convention on Elimination of All Forms of Racial Discrimination
CESCR	Committee on Economic Social and Cultural Rights
EHRC	Ethiopian Human Rights Commission
HOF	House of Federation
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
MoFA	Ministry of Foreign Affairs
MoLSA	Ministry of Labour and Social Affairs
MoW	Ministry of Women
MoWYCA	Ministry of Women, Youth and Children Affairs
NGOs	Non-Governmental Organizations
UPR	Universal Periodic Review
UN	United Nations
VCLT	Vienna Convention on Law of Treaties

Chapter One: Introduction

1.1. Background

All core human rights treaties under the auspices of United Nations established bodies of experts to monitor implementation of the treaties. Treaty bodies employ a number of mechanisms to oversee implementation of treaties by State Parties. For instance, they adopt general comments in order to clarify provisions of the treaties. Treaty bodies may also entertain individual and State complaints filed against a State Party. Treaty bodies also examine reports of States on the measures taken and challenges encountered in the process of implementation of the treaties. The reporting procedure is an essential tool to examine the level of State compliance with human rights undertakings. The procedure is composed of submission of reports by States and concerned organizations and oral communications in pre-session and plenary meetings. The outcome documents of this procedure are known as concluding observations.

Concluding observations, besides reflecting the status of implementation of a treaty in a particular State Party, constitute recommendations that the experts believe necessary for improvement of human rights implementation and situations. We can hardly find literatures on relevance of these instruments to the process of making and interpretation of human rights. A study on status of concluding observations of treaty bodies shall not be restricted to the issue of bindingness. Broader perspective on the status of concluding observations can be acquired through analysis on their relevancy to and implications on the international and domestic human rights systems. Hence, this paper tried to mitigate the dearth of literatures on the law interpreting, initiating and determining role of concluding observations. One dimension of status of concluding observations concerns implication of the observations on the making and interpretation of international human rights law. Another dimension of their status requires investigation of state practice in order to identify domestic status of the instruments. This paper examined the status of concluding observations with a particular focus on concluding observations of the Committee on the Rights of the Child (here in after, CoRC) which is entrusted to the supervision of the Convention on the Rights of the Child (here in after, the Convention) and two substantive Protocols.

1.2. Research Objectives

Hence, the general objective of this research is to examine the status of concluding observations of the CoRC in international and domestic child rights frameworks. Specifically, the research aimed at:

- Examining binding nature of concluding observations of the CoRC;
- Identifying prescriptive and interpretative nature of concluding observations of the CoRC;
- Analyzing interplay between concluding observations of the CoRC and the law of treaty interpretation;
- Identifying relevancy of concluding observations of the CoRC in determination of rules of child rights law;
- Identifying place of concluding observations of the CoRC in proving custom;
- Analyzing reactions of the Government of Ethiopia to recommendations of the CoRC and examining sense of compliance towards the recommendations;
- Identifying implications of concluding observations of the CoRC on Ethiopia's laws, policies and plans of action relevant to children; and
- Appraising the reality and possibility of citing concluding observations of the CoRC in domestic cases affecting children.

1.3. Research Questions

A primary problem area in this research is the status of concluding observations of the CoRC in the making, interpretation and determination of the rights of the child. Specific questions to address this problem were:

- Are the recommendations of the CoRC binding?
- Can recommendations of the CoRC be characterized as soft laws?
- Are concluding observations of the CoRC prescriptive?
- Are concluding observations of the CoRC interpretative?
- How concluding observations of the CoRC interplay with law of treaty interpretation?
- Are concluding observations of the CoRC relevant to determine the rules of child rights law? and
- Are concluding observations of the CoRC relevant in proof of custom?

The research also instigated fundamental questions on the practice of Ethiopian Government regarding concluding observations and the implications of the concluding observations of CoRC in the making and interpretation of laws, policies and plans of actions in Ethiopia. The following research questions were identified and addressed:

- How the Government of Ethiopia is reacting to the recommendations of the CoRC?
- Are concluding observations of the CoRC relevant in initiating Ethiopia's laws, policies, programmes and plans of actions relevant to children?
- Are there pertinent mechanisms for concluding observations of the CoRC to influence the law making process in Ethiopia?
- Is it legally and practically possible in Ethiopia to cite concluding observations of the CoRC in cases which affect children?

1.4. Summary of Findings

It is submitted that States have no obligation to implement recommendations of the CoRC. The recommendations, however, hold expectations regarding binding rules of child rights. Accordingly measures recommended by the CoRC are soft laws taking in to account promises of concerned State Party at the adoption of concluding observation and sense of accountability by reporting implementation of the recommendations. It is also shown that the CoRC is interpreting the Convention and its Protocols through concluding observations. These interpretative instruments of the CoRC are important in determining binding rules of child rights. With a law-making approach of interpretation, the CoRC's concluding observations are also introducing norms which were not intended by States at the making of the Convention. By putting the norms for States' reactions, the concluding observations of CoRC play a law-initiating role.

Domestic status of concluding observations is evaluated taking Ethiopia as the focus area. Ethiopia is a party to the Convention on the rights of the child and its two substantive Protocols. Ethiopia submitted four reports to the CoRC and received recommendations. Reports of the Ethiopian Government, concluding observations of the CoRC and reactions of the Government to the observations are analyzed. The Government has made a number of promises and reports of compliance with regard to the CoRC's recommendations. Concluding observations of the CoRC, which are checklist of compliance with conventional obligations, are soft obligations on the Government of Ethiopia. Though the domestic law making process and the law making organs

are not permeable to concluding observations, reports of the Government are analyzed and propelling role of the observations in the adoption of domestic laws, policies and plans of action is shown. With regard to interpretative relevance of concluding observations, it is indicated that there are no analytical mode of treaty application and prescribed principles of treaty reference which would have paved the way to utilization of concluding observations of the CoRC in interpreting child rights treaties.

1.5. Methodology

1.5.1. Data Collection Tools

The researcher utilized a combination of primary and secondary data gathering tools. Human rights treaties, State reports, concluding observations, rules of procedures of the CoRC, *preparatore travaux*, general comments, cases, domestic legislations, policies and plans of actions are the primary sources. The researcher utilized literatures as secondary source.

1.5.2. Data Analysis Methods

The research identified and analyzed relevant domestic and international laws. The research analyzed interpretations of the laws. Cases relevant for the theme of the research were identified and analyzed. The research also analyzed practices of States as manifested in formal communications with the CoRC. Hence, this research is a legal research.

1.6. Limitations of the Research

Ethiopia is selected to demonstrate status of concluding observations at domestic level. It is admitted that success in periodically reporting and status in taking action as recommended have no identical picture concerning all States. It is also acknowledged that the power of a treaty body to influence conducts of States through its recommendations may show variance depending on political and economic status of States. But, this research examines only Ethiopia's case. Ethiopia is selected mainly due to its favorability to access sources. Though the status of concluding observations in Ethiopia may not be generalizable to all States, it is illustrative to the case in States which are comparable with Ethiopia based on policies of external human rights monitoring among other factors.

The research is also limited to examining status of concluding observations of the expert committee on child rights. Selection of a treaty body is necessary for a streamlined analysis and the selection of the CoRC is influenced by the selection of Ethiopia as a hub of the study on domestic status of concluding observations. Ethiopia has commendable history of reporting to the CoRC in complying with periodicity and with regard to number of reports submitted.

1.7. Organization of the Research

This research is divided in to seven chapters. The first chapter is an introduction to the research. The second chapter discusses treaty bodies' role in the making and interpretation of international law. Chapter three introduces to the CoRC and its reporting procedure. Then concluding observations of the CoRC will be examined from historical, substantive and structural perspectives. Chapter five evaluates status of concluding observations of the CoRC in the international child rights system. The sixth chapter shifts attention to status of concluding observations of the CoRC in Ethiopia. Finally, chapter seven summarizes findings of the research.

Chapter Two: The Making and Interpretation of International Law and the Growing Role of Treaty Bodies

2.1. The Making of International Law

Material sources of international law provide evidence of the existence of rules which, when proved, have the status of legally binding rules of general application.¹ The International Court of Justice (ICJ) identified, in its constituting Statute, material sources of international law that may be applied in the disposition of contentious cases brought before it.² The court resolve disputes between States by applying international treaties,³ international customs⁴ and general principles of law.⁵ This positivist approach to the doctrine of sources is based on two principles found within traditional conceptions of international law.⁶ First, only States are subjects of international law, meaning that States are the sole entities that enjoy rights and obligations under international law.⁷ Second, international law is to be derived from the consent of its subjects.⁸

2.2. Treaty Bodies and the Making of International Law

Significant inroads have been made into the first principle.⁹ Particularly, human rights have brought a shift of focus from States to the individual as a subject of international law.¹⁰ Though the change with respect to the second principle is relatively insignificant, the principle is being stiffly challenged.¹¹ Modern positivists recognize that some non-state actors play a role in developing international law.¹²

¹ I. Brownlie, *Principles of Public International Law*, 2003, p.3

² United Nations, *Statute of the International Court of Justice*, 18 April 1946, Art.38/1.

³ *Id.*, Art.38/1/A

⁴ There is also an agreement that there is a body of customary international principles, *jus cogens*, which are so fundamental that they cannot be set aside by treaty or acquiescence but only by the formation of a contrary rule of customary international law. I. Brownlie, cited above at note 1, p.5; *Vienna Convention on the Law of Treaties*, 1969 (entered in to force 27 January 1980), Art.53

⁵ United Nations, cited above at note 2, Art.38/1/C; General principles of law are rules accepted in the domestic law and they are the general principles of municipal jurisprudence, particularly in private law. See I. Brownlie, *Id.*, p.16 and L. Oppenheim, *International Law: A Treatise*, (8th ed., 1955), p.29

⁶ A. Roberts & S. Sivakumaran, "Lawmaking by Non-state Actors: Engaging Armed Groups in the Creation of International Humanitarian Law", *The Yale Journal of International Law*, vol.37, no.1, p.112

⁷ L. Oppenheim, cited above at note 5, p.341

⁸ A. Roberts & S. Sivakumaran, cited above at note 6, p.112

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

State-empowered bodies are sharing the field of international law making with States. State-empowered bodies are “international bodies created by two or more States and granted authority to make decisions or take actions, such as developing, interpreting, applying, and enforcing international law”.¹³ State-empowered bodies may be entities made up of all or some States (such as the General Assembly and the Security Council), and entities whose members are appointed by States (such as human rights treaty bodies).¹⁴ Treaty bodies are empowered by State Parties to monitor implementation of treaties. Human rights treaty bodies primarily engage in reviewing state reports, investigating complaints and adopting general comments.

These activities of treaty bodies may be seen as law-making since the bodies determine precise scope of vague obligations in the treaties.¹⁵ Treaty bodies have been offering experiences which amounts to law making.¹⁶ For instance, for Mechlem, General Comments of the Committee on Economic, Social and Cultural Rights (here in after, CESCR) on the obligations of international organizations, States’ extraterritorial obligations and the concept of core obligations;¹⁷ and for Khaliq and Churchill, the approach of the CESCR on the rights to adequate housing and water can be characterized as quasi-legislative.¹⁸ Similarly, the Human Rights Committee’s (here in after, HRC) approach with regard to the right to life is conceived as extremely expansive as it encompasses, *inter alia*, housing, health and nutrition.¹⁹

This trend is mainly attributable to a principle that human right treaties are not dead instruments and they shall be interpreted based on their relevance to the dynamics. This approach is known as “the living instrument approach” or “evolutive interpretation”.²⁰ The approach was first adopted by the Strasbourg court with a view that the European Convention on Human Rights should be interpreted in line with the views of today’s society instead of having a stagnant

¹³ Id., p.116-117; The creation of State-empowered bodies by States distinguishes them from pure non-State actors such as individuals, corporations, NGOs, and armed groups.

¹⁴ Id.

¹⁵ G. Ulfstein, Law making by Human Rights Treaty Bodies, p.1

¹⁶ A. Roberts & S. Sivakumaran, cited above at note 6, p.117

¹⁷ K. Mechlem, “Treaty Bodies and the Interpretation of Human Rights,” Vanderbilt Journal of Transnational Law, vol.42, p.931, 935 and 940

¹⁸ U. Khaliq and R. Churchill, “The Protection of Economic and Social Rights: A Particular Challenge?”, in H. Keller and G. Ulfstein (eds.), UN Human Rights Treaty Bodies, cited in G. Ulfstein, cited above at note 15, p.9

¹⁹ Id.

²⁰ K. Dzehtsiarou and C. O’Mahony, “Evolutive Interpretation of Rights Provisions: A Comparison of the European Court of Human Rights and the U.S. Supreme Court”, Colum. Human Rights L. Rev., 2013, p.3

approach of interpretation.²¹ The “living instrument approach” was subsequently subscribed to courts and treaty bodies.

This paper adds that the CoRC is also applying the living instrument approach of interpretation. This paper introduces to child rights standards adopted by the CoRC with the instrumentality of concluding observations. The main objective of this analysis is to show that concluding observations are instrumental in initiating international child rights laws. The paper also gives insight on the reactions of State Parties to the standards progressively developed by the CoRC and to the law making approach of the CoRC.

2.3. The Law of Treaty Interpretation and Interpretation of Human Rights Treaties by Treaty Bodies

The law making approach of interpretation triggers a primary issue whether treaty bodies were, at first place, empowered to interpret treaties. The decentralized system of international law making is similarly applicable with respect to interpretation.²² The rules of interpretation under the Vienna Convention on Law of Treaties (here in after, VCLT) indicate that the authority to interpret a treaty is incumbent up on State Parties.²³ However, States may delegate the power to interpret treaties to courts, tribunals or other bodies.²⁴ States have not explicitly delegated interpretative authority to human rights treaty bodies.²⁵ The authority to interpret treaties may also be delegated implicitly. As the ICJ noted in the Reparation Case, “under international law the organization must be deemed to have those powers which, though not expressly provided are

²¹ Id.; The approach was first employed in 1978 in a case *Tyrer v. The United Kingdom*, a case in which the court held that corporal punishment is degrading within the meaning of Article 3 of the European Convention on Human Rights. See J. Silvis, *Human Rights as a Living Concept: Case-law overview*, p.7; See also the case: European Court of Human Rights, *Judgment: Tyrer v. The United Kingdom*, App. No. 5856/72, 25 April 1978, par.22 and par.31

²² C. Fernández, *Sovereignty and Interpretation of International Norms*, 2007, p.3

²³ The most fundamental rules of interpretation are articulated under Article 31 of the Convention which orders an interpretation of treaty shall be in good faith, contextual and taking in to account the object and purpose of the treaty. Agreements and state practices before and after conclusion of the treaty are also integral tools in interpretation of a treaty. *Vienna Convention on the Law of Treaties*, cited above at note 4, Art.31

²⁴ A. Roberts, “Treaties and Subsequent Practice”, in G. Nolte (ed.), *Subsequent Agreements and Practice: the Battle over Interpretative Power*, 2013, p.95

²⁵ With respect to the possible disputes arising from interpretation, some human rights treaties provide that any one of those Parties may refer disputes to the International Court of Justice. See for instance General Assembly Resolution 2106 A (XX), *International Convention on the Elimination of All Forms of Racial Discrimination* (here in after, CERD), 21 December 1965 (entered in to force 4 January 1969), Art.22 and General Assembly Resolution 34/180, *Convention on the Elimination of All Forms of Discrimination against Women*, 18 December 1979 (entered in to force 3 September 1981), Art.29; However, there is no such “dispute settlement provision” concerning the Convention on the Rights of the Child.

conferred upon it by necessary implication as being essential to the performance of its duties.”²⁶ Human rights monitoring is expressly delegated to treaty bodies. It requires a ‘law to fact’ analysis which necessarily involves interpretation of law. Therefore, though States do not explicitly confer on the treaty bodies the power to interpret human rights conventions, treaty bodies are impliedly empowered to interpret the conventions.

The law of treaty interpretation was developed as if the authority to interpret a treaty is totally incumbent upon States. Having in mind the growing role of non-State entities in interpretation of international human rights laws, a study was conducted on applicability of VCLT on human rights treaties.²⁷ The study concluded that dogmatic applicability of VCLT is uncomfortable with regard to special nature of human rights treaties.²⁸ The special characteristics of human rights treaties which were not forecasted by the VCLT include a treaty on which monitoring bodies involve in the interpretation and enforcement of a treaty.²⁹ Besides, since human rights treaties do not impose reciprocal obligations, States would have an obvious interest in interpreting them restrictively in order to retain more liberty to ease the burden imposed upon them.³⁰ A modified application of VCLT recognized that the institutionalized practices of interpretation developed by a monitoring body established through a treaty affect the rules of interpretation under that treaty.³¹

Due to these normative and pragmatic justifications, the responsibility for determining how rights can be realized and whether or not States have fulfilled their obligations shall also rest

²⁶ The court held, in an issue whether the UN has the power to sue and claim reparation for injuries on its agents, that “an entity such as the UN must depend upon its purposes and functions as specified or implied in its constituent documents and developed in practice.” The court did not define what an international organization means but remarked that by entrusting certain function with an organization, States which established the organization are presumed to cloth the organization with competence required to enable those functions to be effectively discharged. See International Court of Justice, Judgments, Advisory Opinions and Orders: Reparation for Injuries Suffered in the Service of the United Nations, A. W. Sijthoff Publishing Company, April 11, 1949, p.9

²⁷ See M. Sheinin, Human Rights Treaties and the Vienna Convention on the Law of Treaties-Conflicts or Harmony: A Report, UNIDEM Seminar on the Status of International Treaties on Human Rights, Coimbra, Portugal, 7-8 October 2005, p.1-4

²⁸ Id., p.4

²⁹ Id.

³⁰ K. Mechlem, cited above at note 17, p.15; Hakimi also argued that total empowerment of States to define their commitments will leave individuals to have human rights to the extent of what their Governments like. M. Hakimi “Secondary Human Rights Law”, The Yale Journal of International Law, vol. 34(2009), no.2, p.600

³¹ M. Sheinin, cited above at note 27, p.5

with the treaty bodies.³² However, interpretations by treaty bodies do not oust inherent authority of States to interpret their own agreements. The interpretation of treaties is incumbent upon “community of interpreters”: those existing within States as well as transnational communities in the international sphere including treaty bodies.³³ Thus, the interpretive process should be understood as part of an ongoing relationship in which these communities generate and refine shared understandings and expectations.

This paper shows the CoRC is actually interpreting the Convention and its Optional Protocols using concluding observations as a tool for interpretation. The purpose of this discussion is to show that concluding observations of the CoRC are interpretative instruments. This paper goes further to evaluate the status of these instruments from the perspective of the reactions of State Parties to the authority assumed by the CoRC and the concluding observations’ interplay with the law of treaties and custom.

³² P. Alston & G. Quinn, “The Nature and Scope of States Parties’ Obligations under the International Covenant on Economic, Social and Cultural Rights”, Human Rights Quarterly, 1987, p.161

³³ The term “interpretive communities” was coined by Stanley Fish. See S. Fish, Is There a Text in this Class? The Authority of Interpretive Communities, 1980; See also O. Fiss, “Objectivity and Interpretation”, Stan. L. Rev. vol.34(1982), no.4

Chapter Three: The CoRC

3.1. Introduction to the CoRC

At the center of monitoring State Parties' compliance with the Convention is the CoRC.³⁴ Number of members of the CoRC was fixed to be ten by the Convention.³⁵ However, an amendment to Article 43/2 of the Convention was made to increase the number of members to eighteen.³⁶ Another major restructure is the split of the CoRC in to two for the purpose of consideration of reports.³⁷ High moral standing and expertise in the field relevant to the Convention are being the main weights for membership to the CoRC; the Convention additionally requires that consideration shall also be given to equitable geographical distribution, as well as to the principal legal systems.³⁸ Though members of the CoRC are to be nominated and elected by Governments, members are expected to act only in a personal capacity³⁹ and accountable solely to the children of the world.⁴⁰ The Convention stipulated that the CoRC shall

³⁴ The initial proposal which was made in 1980 by Poland designates the Economic and Social Council (ECOSOC) as a monitoring body over the proposed Convention. There was also a proposal, which was not considered, to enable the ECOSOC to establish a group of experts entrusted with the responsibility of examining State reports. Finally a proposal which enjoyed an extensive support was forwarded by Sweden jointly with Canada. The proposal called for an establishment of a separate committee of experts. It was justified that neither the UN system nor any NGOs had an overall view of the rights of the child; a committee of specialists in child law, with expert knowledge of the serious problems that affect childhood and with moral and legal authority to approach any Governmental or private international agency to draw attention to the plights of children could be of considerable benefit to children. Accordingly, the final text of the Convention settled that a committee which examines the measures taken by State Parties shall be established. See General Assembly resolution 44/25, Convention on the Rights of the Child, 20 November 1989(entered into force 2 September 1990), Art. 43/1; Office of the United Nations High Commissioner for Human Rights, Legislative History of the Convention on the Rights of the Child, vol.II, 2007, p.820; See also Jaap E. Doek, The United Nations Convention on the Rights of the Child, a Guide to the Preparatory Work, 2006, p.535-539

³⁵ Convention on the Rights of the Child, Id., Art.43/2

³⁶ Conference of State Parties to the Convention on the Rights of the Child, General Assembly Resolution 50/155, A/50/L.61/Rev.1, 28 February 1996; The amendment was necessitated by the considerable workload of the CoRC, which was triggered by the Convention's extensive ratification.

³⁷ The most recent authorization by the General Assembly was made in 2012. See General Assembly Resolution 67/167, Committee on the Rights of the Child, A/RES/67/167, 20 December 2012; The backlog of pending reports from large number of State Parties compelled consideration of reports to be made through two chambers each consisting of nine members taking due account of equitable geographical distribution. However, the Concluding observations are being adopted in plenary sessions.

³⁸ See Convention on the Rights of the Child, cited above at note 34, Art.43/2, Art.43/3, Art.43/5 and Art.43/6; Members of the CoRC are elected for a period of four years. However, the members are eligible for re-election if they are renominated at the expiry of their term. As of March 2015, each of Africa, Asia and Europe has five members while the remaining three are from South America and Pacific. Currently, the chairperson of the CoRC is Ethiopian.

Visit <http://www.ohchr.org/EN/HRBodies/CRC/Pages/Membership.aspx> last visited 20 September, 2015.

³⁹ Convention on the Rights of the Child, cited above at note 34, Art.43/2

⁴⁰ The Addis Ababa Guideline on Independency and Impartiality of Members of the Human Rights Treaty Bodies also remarks that the election of a member should not thought to result in more favorable treatment for the State of which national is the member. One tool for ensuring impartiality is withdrawal of members whose Government's

meet annually though this can be changed by the CoRC.⁴¹ Starting from 1995, the CoRC holds three sessions a year.⁴²

3.2. The Reporting Procedure

The central aim of the CoRC is “examining the progress made by States Parties in achieving the realization of obligations undertaken in the Convention.”⁴³ The States Parties to the Convention undertake to respect and ensure the rights set forth in the Convention by taking all legislative, administrative and other measures appropriate for the realization of each right under the Convention.⁴⁴ The CoRC monitors the State Parties’ progress through investigating complaints procedure; adopting general comments; review State reports and organizing meetings for thematic discussion on child rights issues.

The CoRC is utilizing the reporting procedure as the primary tool of supervision of implementation of the rights. State Parties to the Convention undertake an obligation to report on measures they take to realize the rights of the child recognized under the Convention.⁴⁵ The reporting mechanism extends to the substantive Optional Protocols.⁴⁶ Initial report shall be submitted two years after the Convention enters in to force for the State⁴⁷ while periodic reports

reports are being examined or the Government is Party to other monitoring procedure. See Committee on the Rights of the Child, Rules of Procedure, CRC/C/4/Rev.4, 18 March 2015, Annex: Guidelines on the independence and impartiality of members of the Human Rights Treaty Bodies (“The Addis Ababa Guidelines”), sec.2, par.6 and sec.3, par.1; See also Committee on the Rights of the Child, Report on the Second Session, CRC/C/10, 19 October 1992, par.33; It is also important to remind the solemn declaration which a member is required to make at the commencement of his/her office: “I solemnly declare that I will perform my duties and exercise my powers as a member of the Committee on the Rights of the Child honourably, faithfully, impartially and conscientiously.” See Rule 15

⁴¹ Convention on the Rights of the Child, cited above at note 34, Art.43/10

⁴² Each session comprises one week pre-session period and three weeks for reporting procedure. See Committee on the Rights of the Child, Report on the Fifth Session, CRC/C/24, 28 January 1994, sec.I.1.4. Apart from the regular sessions, the CoRC may also convene special sessions according to the rules of procedure. See Committee on the Rights of the Child, cited above at note 40, Rule 3

⁴³ Convention on the Rights of the Child, cited above at note 34, Art.43/1

⁴⁴ Id., Art.2/1 and Art.4

⁴⁵ See Convention on the Rights of the Child, cited above at note 34, Art.44/1 and Art.44/2; In the negotiation of the text of Art. 44, there has been a debate on what exactly the State Parties are required to report. An earlier proposal directed State Parties to report “on their compliance with obligations under the Convention”. However, the approved text of Art.44/1 is more flexible as State Parties are required to report “on the measures they have adopted to give effect to the rights recognized under the Convention and on the progress made on the enjoyment of those rights”. See Office of the United Nations High Commissioner for Human Rights, cited above at note 34, p.840

⁴⁶ See General Assembly Resolution 54/263, Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts (here in after, OPAC), A/RES/54/263, 25 May 2000, Art.8/1 and General Assembly Resolution 54/263, Optional Protocol to the Convention on the Rights of the Child on the sale of children (here in after, OPSC), child prostitution and child pornography, A/RES/54/263, 16 March 2001, Art.12

⁴⁷ Convention on the Rights of the Child, cited above at note 34, Art.44/1/A

shall be made every five years.⁴⁸ State reports are required to meet structural and substantive specifications provided by the CoRC. Apart from guidelines common for all treaty bodies,⁴⁹ the CoRC adopted guidelines for initial and periodic State reports.⁵⁰

The CoRC's pre-sessional meetings are dedicated for a preliminary consideration of State reports.⁵¹ A pre-sessional working group prepares lists of issues.⁵² The lists of issues are to be forwarded to a State Party to clarify facts mentioned in the State report or to provide supplementary information.⁵³ Though the Convention does not provide for the procedure of considering a State report in the presence of a delegate of a State, the CoRC adopted a practice of formal meeting with a State Party. A series of exchange of thoughts between members of the CoRC and a State Party is known as constructive dialogue.⁵⁴ The consideration of a State report is to be commenced with an introduction statement from a delegation⁵⁵ by the State Party about

⁴⁸ See Convention on the Rights of the Child, cited above at note 34, Art. 44/1/B; The same periodicity applies for the two substantive Optional Protocols of the Convention. An initial report on an Optional Protocol is due within two years after it enters into force for the State Party, thereafter the periodic report is to be submitted with reports on the Convention. See OPAC, cited above at note 46, Art.8/1 and Art.8/2 and OPSC, cited above at note 46, Art.12/1 and Art.12/2; Being concerned with high rate of non-submission of reports and overlapping of reports, the CoRC has adopted a rule which exceptionally allowed a State Party under dialogue to combine its next two periodic reports. See Committee on the Rights of the Child, Recommendation adopted by the Committee on the Rights of the Child, [CRC/C/124](#), Thirty-second session, 2003, p.1

⁴⁹ Fifth Inter-Committee Meeting of the Human Rights Treaty Bodies, Harmonized guidelines on reporting under the international Human rights treaties, including guidelines on a common core document and treaty-specific documents, [HRI/MC/2006/3](#), 10 May 2006

⁵⁰ Committee on the Rights of the Child, "Reporting Guidelines for Initial Reports on the Convention on the Rights of the Child", in *Compilation of Guidelines on the Form and Content of Reports to be Submitted by States Parties to the International Human Rights Treaties*, [HRI/GEN/2/Rev.6](#), 3 June 2009 and Committee on the Rights of the Child, *CRC Treaty Specific Reporting Guidelines, Harmonized according to the Common Core Document*, [CRC/C/58/Rev.2](#), 1 October 2010; These guidelines outlined basic formality and content requirements of State reports. Both guidelines classified provisions of the Convention into eight clusters for the purpose of preparing the State report. These clusters are: General implementation measures; Definition of the child; General Principles; Civil rights and freedoms; Family environment and alternative care; Basic health and welfare; Education, leisure and cultural activities; and Special protection measures.

⁵¹ Committee on the Rights of the Child, *Overview of working methods of the Committee*, p.3

⁵² See Meeting of chairpersons of the Human Rights Treaty Bodies Twenty-fifth meeting, *Overview of the Human Rights Treaty Body System and Working Methods related to the Review of States Parties*, [HRI/MC/2013/2](#), 12 April 2013 par.28

⁵³Id.

⁵⁴ Id., p.11; The period for a constructive dialogue takes two 3-hours periods. There are some features what make the dialogue a constructive one. First, openness of the arguments; readiness to admit that the other Party may be right on some issues; readiness to provide all necessary information requested and positivity towards proposals aimed at improving human rights observance are essential behavior of the Parties to consideration of the report. Second, unlike the complaints procedure (individual, inter-State and inquiry), the process of consideration of reports has more non-judgmental atmosphere than a blame and shame nature. See B. Faracik, "Constructive Dialogue" as a cornerstone of the Human Rights Treaty Bodies Supervision, p.3.

⁵⁵ In fact, no treaty body imposes an obligation on State Parties to send delegation. See Meeting of chairpersons of the Human Rights Treaty Bodies Twenty-fifth meeting, cited above at note 52, p.14; If the State decides to send a

the report, the lists of issues and new developments. Then, two of the CoRC members who are appointed as country rapporteurs provide a brief overview of the state of child rights in the concerned State Party.⁵⁶ Thereafter, the CoRC members raise questions on each cluster of rights and the State Party responds.⁵⁷ Based on their observations of the report and the dialogue, the country rapporteurs prepare a summary which may include recommendations. The State delegation makes a final Statement.⁵⁸ The State Party under examination may make comments on the recommendations adopted by the CoRC.⁵⁹ If the CoRC understands that the State Party is in need of technical advice or assistance, it transmits the State report with relevant recommendations to United Nations (here in after, UN) specialized agencies and other bodies.⁶⁰

delegation, the delegation is preferred to be constituted with individuals who have experience in the fields covered by the Convention and who can influence policy-making and enhance the promotion and protection of children's rights. Marta S. Pais, "The Convention on the Rights of the Child", in United Nations, Manual on Human Rights Reporting under Six Major International Human Rights Instruments, 1997, p.494

⁵⁶ Committee on the Rights of the Child, cited above at note 51, p.3 In addition to drafting the CoRC's concluding observations; country rapporteurs play a prominent role with regard to the constructive dialogue through leading the dialogue and ensuring full coverage of the main areas of concern in the country. Meeting of chairpersons of the Human Rights Treaty Bodies Twenty-fifth meeting, cited above at note 52, p.13

⁵⁷ The delegation may defer an answer for any question to consult with relevant organ in the State country. See Id., p.13; If the CoRC considers that a number of issues should be clarified further, it invites the State to submit additional information or an additional report, including a progress report, on the implementation of the Convention. Marta S. Pais, cited above at note 55, p.501

⁵⁸ Meeting of chairpersons of the Human Rights Treaty Bodies Twenty-fifth meeting, cited above at note 52, p.3

⁵⁹ See Committee on the Rights of the Child, cited above at note 40, Rule 75/2

⁶⁰ Convention on the Rights of the Child, cited above at note 34, Art.45/B; The CoRC serves as a bridge between the child welfare organizations with the technical and financial resources and the State Party which is in need of those resources. Particularly to children's Economic and Social Rights, a system of international cooperation plays a crucial role in boosting the capacity of State Parties to realize these rights for children under their jurisdiction.

Chapter Four: Concluding Observations of the CoRC

4.1. Definition and History of Concluding Observations

Following the dialogue with the reporting State, the CoRC issues a statement of understanding with comments. This outcome of the reporting process is a document called the concluding observations. O'Flaherty designated the issuance of concluding observations as the single most important activity of human rights treaty bodies.⁶¹ This assertion is in congruence with the fact that reporting procedure remains the primary human rights monitoring mechanism. Bayefsky considered concluding observations as an expert committee's carefully considered conclusion about whether a State Party has satisfied the legal obligations it assumed upon ratification of the treaty.⁶² Indeed, concluding observations are not only conclusion about compliance, they also serve as a tool for improvement of compliance. As such, concluding observations have retrospective as well as prospective implications. That is why O'Flaherty defined concluding observations as "a mechanism for committees of experts to forward an authoritative overview of the state of human rights in a country and forms of advice which can stimulate systemic improvements."⁶³

As it is clear from Flaherty's definition, the observation of the committees on the state of human rights in a particular State Party is an authoritative statement. This view is shared by Santos who believes that concluding observations are authoritative Statements of a treaty body with regard to the State concerned and as a guiding reference for action to be undertaken by States Parties in general.⁶⁴ Mechlem explains the authoritativeness of concluding observations as consensus on how the provisions of a treaty should be interpreted with regard to the particular situation in a country.⁶⁵ Therefore, concluding observations are instruments, adopted by treaty bodies after a reporting procedure to interpret a treaty; to express understanding of the body as to human rights situation in a State Party and to suggest measures that the State Party should take to improve the situation.

⁶¹ M. O'Flaherty, "The Concluding observations of United Nations Human Rights Treaty Bodies," Oxford University Human Rights Law Review, vol.6:1(2006), p.3

⁶² Anne F. Bayefsky, Report on the UN Human Rights Treaty System: Universality at the Crossroads, April 2001, p.66; See also K. Mechlem, cited above at note 17, p.923

⁶³ M. O'Flaherty, cited above at note 61, p.27

⁶⁴ Marta S. Pais, cited above at note 55, p.501

⁶⁵ K. Mechlem, cited above at note 17, p.19

All treaty bodies adopt concluding observations (“concluding comments”, in case of Convention on Elimination of All forms of Discrimination Against Women (CEDAW)) in more or less similar structure and substance. Article 45/D of the Convention empowers the CoRC to make suggestions and general recommendations.⁶⁶ This enabling provision stipulates that the suggestions and recommendations of the CoRC are to be issued on the basis of information received by the CoRC in accordance with Articles 44 and 45 of the Convention. Therefore, the CoRC adopts concluding observations based on information from the reporting procedure and other submissions and dialogue with stakeholders. Based on the dialogue, the State report and other sources, the CoRC forward a set of recommendations.⁶⁷ The CoRC adopted its first concluding observations on February 1993 on Bolivia.⁶⁸ This concluding observation was so precise and the issues dealt were insignificant. The views and recommendations of the CoRC were too general. Besides, we can hardly find suggestions on follow up to observations.⁶⁹ Concluding observations of late 1990s dedicated a paragraph for the dissemination of the reporting documents.⁷⁰ A turning point for structural and substantive improvement in the

⁶⁶ There is an issue on which contemporary recommendatory documents of the CoRC fall under the cited provision. The preparatory works give no hint on the issue since the text of Art.45/D of the Convention was adopted in 1987 with no comments and objections from negotiating States. The inclusion of the word “general” may create an impression that the recommendations are intended to be applicable with respect to all State Parties rather than focusing on a particular State Party. But recommendations under Art. 45/D were not intended to be exclusively general. The clause that “the recommendations shall be transmitted to any State Party concerned” is an indicative that the recommendations may also be directed towards a particular State Party. So it is clear that the concluding observations are “suggestions and general recommendations” emanate from the authority bestowed up on the CoRC by the virtue of Art. 45/D of the Convention. See Convention on the Rights of the Child, cited above at note 34, Art.44 and 45/D; Office of the United Nations High Commissioner for Human rights, cited above at note 34, par.665; N. Ando, General Comments/Recommendations, Max Planck Encyclopedia of Public International Law Max Planck Institute for Comparative Public Law and International Law, Heidelberg and Oxford University Press, 2010, online available at www.mpepil.com last visited on 27/7/2015, p.8

⁶⁷ M. Kjørum, “State Reports,” in G. Alfredsson, J. Grimheden, Bertrand G. Ramcharan and Alfred de Zayas(eds.), International Human Rights Monitoring Mechanisms, Essays in Honour of Jakob Th. Möller, (2nd rev. ed., 2009), vol.35, The Raoul Wallenberg Institute Human Rights Library, Martinus Nijhoff Publishers, p.22

⁶⁸ Committee on the Rights of the Child, Third Session, Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding observations of the Committee on the Rights of the Child: Bolivia, CRC/C/15/Add.1, 18 February 1993

⁶⁹ In addition to the Concluding observation on Bolivia, see Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding observations: Peru, CRC/C/15/Add.8, 18 October 1993

⁷⁰ See Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding observations: Ghana, CRC/C/3/Add.39, 6 June 1997

concluding observations of the CoRC can be drawn at the beginning of the new Millennium.⁷¹ The primary source of the change is the adoption of the system of clustering.⁷²

4.2. Structure of Concluding Observations

Concluding observations of UN treaty bodies tended to follow structures of the earliest concluding observations by the CESC and the HRC.⁷³ Generally, concluding observations comprise an 'introduction', 'positive aspects', 'principal areas of concern' and 'recommendations'.⁷⁴

Though there are some varieties with in the CoRC's concluding observations; they generally follow a structure adopted by other committees.⁷⁵ The first part of the CoRC's concluding observations is left for introductory remarks on quality⁷⁶ and comprehensiveness of State report⁷⁷; adherence to the reporting guidelines⁷⁸; comment on delay of submission⁷⁹; and other related matters.⁸⁰ The next part of the CoRC's concluding observations is headed with 'Follow-

⁷¹ It is sufficient to compare the Concluding observations of the CoRC adopted before and after the year 2000: Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding observations: Maldives, CRC/C/8/Add.33, 29 May 1998 with Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding observations: South Africa, CRC/C/51/Add.2, 26 January 2000

⁷² The guidelines of the CoRC require State Parties to submit comprehensive information through classifying provisions of the Convention in to eight categories. Committee on the Rights of the Child, Reporting Guidelines for Initial Reports on the Convention on the Rights of the Child, cited above at note 50 and Committee on the Rights of the Child, Treaty Specific Reporting Guidelines, cited above at note 50

⁷³ M. O'Flaherty, cited above at note 61, p. 3

⁷⁴ Until recently, there was also a chapter entitled 'factors and difficulties affecting the implementation of the Convention' common to all treaty bodies' concluding observations though only Committee on CEDAW is now retain the chapter in its concluding observations.

⁷⁵ However, since the CoRC is expected to deal with more issues in more detail and due to extensive inputs from Non-Governmental sources, the committee's concluding observations are the longest. The CoRC's observations are more than twice as long as other treaty bodies. See Anne F. Bayefsky, cited above at note 62, p.67

⁷⁶ Committee on the Rights of the Child, Concluding observation of the Committee on the Rights of the Child: Germany, CRC A/51/41, 1996, par.1

⁷⁷ Committee on the Rights of the Child, Initial Report under Article 8 of the Optional Protocol (Armed Conflict), Concluding observation of the Committee on the Rights of the Child: Austria, CRC/C/146, 2005, par.1

⁷⁸ Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding observations: Russian Federation, CRC/C/RUS/CO/3, Fortieth session, 23 November 2005, par.1

⁷⁹ Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding observations: Bahrain, CRC/C/BHR/CO/2-3, Fifty-seventh session, 3 August 2011, par.1

⁸⁰ Although it is not comprehensively stating sources of information, the CoRC also indicates sources other than the State report such as replies to the list of issues. The CoRC also highlights the environment of the dialogue and exchange of information with the State Party. A common expression in this regard is a Statement that 'the CoRC appreciates the frank, self-critical and open dialogue held with the delegation'. An assessment by the CoRC on the quality of delegation sent by the State Party may also be provided in this part. Though the CoRC encourages high-level and inter-sectoral delegation, there is no a practice to specify the name of the delegate or their responsibility.

up measures and progress achieved by the State Party'.⁸¹ In this part, the CoRC praises the State Party for a progress it achieved. The 1990s concluding observations of the CoRC tend to frame 'areas of concern' and 'recommendations' in to two separate parts.⁸² The contemporary concluding observations forward relevant suggestions immediately after identified gaps. Concluding observations of treaty bodies have two functions: direct public attention to shortfalls and identify specific activities to improve implementation.⁸³ These two functions of concluding observations fall under the 'areas of concern and recommendations' section. With expressions of the clauses like "deeply concerned" and "concerned", the CoRC tacitly established groups of "concerns", thereby relative difference on priority of recommendations. After giving recommendations in accordance with the clusters, the CoRC presents its examination of the State's practice regarding the two Optional Protocols if the State ratified the Protocols.⁸⁴

4.3. Quality of Concluding Observations

Concluding observations deserve a careful drafting process as they represent the treaty body's understanding of rights contained in a treaty and the way the rights should be implemented in context of a particular State Party. Generally speaking, the quality of concluding observations may be assessed first, from the perspective of their substance and second, from the level of reflecting the process of the consideration of State report.⁸⁵ The substantive success of concluding observations mainly depends on their accuracy in assessments of human rights conditions in a reporting State, and their functionality in prescribing needs and priorities.⁸⁶ Though there is still a room for improvement, concluding observations of the CoRC is

See Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties under Article 44 of the Convention, Concluding observations: Canada, CRC A/51/41, 9 June 1995, par.1 and Concluding observations: Maldives, cited above at note 71, par. 1

⁸¹ In the earlier versions of the CoRC's Concluding observations, this part of the documents was entitled as 'Positive Aspects' which were mainly focused only on appreciating measures taken by the State Party. When the CoRC commenced to review periodic reports, it became necessary to evaluate the State Party's effort to implement Concluding observations of the CoRC. Hence, the 'Follow up measures' began to constitute part of chapter two of Concluding observations. Anne F. Bayefsky, cited above at note 108, p.69

⁸² Committee on the Rights of the Child, Consideration of reports submitted by States Parties under Article 44 of the Convention, Concluding observations: Holy See, CRC A/51/41, 17 November 1995; See also Concluding observation: Germany, 1996, cited above at note 76, Concluding observation: Maldives, 1998, cited above at note 71. The risk with such model of concluding observations is that the problems identified in the 'areas of concern' part may not get a corresponding recommendation.

⁸³ Anne F. Bayefsky, cited above at note 108, p.67

⁸⁴ Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding observations: Denmark, CRC/C/DNK/CO/4, Fifty-sixth session, 7 April 2011, par. 68

⁸⁵ M. O'Flaherty, cited above at note 61, p.14 and Anne F. Bayefsky, cited above at note 108, p.67

⁸⁶ Currently, the Concluding observations meet the conditions of accuracy and functionality to widely varying degrees. The quality has been impeded by a number of factors. See Anne F. Bayefsky, Id.

recognized as less general and more specific to guide, advice and push Governments to make progress.⁸⁷

4.4. Publication and Dissemination of Concluding Observations

The real impact of the reporting procedure and the concluding observations on the life of children shall be evaluated by its capacity to improve the situation at the country level. The purpose of concluding observations is to encourage progress and strengthen capacity of a State Party to assess plights of children and shape appropriate strategies to solve them.⁸⁸ This in turn requires effective means to make concluding observations accessible and disseminate to the lower level of public administration.⁸⁹

A number of dissemination mechanisms are available at the international level.⁹⁰ The Convention requires States to make their reports widely available to the public.⁹¹ The CoRC's general comment reiterates that unless reports are disseminated and constructively debated at the national level, the process is unlikely to have substantial impact on children's lives.⁹² The CoRC's concluding observations also direct a detailed means of publication and dissemination of the State Party's report together with the concluding observations.⁹³ The CoRC urged States to make all documentation of the examination of their reports widely available to promote

⁸⁷ E. Clarhall, Monitoring implementation of the UN Convention on the Rights of the Child: To strengthen follow up by civil society on Concluding observations and recommendations made by the UN Committee on the Rights of the Child, Save the Children, September 2011, p.6

⁸⁸ Marta S. Pais, cited above at note 83, p.521

⁸⁹ The publicity of Concluding observations may even have a broader impact as the situation in one State can be a good point of reference for other States. See E. Steinerte and R.M.M. Wallace, United Nations protection of Human Rights: Mechanisms for Human Rights protection by United Nations Bodies, University of London, 2009, p.17

⁹⁰ First of all, the Convention requires the CoRC to transmit the concluding observations to any State Party concerned. See Convention on the Rights of the Child, cited above at note 34, Art. 45/D; The CoRC shall also report the recommendations and comments of the State Party to the General Assembly at the end of each session as part of sessional report and constituting a chapter of its report. See Marta S. Pais, cited above at note 83, p.520; There is also a practice to post the concluding observations on the CoRC's official website, under the OHCHR, on the last day of the session. The concluding observations also form part of the report that the CoRC is required to submit to the General Assembly every two years. See Convention on the Rights of the Child, cited above at note 34, Art. 44/5

⁹¹ Convention on the Rights of the Child, Id., Art. 44/6

⁹² Committee on the Rights of the Child, General Comment No. 5, General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), CRC/GC/2003/5, 27 November 2003, par.73

⁹³ Concluding observations, Denmark, cited above at 84, par.70 and 71: The CoRC recommended Denmark to transmit the recommendations to the Head of State, the Supreme Court, Parliament, relevant ministries and local authorities for appropriate consideration and further action. It also suggested that the recommendations shall be made widely available in the languages of the country including through the internet to the public at large, civil society organizations, youth groups, professional groups and children.

constructive debate, including in parliament, and inform the process of implementation at all levels.⁹⁴

4.5. Follow up on Implementation of Concluding Observations

The preliminary means to follow up implementation of concluding observations is State report. Concluding observations and the guidelines of the CoRC require State Parties to include information on the implementation of concluding observations in next reports.⁹⁵ The status of implementation of previous recommendations constitutes part of the cluster of ‘general measures of implementation’ of concluding observations of the CoRC. Though the CoRC has no separate procedure to follow up,⁹⁶ regional and sub-regional workshops are also being taken as a good opportunity to motivate States to implement recommendations.⁹⁷

⁹⁴ General Comment 5, cited above at note 92, par.73

⁹⁵ See CRC Treaty Specific Reporting Guidelines, cited above at note 82, par.17

⁹⁶ Having in mind the long period of time after the adoption of the concluding observations until the next State report and due to experience of overwhelming non-submission or delay of reports, it is indicated that follow up through the means of examination of next State report and concluding observations is not a dependable mechanism. Accordingly, the Human Rights Committee appointed a Special Rapporteur for Follow-Up on concluding observations in July 2002. See M. Kjærum, cited above at note 67, p.29; Human Rights Committee, Rules of procedure of the Human Rights Committee, CCPR/C/3/Rev.10, 11 January 2012, Rule 72; General Assembly, Report of the Human Rights Committee, A/57/40, 2002, Supplement No. 40, vol.II, Annex III. This follow up procedure is focused to specific areas of concern which the Human Rights Committee has specified as priorities. Other four treaty bodies have also adopted the same procedure with varying period of follow up reports. Unfortunately, the CoRC has not yet established a follow up reporting procedure. It is important to remind here the 2004 Statement by ex-Chairperson of the CoRC who stated that his CoRC had no resources to implement such sort of follow-up procedure. Report of the chairpersons of the Human Rights Treaty Bodies on their 16th meeting, A/59/254, 11 August 2004, at par.7; It is also equally relevant to reiterate the fact that the CoRC has no experience to explicitly include priority areas in its Concluding observations though it may utilize emphasizing expressions like “highly concerned”, “deeply concerned” and “very disappointed”.

⁹⁷ This kind of conference is usually preceded by case studies on measures taken by sample State Parties in a region where the conference is to be conducted. So far, the Follow up workshops on Convention have been held in Damascus, Bangkok, Doha, Buenos Aires, Suva and San Jose, and recommendations have been issued to the regions concerned. Involving participants from Governments, national human rights institutions, NGOs and United Nations agencies, the follow up conferences provide a chance to better understand the achievements and constraints in implementing child rights and the CoRC’s recommendations at country level.

See CRIN website <https://www.crin.org/en/library/publications/Committee-rights-child-follow-workshops-concluding-observations> last visited on 4 May 2015

Chapter Five: The Status of Concluding observations of the CoRC in the International Law Making and Interpretation Process

5.1. Binding Nature of Recommendations of the CoRC

5.1.1. Are the recommendations of the CoRC binding?

As indicated above what the ICJ uses to decide on disputes, treaties, custom and general principles are accepted as sources of binding obligations. Concluding observations are composed of recommendations of an expert committee. State Parties to the Convention have not given consent to be bound by the recommendations. Obligations of State Parties may be classified as obligation to implement the rights and obligation to report their compliance with the first obligation. Though State Parties are obliged to report, they have no duty to send delegation to the dialogue.⁹⁸ The experts examine reports and issue suggestions which they think appropriate for realization of rights of children. However, the CoRC has no legal means to enforce its recommendations. Hence, the concerned State Party is not bound to implement the 'do' and 'don't' of concluding observations.

A high level seminar held in Bristol to examine the implementation and follow-up of concluding observations⁹⁹ entertain a proposal which separated concluding observations into a number of categories to determine their binding nature.¹⁰⁰ It was proposed that some recommendations which are attached to treaty provisions are legally binding, whereas other recommendations which are not strictly derived from the text of the treaty are not binding.¹⁰¹ Besides defeating the recommendatory nature of concluding observations, a problem with such ambitious approach is that it risks the integrity of concluding observations.¹⁰²

O'Flaherty cautioned that to confer a compulsive quality to the recommendations may further exacerbate the reluctance of States to participate in the reporting process.¹⁰³ Besides, the principle of due process of law does not warrant conferring binding status to the outputs of

⁹⁸ Committee on the Rights of the Child, cited above at note 40, Rule 72

⁹⁹ University of Bristol, Implementation of UN Treaty Body Concluding observations: The Role of National and Regional Mechanisms in Europe, Summary and recommendations from the High Level Seminar, 19-20 September 2011, Bristol, United Kingdom, p.1

¹⁰⁰ Id., p.2

¹⁰¹ Id.

¹⁰² M. O'Flaherty, cited above at note 61, p.11

¹⁰³ Id.

hurried, non-adversarial and consensual procedure.¹⁰⁴ It is also necessary to remind that concluding observations are aimed to call a State Party for implementation of its obligatory undertakings. Concluding observations supplement binding instrument instead of imposing brand new obligations *per se* save for exceptional librative approach which is to be discussed soon.

The practice of States also supports that States do not recognize concluding observations as levying mandatory rules. While Governments may admit recommendations of the treaty bodies are to be accorded considerable importance as the pronouncement of a body of expert on the issues covered by the treaty, they do not submit that concluding observations are in themselves formally binding.¹⁰⁵ This was reaffirmed in the Bristol conference where there was a consensus emerging from participants of national level that concluding observations were not considered to be legally binding by States.¹⁰⁶

5.1.2. Concluding Observations of the CoRC as Soft Obligations

Despite the fact that recommendations of treaty bodies are not legally binding, they have some special status, at least to the extent that they purport to interpret the treaty or consider the treaty obligations of the State Party.¹⁰⁷ Dimitrijevic believes that ‘a Statement of an authoritative body performing an important supervisory function cannot remain without consequences’.¹⁰⁸ More interestingly Shenin argued that “a finding of a violation by UN human rights treaty body may be understood as an indication of the State Party being under a legal obligation to remedy the situation”.¹⁰⁹ Accordingly, concluding observations of the CoRC may levy an ‘expectation to remedy’ on a State Party by identifying a violation or non-compliance with provisions of the Convention or the Protocols.

¹⁰⁴ Id.

¹⁰⁵ International Law Association, International Human Rights Law and Practice: Final Report on the Impact of Findings of the United Nations Human Rights Treaty Bodies, Berlin Conference, 2004, par.16

¹⁰⁶ University of Bristol, cited above at note 99, p.2; In one case, the House of Lords held that the Concluding observations of the Committee on Convention Against Torture (here in after, CAT) were mere recommendations. It was asserted that “Whatever its value in influencing the trend of international thinking, the legal authority of this recommendation is slight”.¹⁰⁶ See House of Lords, Opinions of the Lords of Appeal for Judgment in the Cause, Jones v. the Kingdom of Saudi Arabia, 2006 UKHL 26, 2006, par.15; There would not also be a better treatment of concluding observations of CoRC. It is reaffirmed that Concluding Observations contain suggestions to come closer to implementation of the Convention, but no binding judgments. See M. Verheyde and G. Goedertier, Articles 43-45: The UN Committee on the Rights of the Child, p.30

¹⁰⁷ M. O’Flaherty, cited above at note 61, p.8

¹⁰⁸ V. Dimitrijevic, “State Reports” cited in M. O’Flaherty, Id.

¹⁰⁹ M. Scheinin, “International Mechanisms and Procedures for Implementation”, in Hanski and Suksi (eds.), An Introduction to the International Protection of Human Rights: A Textbook, Turku/Abo: Institute for Human rights, Abo Akademi, 1997, p.369

The fact that recommendations of the CoRC are non-binding does not mean they have no any legal relevancy. The recommendations are soft obligations imposed on the State Party. A definition of soft law by Guzman and Meyer is taken as pertinent to instruments adopted by human rights bodies. They defined soft law as “those nonbinding rules or instruments that interpret or inform our understanding of binding legal rules or represent promises that in turn create expectations about future conduct”.¹¹⁰ According to Olivier, soft obligations shall be seen as the grey area between law and non-law.¹¹¹ Shelton forwarded that hard law and soft law may be differentiated based on the level of normativity, which is not necessarily depends on consequences, instead on internal provisions and final clauses.¹¹² On the other hand Riesman proposed that law requires authority plus control while non-laws may embrace authority but not control.¹¹³

We can extract from the above scholastic insights that instruments which are not binding but related to binding laws and lay down “do and don’t” statements which impose expectations and embrace promises to which States showed sense of compliance are soft instruments. The definition is wide enough to include concluding observations. The main aim of the instruments is an expression of understanding of challenges and prospects on implementation of binding instruments in a particular State. Concluding observations also constitute recommendations and promises which the State is expected to behave in compliance with. The recommendations require a State Party to take measures necessary to realize child rights or refrain from activities which are detrimental to the realization of child rights.

Hence, concluding observation as soft law is capable to trigger a sense of compliance on the part of the concerned State party. Sense of compliance is used here to represent the belief of the State that it is expected to behave in accordance with its promises and recommendations of committee of experts. States are aware, at the moment of the adoption of the recommendations, the fact that there are certain expectations they need to satisfy. These soft outputs remain legally relevant and are therefore a matter governed under the international child rights system. The

¹¹⁰ Andrew T. Guzman and Timothy L. Meyer, International Soft Law, p.35

¹¹¹ M. Olivier, “The Relevance of ‘soft law’ as a Source of International Human Rights”, in The Comparative and International Law Journal of Southern Africa, vol.35(Nov. 2002), no.3, p.7

¹¹² Dinah L. Shelton, “Introduction: Law, Non-law and Problem of Soft Law”, in Dinah L. Shelton(ed.), Commitment and Compliance: The Role of Nonbinding Norms in the International Legal System, Oxford University Press, 2000, p.13

¹¹³ M. Hakimi, cited above at note 30, p.4

recommendations can have considerable political and legal weight.¹¹⁴ States also admitted that while the recommendations and criticism of the monitoring committees are not legally binding, they would attach great importance to them as the recommendations constitute important guidelines to ensure the conscientious implementation of the human rights conventions.¹¹⁵

Concluding observations as soft instruments also impose duty to consider the instruments. Citing the Concluding observations of the HRC, ICJ asserted, in Diallo case, that it is necessary to “ascribe great weight to the interpretation adopted by this independent body that was established specifically to supervise the application of that treaty”.¹¹⁶ The International Law Association is also positive in this regard with a proposition that “despite the lack of binding force, findings of treaty bodies may still have ‘considerable persuasive force’ on decision-makers in domestic legal systems”.¹¹⁷ The CoRC has also reaffirmed that obligation to consider the recommendations in parliament and other organs is part of the Conventional obligations.¹¹⁸ In tandem with General Comment 5 and recommendations of the CoRC under the auspices of Art. 44/6 of the Convention, the CoRC’s concluding observations should be subject of detailed debate in parliaments.¹¹⁹ Being subject to the dialogues in parliament and other organs of the Government, recommendations of the CoRC are intended to affect the decisions of those organs. In conclusion, though State Parties have no obligation to implement the recommendations of the CoRC, they are not totally free. There are expectations from the side of the CoRC and the State Parties have an obligation to consider the recommendations in decisions which affect children.

¹¹⁴ International Council on Human Rights Policy, Human Rights Standards: Learning from Experience, Versoix, Switzerland, 2006, p.11

¹¹⁵ Norwegian Ministry of Foreign Affairs, cited in International Law Association, cited above at note 105, par.16

¹¹⁶ International Court of Justice, Reports of Judgments Advisory Opinions and Orders: Case Concerning Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Judgment of 30 November 2010, para. 66.)

¹¹⁷ International Law Association, cited above at note 105, par.31

¹¹⁸ Committee on the Rights of the Child, General Comment 5, General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), CRC/GC/2003/5, 27 November 2003, par.73; The implementation manual for the Convention also underscored in its evaluation checklist the fact “whether the concluding observations are debated in parliament” shall be taken as one element in evaluating whether a State has met its obligations under Art.44/6 of the Convention. See R. Hodgkin and P. Newell, UNICEF, Implementation Handbook for the Convention on the Rights of the Child, (3rd. ed, 2007), p.654

¹¹⁹ Committee on the Rights of the Child, General Comment 5, General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), CRC/GC/2003/5, 27 November 2003, par.73

5.2. Interpretative and Prescriptive Nature of Concluding Observations of the CoRC

5.2.1. Concluding Observations of the CoRC as Instrument to Prescribe Norms

Concluding observations of the CoRC were, by no means, intended to be source of new norms. However, they are facilitating and mobilizing the consent of States required to establish binding international law.¹²⁰ We may cite instances in which concluding observations of the CoRC liberated from the realm of the enabling Convention with a pretext of interpreting the Convention. Though these concluding observations became source of new norms which were not intended at the formation of the Convention, the observations effectively entrench a foundation for the development of new or modified norms in the field of child rights.

The CoRC activism in norm prescription is typically clear when one examines general comment and concluding observations of the CoRC concerning corporal punishment. The Convention imposes obligations on State Parties to take appropriate measures to protect the child from all forms of physical or mental violence;¹²¹ to ensure that school discipline is consistent with dignity of the child¹²² and to protect the child from torture or other cruel, inhuman or degrading treatment or punishment.¹²³ The CoRC's General Comment 8 of 2006, which was purported to be adopted on the basis of these obligations, insisted that State Parties shall prohibit corporal punishment in all settings.¹²⁴

The CoRC itself recognized that provisions of the Convention which were cited as basis for the general comment do not refer explicitly to corporal punishment and the *Travaux Preparatoires* for the Convention do not record any discussion of corporal punishment during the drafting sessions.¹²⁵ However, the CoRC justified its comments on corporal punishment by restating the prevalence of corporal punishment of children in their homes, schools and other institutions.¹²⁶ The CoRC further emphasized that "the Convention, like all human rights instruments, must be

¹²⁰ M. Olivier, cited above at note 111, p.2

¹²¹ Convention on the Rights of the Child, cited above at note 34, Art. 19/1

¹²² Id., Art.28/2

¹²³ Id., Art.37/A

¹²⁴ Committee on the Rights of the Child, General Comment No. 8, The Right of the Child to Protection from Corporal Punishment and other Cruel or Degrading forms of Punishment (Arts.19; 28, par.2; and 37, inter alia), CRC/C/GC/8, 2 March 2007, pars.31 and 32

¹²⁵ Id., par.20

¹²⁶ Id.

regarded as a ‘living instrument’, whose interpretation develops over time.”¹²⁷ Accordingly, the Convention is no more a static instrument since the sense of its provisions may be changed through time to the extent of embracing new obligations.

The CoRC started to forward recommendations for States to expressly prohibit corporal punishment in all settings¹²⁸ and to ensure full implementation of the laws prohibiting corporal punishment¹²⁹ far before General Comment 8.¹³⁰ However, a real impact on the States’ behavior began to be seen after the adoption of the general comment. While countries which prohibited corporal punishment in all setting before the general comment were only sixteen, within eight years thereafter thirty other countries amended their laws or made new laws which outlaw corporal punishment in all settings.¹³¹ This significant development is not exclusive impact of the general comments. Instead, the continuous urgency by the CoRC through its concluding observations and focused endeavor of Non-Governmental Organizations (here in after, NGOs) played an indispensable role.

Persistent recommendations under the CoRC’s concluding observations also tend to introduce a new rule on the Minimum Age for Criminal Responsibility (MACR). The Convention calls on State Parties to establish a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.¹³² The Convention does not provide a specific minimum age

¹²⁷ Id.; See also *Tyrer v. The United Kingdom*, cited above at note 20, par.22 and par.31

¹²⁸ See Concluding observations: Bahrain, cited above at note 79, par.45; Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding observations: Equatorial Guinea CRC/C/15/Add.245, Thirty-seventh session, 3 November 2004, par.35/A; Committee on the Rights of the Child, Consideration of reports submitted by States Parties under Article 44 of the Convention, Concluding observations: Finland, CRC/C/FIN/CO/4, Fifty-seventh session, 3 August 2011, par.36

¹²⁹ Committee on the Rights of the Child, Consideration of reports submitted by States Parties under Article 44 of the Convention, Concluding observations: Uruguay, CRC/C/URY/CO/2, Forty-fifth session, 5 July 2007, par.37; Until May 2014, the CoRC has made 364 recommendations on corporal punishment to 188 States. See Global Initiative to End All Corporal Punishment of Children, *Childhood free from corporal punishment-changing law and practice*, May 2014, p.8. Online available at www.endcorporalpunishment.org last visited on 10/6/2015

¹³⁰ For instance see Committee on the Rights of the Child, Consideration of reports submitted by States Parties under Article 44 of the Convention, Concluding observations: New Zealand, CRC/C/15/Add.216, Thirty fourth Session, 27 October 2003, par.142/A and Committee on the Rights of the Child, Consideration of reports submitted by States Parties under Article 44 of the Convention, Concluding observations: Indonesia, CRC/C/15/Add.223, Thirty fifth Session, 26 February 2004, par.64/A. The earliest recommendation in this regard is a recommendation for Canada in 1995: Committee on the Rights of the Child, Consideration of reports submitted by States Parties under Article 44 of the Convention, Concluding observations: CRC/C/15/Add.37, Ninth Session, 20 June 1995, par.93

¹³¹ Source: http://www.endcorporalpunishment.org/pages/progress/prohib_States.html as last visited on 23/5/2015. Besides, in the first cycle Universal Periodic Review, corporal punishment has been raised in the examination of many States, and more than 80 have accepted recommendations to prohibit it. Source: CRIN website www.crin.org

¹³² Convention on the Rights of the Child, cited above at note 34, Art.40/3/A

limit. However, the CoRC through its recommendations suggested States to make MACR not below 12 years.¹³³ The CoRC argues this rule is an internationally acceptable standard adopted by the Beijing Rules.¹³⁴ The CoRC supported this standard by General Comment 10 which specifically encourages States to increase their MACR to the age of 12 years or a higher age level.¹³⁵ To understand the submission of States to the standard, it is sufficient to examine law reforms in Africa to increase MACR. Since 2007, sixteen African countries amended their criminal laws to fix the applicable MACR to 12 years and above.¹³⁶ We may also witness continuous declaration of States which made the recommended adjustments.¹³⁷

The minimum age for marriage is also being fixed by the CoRC through its concluding observations. The Convention does not stipulate a minimum age limit for entering in to a marriage relationship. The Convention has defined a child to mean every human being below the age of eighteen.¹³⁸ In fact, the Convention contains a provision calling for the abolishment of traditional practices (which includes child marriage by interpretation) prejudicial to the health of the child.¹³⁹ It is the CEDAW, however, which clearly prohibited child marriage.¹⁴⁰ The CoRC has, so far, given recommendations for many State Parties to accept 18 years as the minimum age requirement for marriage as the internationally acceptable level.¹⁴¹ Setting the minimum age for marriage at 18 is a vital step to the realization of other rights of the child. A quick look in to

¹³³ Concluding observations: Bahrain, cited above at note 79, Par.70/A and B

¹³⁴ United Nations General Assembly Resolution 40/33, United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“The Beijing Rules”), A/RES/40/33, 29 November 1985. Rule 4: “In those legal systems recognizing the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.” However, the rule does not prescribed a specific minimum age requirement.

¹³⁵ Committee on the Rights of the Child, General Comment No. 10: Children’s Rights in Juvenile Justice, CRC/C/GC/10, 25 April 2007, par.32

¹³⁶ African Child Policy Forum, Minimum Age for Criminal Responsibility in Africa, 2013

¹³⁷ For instance in its State report, Egypt reported that “The minimum age of criminal responsibility has been raised from 7 to 12 years and a new system for the administration of children’s justice has been introduced”. See Committee on the Rights of the Child, Consideration of reports submitted by States Parties under Article 44 of the Convention, Third and fourth periodic reports of States Parties due in 2007: Egypt, CRC/C/EGY/3-4, 29 December 2008, par.9

¹³⁸ Convention on the Rights of the Child, cited above at note 34, Art.1

¹³⁹ Id., Art. 24/3

¹⁴⁰ United Nations General Assembly Resolution 34/180, Convention on the Elimination of All Forms of Discrimination against Women, A/RES/34/180, Annex, 18 December 1979 (entered in to force 3 September 1981), Art.16/2

¹⁴¹ Committee on the Rights of the Child, Consideration of reports submitted by States Parties under Article 44 of the Convention, Concluding observations: Thailand, CRC/C/THA/CO/3-4, Fifty-ninth session, 17 February 2012, par.32 and Committee on the Rights of the Child, Consideration of reports submitted by States Parties under Article 44 of the Convention, Concluding observations: Mexico, CRC/C/MEX/CO/3, Forty-second session, 8 June 2006, par.22

State responses shows that States are accepting and implementing the recommendation of the CoRC.¹⁴²

The above instances show that the CoRC is taking an active role in introducing new norms which were not initially intended by States. This *modus operandi*, as admitted by the CoRC, is the “living instrument” approach of interpretation. It is argued that any role that State-empowered bodies play in law creation is dependent on initial State consent and at least some level of ongoing State consent.¹⁴³ Although non-state actors are showing a capacity to make international laws and participate in their application and implementation, the treaty paradigm generally continues to be conditional on the presence of State consent.¹⁴⁴ The rules adopted by the CoRC are merely candidates for public reaction and they may confront States in significant way.¹⁴⁵

The CoRC does not have an organized procedure for States to accept or reject each recommendation. Similarly there is no formal system to undertake voluntary pledges.¹⁴⁶ The Convention and its rules of procedure allow a State Party to express its views on the CoRC’s concluding observation.¹⁴⁷ The State Parties are not sufficiently utilizing this system to challenge or express their agreement with the understandings of the CoRC. The OHCHR is able to document only seven comments of five States on concluding observations of the CoRC; five comments made on the CoRC’s concluding observations on the Convention, one on concluding observation to the Optional Protocol on the involvement of children in armed conflicts and one another on Optional Protocol on the sale of children, child prostitution and child pornography.¹⁴⁸

¹⁴² The CoRC welcomes the information that Uzbekistan provided which showed the minimum age of marriage will be set at age 18 for both girls and boys as recommended in previous Concluding observations. Committee on the Rights of the Child, Consideration of reports submitted by States Parties under Article 44 of the Convention, Concluding observations: Uzbekistan, CRC/C/UZB/CO/2, Forty-second session, 2 June 2006, par.19. See also a State report in which Jordan replied that a provision for minimum age was amended by the interim Personal Status Act (Law No. 82 of 2001) according to previous recommendation of the CoRC to make the minimum age for marriage 18 years for persons of both sexes. Committee on the Rights of the Child, Consideration of reports submitted by States Parties under Article 44 of the Convention, Third periodic report of States Parties due in 2003: Jordan, CRC/C/JOR/3, 11 July 2005, par.51

¹⁴³ A. Roberts & S. Sivakumaran, cited above at note 6, p.118

¹⁴⁴ Duncan B. Hollis, “Why State Consent Still Matters: Non- State Actors, Treaties, and the Changing Sources of International Law”, Berkley Journal of International Law, vol.23:1(2005), p.140

¹⁴⁵ I. Brownlie, cited above at note 1, p.4

¹⁴⁶ These two procedures are made essential part of the recent human rights monitoring mechanism, the Universal Periodic Review.

¹⁴⁷ Convention on the Rights of the Child, cited above at note 34, Art.45/D and See Committee on the Rights of the Child, cited above at note 40, Rule 75/2

¹⁴⁸ States commenting on concluding observations of the CoRC are actually focusing on explaining why the recommendations of the CoRC are not practicable and objecting erred understanding of the Committee on child

Despite the reluctance of States to participate in the formal exchange of statements right after the adoption of the concluding observations, it can be concluded from the above concrete experiences that States' submission to standards drawn up by the CoRC can be deduced from States' reactions in the dialogue and State reports on implementation of previous recommendations.

There is an issue whether Art. 38/1 of the ICJ Statute should still be considered as the yardstick to determine international human rights law.¹⁴⁹ Scholars are challenging the traditional listing of sources. Particularly concerning human rights, the traditional schema of sources is criticized as "limited, outmoded, and an incomplete reflection of the realities of contemporary international law-making".¹⁵⁰ More pertinently, the problem experienced with sources recognized under the statute is their incapacity to explain the status of instruments like findings of treaty bodies.¹⁵¹ In fact the consent of States plays the most important role to modify the traditional listing of sources of international law to recognize brand new sources. It is argued that with a presupposition that it is States' consent and not Article 38, which is the basis of international obligation, States may subsequently consent to being bound by new instruments.¹⁵² Van Hoof has rightly observed that "States acting collectively as the law-givers in international law can also change or supplement the sources of international law".¹⁵³ Though it is even tough to think at this time that States are keen to acknowledge treaty bodies as new sovereign to make international laws, there is no clear reason why the mainstream sources of international law may not be accompanied by new means in the future.

rights situation in a State Party. A rather critical legal comment was made by the Holy See on the CoRC's Concluding observation of 5 February 2014. The Holy See expressed the CoRC, which is alleged to introduce new principles and rules not contained in the Convention, as disrespectful to the text of the Convention. See, Comments of Holy See on Concluding observation of the Committee on the Rights of the Child, No. 11399/2014. Source: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en last visited on 1/6/2015.

¹⁴⁹ C. Blake, Normative Instruments in International Human Rights Law: Locating the General Comment, Center for Human Rights and Global Justice Working Paper, no.17, 2008, p.24-25

¹⁵⁰ C. Chinkin and A. Boyle, The Making of International Law, Oxford, 2007, p.35 and H. Charlesworth and C. Chinkin, The Boundaries of International Law: A Feminist Analysis, Manchester, 2001, p.65

¹⁵¹ M. Olivier, cited above at note 111, p.3

¹⁵² C. Blake, cited above at note 149, p.28

¹⁵³ G. Van Hoof, Rethinking the Sources of International Law, 1983, p.182

5.2.2. Concluding Observations as Interpretative Instrument

Since it is essential to carrying out functions explicitly entrusted by States, the CoRC has the power to interpret the Convention and its Protocols. The CoRC interprets the treaties when it comments on State reports and when it issues general comments.¹⁵⁴ General comments, which mainly aimed to interpret treaties, raise more complex and comprehensive issues relevant to interpretation of treaties.¹⁵⁵ Concluding observations employ norm-to-act reasoning which involves less complex interpretation.¹⁵⁶ But, it is evident that concluding observations are also interpretative instruments.

For instance, the CoRC has assumed power to decide on the legality of reservations of State Parties through concluding observations.¹⁵⁷ The Convention prohibited a reservation which is incompatible with its object and purpose¹⁵⁸. The CoRC is not “international organization” in the sense of Art. 20/3 of the VCLT.¹⁵⁹ Therefore it has no authority to decide legality of reservations on its constituting treaty. However, with an instrumentality of its concluding observations, the CoRC engaged itself in deciding which reservations of States Parties to the Convention are incompatible with the object and the purpose of the Convention.¹⁶⁰ In response to the CoRC’s interpretation of “reservation incompatible with object and purpose of the Convention”, instead of questioning the very authority of the CoRC to interpret the reservation provision of the Convention, the States’ focus is either to comply with the recommendation and withdraw

¹⁵⁴ Unlike other treaty bodies which for long built jurisprudence through the complaint procedure, the CoRC has no existing jurisprudence in this thread and highly relied up on its Concluding observations and General Comments.

¹⁵⁵ Henry J. Steiner, “Individual Claims in a World of Massive Violations: What Role for the Human Rights Committee?” in P. Alston and J. Crawford (eds.), *The Future of UN Human Rights Treaty Monitoring*, 2000, p.52

¹⁵⁶ *Id.*, p.51

¹⁵⁷ The Human Rights Committee’s assumption of its exclusive power of interpretation overriding any dissent opinion from State Parties concerning legality of reservations is an extreme expression of the trend on the power of treaty bodies to interpret legality of reservations. A quintessential example in this regard is General Comment 24 of the Human Rights Committee. Under this General Comment, despite the ICCPR has no provision which prohibits reservation, the committee tried to list up reservations illegal in light of the ICCPR and the VCLT. Human Rights Committee, General Comment 24 (52): General comment on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant, *U.N. Doc. CCPR/C/21/Rev.1/Add.6*, 1994

¹⁵⁸ Convention on the Rights of the Child, cited above at note 34, Art.51/2

¹⁵⁹ This provision empowers international organization to decide on legality of reservations on its constituting treaty. The Committee is not an inter-governmental organization or an organization which was constituted as the primary purpose of the Convention and the States are to subscribe in. Vienna Convention on the Law of Treaties, cited above at note 4, Art.20/3

¹⁶⁰ See these concluding observations as instance. Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding observations: Jordan, *CRC/C/JOR/CO/3*, Forty-third session, 29 September 2006, par.11 and Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding observations: Oman, *CRC/C/OMN/CO/2*, Forty-third session, 29 September 2006, par.8.

reservations or to defend their reservations.¹⁶¹ This course of discourse between the CoRC and State Parties reveals that States have tacitly recognized that the CoRC is an authoritative interpreter of the legality of reservations and the mechanism to render such authoritative interpretation is concluding observation.

Another crucial provision of the Convention on which the CoRC exhaustively exerted its interpretation muscle is Article 4 under which States undertake to take appropriate legislative, administrative, and other measures for the implementation of the rights under the Convention. It is clear from the outset that this provision is not readily consumable as the obligations were stipulated in the most general manner. While a State Party is expected to take all measures it deemed appropriate in its context, the CoRC besides examining the measures taken by the State Party, has engaged in suggesting measures it deemed essential for the realization of rights under the Convention.¹⁶²

5.2.3. Relevance of Interpretations of the CoRC to Establish Subsequent Practice

We have seen concluding observations are in fact interpretations of the Convention and States are positive with the power of the CoRC to interpret the Convention. It is also necessary to examine the status of the interpretations *vis a vis* the law of treaties to find out whether the interpretations by concluding observations may be harmonized with the rules of interpretation under the law of treaties.

¹⁶¹ In 2006, the CoRC had requested Thailand to withdraw its reservation to Article 7. See Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding observations: Thailand, [CRC/C/THA/CO/2](#), Forty-first session, 17 March 2006, par.9. Thailand's next periodic report in 2011 confirmed that "Thailand recognizes the concern of the CoRC with regard to Article 7 and has withdrawn its reservation to Article 7 of the CRC". See Committee on the Rights of the Child, Consideration of the reports submitted by States Parties under Article 44 of the Convention, Combined third and fourth periodic reports of States Parties due in 2009: Thailand, [CRC/C/THA/3-4](#), 11 July 2011, par.9 and Footnote 1;

Back in 2002, the CoRC had expressed its concern on Great Britain and Northern Ireland's reservation to Article 37/C of the Convention, a provision which required States to detain children segregating from adults. See Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding observations: United Kingdom of Great Britain and Northern Ireland, [CRC/C/15/Add.188](#), Thirty-first session, 9 October 2002, par.7. In its 2008 State report, Great Britain and Northern Ireland justified the reservation and decided to maintain it. See Committee on the Rights of the Child, Consideration of the reports submitted by States Parties under Article 44 of the Convention, Third and fourth periodic reports of States Parties due in 2007: United Kingdom of Great Britain and Northern Ireland, [CRC/C/GBR/4](#), 16 July 2007, par.17

¹⁶² As instance, the CoRC's concluding observations identically recognize 'National Plan of Action' as indispensable general measure and establishment of human rights institution as essential institutional measure. Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding observations: Ireland, [CRC/C/IRL/CO/2](#), Forty-third session, 29 September 2006, par.10; Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding observations: Mali, [CRC/C/MLI/CO/2](#), Forty-fourth session, 3 May 2007, Par.18.

As one of the principal rules of interpretation, the VCLT adopted that treaties shall be interpreted in light of “any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation.”¹⁶³ A clause which says “establishes the agreement of the parties regarding its interpretation” indicates that one consistent manner of practice shall reflect an agreement among the parties on particular interpretation of the treaty. Therefore, in *strictu sensu* subsequent practice means subsequent State practice. Like other provisions of the VCLT, Art. 31/3/b was written as if no monitoring body had been established by a treaty. Now, given the substantial influence treaty bodies are having on interpretation of human rights treaties, it is important to question whether relevant subsequent practice shall be restricted to subsequent State practice. It is held by International Law Association, congruent with the modified applicability of the VCLT discussed earlier, that it would be inappropriate to limit “subsequent practice” to “subsequent State practice” alone.¹⁶⁴ However it is equally skewed to conclude that interpretations by treaty bodies *per se* reflect an agreement among State Parties. Necessarily sound recipe out of these two arguments is that interpretations by treaty bodies are relevant in initiating a particular line of behavior of States which form subsequent practice.

Therefore, concluding observations of the CoRC can be harmonized with the law of treaties as they may generate an interpretation which may be supported by States and thereby reflect an agreement of States. The CoRC’s interpretations and the fact that they have been accepted and jointly acted upon by States establish subsequent practice.¹⁶⁵ The interpretation of the CoRC may be endorsed by State Parties through practices of the organs of the State, including the courts and legislature.¹⁶⁶ Subsequent practice of these organs may also be tacit approval of a practice by the CoRC.¹⁶⁷

¹⁶³ Vienna Convention on the Law of Treaties, cited above at note 4, Art. 31/3/B; For some scholars, the provision has included both essential elements of a custom: *opinio juris* and State practice, hence a practice to fill the interpretive space is something akin to custom and the rule to ascertain custom shall be employed to establish the practice. See M. Hakimi, Law and Universal Rights, p.2; The possibility for a treaty provision to develop in to a customary law is acceptable. However, an approach which totally overlooks a possibility for treaty provisions to develop independently from being part of developing custom is not tenable. Each practice in accordance with a treaty is relevant as subsequent practice despite that practice may not amount to evidence of custom.

¹⁶⁴ M. O’Flaherty, cited above at note 61, p. 35

¹⁶⁵ K. Mechlem, cited above at note 17, p.16

¹⁶⁶ Id.

¹⁶⁷ International Law Commission, Yearbook, A/CN.4/SER.A/1966/Add.1, vol.II(1966), p.221-222

5.3. Relevance of the CoRC's Concluding Observations to Prove Custom

Art. 38/1/b of the ICJ Statute provides the most authoritative definition of international custom.¹⁶⁸ On the one hand, there must be a State practice, and the practice must be emanated from *opinio juris*.¹⁶⁹ From the perspective of their relevancy to establish and prove custom, practices of international organizations may take two forms. On the one hand, international bodies may act in their own name and their practice represents their own belief.¹⁷⁰ On the other hand, their practices may be expression of the belief of State Parties. Under the second form, we may find the UN General Assembly, which is an inter-governmental organization, and, of which practice, in particular resolutions may be taken as the belief of the general community of States. On the other hand, practices of human rights treaty bodies, of which members are not States, convey the understanding of the body experts instead of State Parties.

Therefore, unlike practices of inter-governmental organizations, the practices of the treaty bodies *per se* neither qualify as State practice nor represent the belief of State Parties. Treaty bodies also have no procedure for States to subscribe to their findings. However, the reporting process and reactions of States to concluding observations are important in demonstrating the practice and belief of States.¹⁷¹ In the field of human rights, inter-state communications are rare and one can find scant State practice accompanied by *opinio juris*.¹⁷² Schachter suggests "looking for practice and *opinio juris* mainly in the international forums where human rights issues are discussed, debated and adopted" is rather best alternative.¹⁷³ Therefore, the overall reporting procedure, from submission of reports to the follow up of concluding observation of the CoRC, provides a record of the belief of States.

¹⁶⁸ A. Cassese, *International Law*, Oxford University Press, New York, 2001, p.156

¹⁶⁹ *Id.*

¹⁷⁰ *Id.*

¹⁷¹ In human rights, emphasis on *opinio juris* helps to compensate for frequent scarcity practice an inconsistent when found. Concluding observations may deservedly take their share of credit in developing modernized notion of international customary human rights law. For more on traditional and modern notions of custom, see International Court of Justice, Judgments, Advisory Opinions and Orders: Case Concerning Military and Paramilitary Activities in and Against Nicaragua (Nicaragua V. United States Of America), Merits Judgment, 27 June 1986; B. Simma and P. Alston, The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles, p.7, I. Brownlie, cited above at note 1, p.8; T. Meron, Humanization of international law, The Hague Academy of International Law, Martinus Nijhoff Publishers, 2006, p.367.

¹⁷² O. Schachter, International Law in Theory and Practice, 1991, p.338

¹⁷³ *Id.*

5.4. Concluding Observations of the CoRC as Subsidiary Means to Determine International Child Rights Law

Apart from the law making procedures considered by the ICJ as primary resort to disposition of cases, the Statute introduced the concept of “subsidiary means” for the determination of rules of law.¹⁷⁴ Judicial decisions and writings of scholars may be utilized as subsidiary means for the determination of rules of law. The provisions of the Statute from Art.38/1/a to Art.38/1/c are purely the rules of international law whereas subparagraph “d” is dedicated for some of the means for determination of the rules of international law. Schwarzenegger framed and presented the taxonomy as the first category involves law-making process while the latter concerns law-determining agencies which do not create new law but say what the existing law is.¹⁷⁵ Therefore, subsidiary sources have evidentiary value and are merely called up on to shed light on the existing laws and to clarify provisions of the law.

However, it is argued that Art. 38/1/d is not all embracing in its enlisting of subsidiary sources.¹⁷⁶ The role which is particularly believed to be played by the teachings of publicists and decisions of tribunals can be played well by other sources.¹⁷⁷ In the same token, it can be rightly observed that, with regard to human rights treaties, findings of treaty bodies composed of experts in respective areas are authoritative tools for determination of binding rules of law enshrined under the treaties.

Concluding observations of the CoRC are interpreting the provisions of Convention in more comprehensive manner through categorization of provisions of the Convention. The recommendations and States’ reactions to the recommendations may also serve as a foundation to extract evidence of the opinion of State to a particular rule which is subject to examination of the customary law test. Hence, beyond the status of “interpretation of the Convention”, the concluding observations of the CoRC are worthy to the status of “subsidiary means” for the determination of the rules of law under the child rights treaties and customary law.

¹⁷⁴ United Nations, cited above at note 2, Art. 38/1/D

¹⁷⁵ Schwarzenegger, cited in G. Van Hoof, cited above at 153, p.170; Similarly Thirlway explained law determining agencies as “The decision or the text will not assert that the law stated there is law because the author or the judge has stated it, it will be stated as so because the judge or the author considers that it derives from the primary sources of international law.” H. Thirlway, *The Sources of International Law*, Oxford university press, 2014, p.117

¹⁷⁶ Vladimir D. Degan, *Sources of International Law*, 1997, P.8

¹⁷⁷ Id.; It is proposed that unilateral acts, General Assembly resolutions, acts of diplomatic conferences and other similar materials are appropriate candidates in this regard.

This assertion is supported by practice of ICJ which in its “Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory” case referred to Concluding observations of the HRC to determine the scope of applicability of the International Covenant on Civil and Political Rights (here in after, ICCPR). The Court takes note the position taken by Israel, in relation to the scope of applicability of the Covenant, in its communications to the HRC, and of the view of the HRC. The court cited concluding observation of HRC on Israel to substantiate a ruling that provisions of the ICCPR apply to the benefit of the population of the Occupied Territories.¹⁷⁸ Here, while the ICCPR is the source of material rules for disposition of the case; the concluding observations of the HRC are used to shed a light on those material rules. Therefore, having in mind the fact that concluding observations of the CoRC are also interpretations of already established rules, it necessarily followed that these observations are important guide towards the primary sources of international child rights law; they are subsidiary means to determine rules of law.

5.5. Concluding Observations of the CoRC and the Universal Periodic Review: A Value Added?

Universal Periodic Review (UPR) is a peer review mechanism established by a resolution to establish the Human Rights Council.¹⁷⁹ One of the documents which serve as input for a dialogue is summary of State under Review (SuR) reports to Treaty Bodies and the latter’s recommendations.¹⁸⁰ The outcome report of the review consists of the questions, comments and recommendations made by States to SuR, as well as the responses by the SuR.¹⁸¹

It is reported that approximately one fifth of all points made across the UPR process are children's rights.¹⁸² An issue relevant for this paper is whether the recommendations of the CoRC will add value in their status after they are endorsed by a group of States which designated as representative of a community of the whole member States to the UN. It was emphasized that the

¹⁷⁸ International Court of Justice, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, no.131, 9 July 2004, par.110

¹⁷⁹ United Nations General Assembly Resolution 60/251, Human Rights Council, A/RES/60/251, 3 April 2006. The UPR review is conducted by a working group of the UN Human Rights Council called the UPR Working Group (which in practice is all 47 members of the UN Human Rights Council) and the Troika (representatives from 3 countries in the UPR Working Group). This charter based mechanism assesses how countries respect the commitments they made and agreements that they signed under international law. See www.upr-info.org/upr-process/what-is-it last visited on 10/6/2015

¹⁸⁰ See www.upr-info.org/upr-process/what-is-it last visited on 10/6/2015

¹⁸¹ Id.

¹⁸² Child Rights Information Network, Universal Periodic Review: The Status of Children's Rights, 2010, p.10

UPR would complement and not replace the reporting procedures.¹⁸³ Though quality of the recommendations under UPR is subject to scrutiny,¹⁸⁴ the UPR has something to supplement the treaty based mechanisms, particularly with regard to the legitimacy of recommendations of the Treaty Bodies.

By peer review mechanism, UPR reintroduced the reciprocal sense of obligations integral to international law into international human rights law. As such, the implication is on maintaining the authority of States beyond the making of international human rights law to an interpretation and supervision of implementation. As a field on which the recommendations of the CoRC are at disposal for discourse among States, UPR is the right place to find the perception of “a group of community of interpreters” or States towards particular practice of the CoRC and to ascertain understanding of States concerning particular obligations under the Convention. The system of declaration of acceptance or rejection enables a streamlined analysis of the consent of the States/State towards a prior recommendation by the CoRC.¹⁸⁵ Besides, since the State delegations to the UPR usually include high ranking officials with political influence, recommendations accepted by a SuR reflect a stronger political commitment from the SuR to implement them before the next review.¹⁸⁶

¹⁸³ Felice D. Gaer, A Voice Not an Echo: “Universal Periodic Review and the UN Treaty Body System”, Human Rights Law Review, (vol7:1, 2007), Oxford University Press, p.2; United Nations General Assembly Resolution 60/251, cited above at note 143, Par.5/E

¹⁸⁴ Though the content of UPR recommendations is generally similar to the CoRC’s concluding observations, they tend to be more general. The UPR may not be specific and exhaustive as the CoRC since the Human Rights Council is expected to deal with bulk of human rights obligations to which the SuR is a Party. It is also worth to note that there may be deficiency in expertise as the UPR recommendations are grossly issued by States which forms the working group in contrast to a committee of experts.

¹⁸⁵ For instance, in the first cycle UPR and early second cycle, corporal punishment has been raised in the examination of many States, and more than 80 have accepted recommendations to prohibit it. Source: Child Rights Information Network website www.crin.org

¹⁸⁶ UPR INFO and Child Rights Connect, Fact sheet 1, The Universal Periodic Review: Information for NGOs, p.2

Chapter Six: The Status of Concluding Observations of CoRC in Ethiopia

6.1. Introduction

The previous chapters showed that concluding observations of the CoRC are legally relevant as norm initiating, interpreting and determining mechanism. Concluding observations impose soft obligations on State Parties. This chapter explores the sense of compliance from the interaction between the Ethiopian Government and the CoRC. The “evolutive” approach of interpretation enables the CoRC’s concluding observations to progressively introduce new or modified child rights norms. The law making impact of the concluding observations is not limited to the international child rights system. This chapter investigates the influence of concluding observations of the CoRC on Ethiopia’s laws which are relevant for children. Concluding observations of the CoRC are also important tools through which the body of international child rights law is being interpreted. In the interpretative community, the other side of players is composed of State agencies and other domestic actors working on child rights. The chapter analyzes impact of concluding observations on the interpretation of child rights by the domestic community of interpreters.

6.2. Status of Child Rights Treaties in Ethiopia

Ethiopia is a Party to major bills of child rights.¹⁸⁷ We can identify disparities on the level of measures taken to integrate those treaties with the national system of child rights protection. The disparity begins from the earliest stage of adopting the treaties through an official instrument. The Parliament proclaimed only the ratification of Convention, the African Charter on the Rights and Welfare of the Child (here in after, ACRWC) and the Palermo Protocol through an Official Federal Negarit Gazeta.¹⁸⁸ While the Parliament proclaimed many bilateral agreements, it is bizarre to found a number of multilateral and international agreements that are not published. Another difference emanates from presence of comparable provisions into domestic laws. There

¹⁸⁷ Ethiopia accedes to the Convention in 1991, to the OPSC on March 2014 and to the OPAC on May 2014. Ethiopia is also a Party to the African Charter on the Rights and Welfare of the Child from October 2002 on-wards. In April 2012, Ethiopia has ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol). The Ethiopian Government has also ratified series of ILO Conventions including Convention on Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (No.182) and Minimum Age Convention (No.138).

¹⁸⁸ The Convention was ratified by Proclamation No. 10/1992. The ACRWC was ratified by virtue of: A Proclamation to Ratify the African Charter on the Rights and Welfare of the Child, 2002, Proc. No. 283/2002, Fed. Nag. Gaz., year 8, no.31 and The Palermo Protocol was ratified by: Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children Ratification Proclamation, 2012, Proc. No. 737/2012, Fed. Neg. Gaz., year 18, no.26

are at least three broad and easily perceptible groups of the child rights provisions based on the mode of incorporation in to domestic laws. First, there are few child rights entrenched under the Constitution.¹⁸⁹ There are other rights which, though not expressly guaranteed by the Constitution, are transformed through an amendment or enactment of ordinary legislations.¹⁹⁰ Finally there are other rights with no corresponding harmonized law in the country. For instance, the CoRC expressed its concern on inconsistency of domestic standards on juvenile justice with the international laws.¹⁹¹

6.3. Ethiopia and Concluding observations of the CoRC

6.3.1. Ethiopia's History of Reporting to the CoRC

Ethiopia is not subject to the third Optional Protocol on Complaints Procedures.¹⁹² The repercussion is that, the reporting procedure remains the primary mechanism available for international and regional child rights monitoring bodies to oversee compliance of Ethiopia with child rights laws.

¹⁸⁹ The Constitution of the Federal Democratic Republic of Ethiopia: A Proclamation to Pronounce the Coming in to Effect of the Constitution of the Federal Democratic Republic of Ethiopia, 1995, Art.36, Proc. No.1/1995, *Fed. Neg. Gaz.*, year 1, no.1; The FDRE Constitution, unlike its predecessors, explicitly recognized children as holder of rights; and it imposed obligations on the State and others to protect and respect those rights. Though States are under obligation to take legislative measures to realize rights of the child, neither the Convention nor the ACRWC oblige State Parties to incorporate child rights provisions of the treaties in to their Constitution. With all due respect to the Constitutional entrenchment of rights of the child, the policy justification behind the choice for child rights which have secured a place in the FDRE Constitution remains blurred. For instance, when we examine the respective recognition given for the four cardinal principles in the Constitution, the “best interest of the child” and the “right to life” are the only principles of child rights explicitly recognized by the Constitution. The general provision on “the right to equality” may also be called to represent “the principle of non-discrimination”. But when we come to the “principle of participation”, there is no comparable provision in the Constitution. “The right to expression” is not equivalent with the broader concept of “the right to be heard” as recognized under the Convention and the ACRWC. Without prejudice to indivisibility of human rights, one may also appreciate the omission of child rights which are more urging in the Ethiopian context. In a country where many children were undernourished and had no access to schools at the time of adoption of the Constitution, specific recognition to health and education of the child must have been more insistent than the right to name of the child.

¹⁹⁰ The Revised Family Code, the Revised Criminal Code and the Labour and Civil Servant Proclamations are solid outputs of this harmonization process.

¹⁹¹ Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding observations on the Combined Fourth and Fifth Report: Ethiopia, *CRC/C/ETH/CO/4-5*, 2024th meeting, 5 June 2015, par.72

¹⁹² *Id.*, par.73; One of the recommendations of the CoRC, which has just reviewed Ethiopia's combined fourth and fifth periodic report, insinuate Ethiopia to consider the ratification of the Protocol.. The African Commission on Human and People's Rights remains the only human rights monitoring institution, to which Ethiopia has submitted through the Banjul Charter, to litigate complaints alleged against Ethiopia. See African Charter on Human and Peoples' Rights, *OAU Doc. CAB/LEG/67/3 rev. 5*, 21 I.L.M. 58, 1981(entered into force 21 October 1986), Art.47 and Art.55

The Ministry of Foreign Affairs (here in after, MoFA) is empowered to enforce rights and obligations that arise from treaties that Ethiopia ratified unless specific power is delegated to other organs.¹⁹³ Enforcement of treaties, *inter alia*, includes enforcement of the reporting obligation of the State. The MoFA has taken the leading role in the coordination and presentation of reports that Ethiopia submitted to human rights bodies.¹⁹⁴ In 2009, a massive reporting project was conducted with the objective to prepare long over-due reports to CAT, CESCR and the HRC.¹⁹⁵

The power of MoFA is without prejudice to powers delegated to other organs. In this regard, treaties on rights of children and women are entrusted to a special organ.¹⁹⁶ The Ministry of Women, Youth and Child Affairs (MoWYCA) is the duty holder to follow up implementation of treaties relating to women and children and submit reports to concerned bodies.¹⁹⁷ The obligation to report on child rights situation resides on an organ which takes responsibility to enforce treaties on child rights. A primary problem resides on the reporting procedure is lack of trans-temporal organ permanently engaged with the reporting affairs.¹⁹⁸

¹⁹³ A Proclamation to Provide for the Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia, 2010, Art.15/4, Proc. No.691/2010, Fed. Neg. Gaz., year 17, no.1

¹⁹⁴ It is interesting, for instance, that all Ethiopian delegates to the one and only review of Ethiopia's report to CESCR in 2012 were staffs of the MoFA. Source: A letter of delegation from the Ministry of Foreign Affairs

¹⁹⁵ The project has also prepared a "core document" common reference source for all treaty bodies in monitoring human right in Ethiopia. See United Nations, Core Document Forming the Initial Part of the Reports of States Parties: Ethiopia, HRI/CORE/ETH/2008 , 6 February 2009; This document which was submitted in 2008 is still in operation. Taking in to account this, the CoRC recommended Ethiopia to submit an updated core document. Concluding Observation on Combined Fourth and Fifth Report: Ethiopia, cited above at note 191, par.78

¹⁹⁶ Child affairs under the FDRE Government was the power of the Ministry of Labour and Social Affairs (here in after, MoLSA) and the Ministry of Women (here in after, MoW). See A Proclamation to Provide for the Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia, 1995, Art.20/9, Proc. No.4/1995, Fed. Neg. Gaz., year 1, no.4 and A Proclamation to Provide for the Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia, 2005, Art.29/8, Proc. No. 471/2005, Fed. Neg. Gaz., year 12, no.1 respectively. A critique that the institutional framework for the implementation of the child rights treaties lack clear legal basis is, consequently, a skewed vision. See for the opinion: Center for Human Rights Studies, Baseline Study for a Comprehensive Child Law in Ethiopia, Addis Ababa University, September 2013, p.141

¹⁹⁷ A Proclamation to Provide for the Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia, 2010, cited above at note 193, Art.32/10. At the final stages of this research, the parliament has enacted a Proclamation to amend the cited Proclamation. According to Government Media outlets, the Ministry of Women, Youth and Children Affairs is restructured to Ministry of Women and Children Affairs which will definitely succeed the power of MoWYCA regarding the power to report on child rights.

¹⁹⁸ Concerning generally applicable treaties of which implementation is not delegated to a centralized coordinating organ unlike child rights treaties; there shall be a permanent mechanism which shall be entrusted for coordinating the reporting procedure. Though the 2009 project initiative was a good omen, it could not overcome the temporality problem prevalent on the reporting procedure as the reports and the core document were prepared by ad-hoc inter-ministerial committees. A look in to the core document indicates that there was a plan to establish a permanent

So far, Ethiopia submitted four reports to the CoRC.¹⁹⁹ Despite clear centralization of the power to report, the reports assert that other Ministries have not been foreclosed from partaking in the process.²⁰⁰ The Ethiopian Human rights Commission (here in after, EHRC) has also the power to forward its opinion on human rights reports to be submitted to international organs.²⁰¹

Regarding the constructive dialogue, the composition of delegations has no a regular picture. One may witness well considered diversity in the delegation to the third periodic report which included Chief Commissioner of the EHRC, the Vice-president of the Federal Supreme Court, Members of the Parliament and representatives from various Ministries. Unfortunately, the delegation to the recent combined fourth and fifth periodic report did not include a representative from those organs while five staffs from a Ministry, MoWYCA, were sent for the dialogue. Well organized and comprehensive written submission cannot meet its informative objective without being accompanied by a quality delegation which can explain the facts and give supplementary information. It is important to take in to account that the making of a delegation shall serve two purposes; one, the group must be composed of individuals who are in the right position to make the merit based discussion with the CoRC and two, the members of the delegation shall also be officials capable of influencing domestic policies and enforcement of child rights on the basis of the exchange of ideas with the CoRC.

committee entrusted to the reporting procedure. United Nations, cited above at note 195, par.256; The EHRC has also, on another occasion, recommended the House of People's Representative to take steps to establish a permanent public organ that shall take ownership of the reporting obligation. See Ethiopian Human Rights Commission, Inaugural Report, February 2011, Addis Ababa, Ethiopia, p.113; The implication of permanent institutional structure is highly positive from the perspective of effectiveness of concluding observation since the structure will essentially establish a procedure to disseminate concluding observations and organize structured post-reporting conferences on concluding observations. This in turn is an important leeway for the recommendations to affect domestic decision making process. This forecast was validated by the core document itself which hinted that one of the responsibilities of the committee was planned to be "to oversee the dissemination of the treaty bodies' recommendations." See United Nations, cited above at note 195, par.257

¹⁹⁹ The initial and second periodic reports were prepared by the MoLSA. Whilst the third reporting process was led by the MoW, the recent report was managed by the MoWYCA. An initial report was submitted in 1995 while the second and third periodic reports were made in 1998 and 2005 respectively. The combined fourth and fifth periodic reports were submitted in 2012 while the dialogue was held in mid-2015.

²⁰⁰ The reports were claimed to be prepared with active participation of the Ministries of Justice, Education, Health, and other key organs including NGOs working on child rights. See Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under Article 44 of the Convention, Initial Report: Ethiopia, CRC/C/8/Add.27, 12 September 1995, par.2; Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under Article 44 of the Convention, Second Periodic Report: Ethiopia, CRC/C/70/Add.7, 23 March 2000, par.1.

²⁰¹ Ethiopian Human Rights Commission Establishment Proclamation, 2000, Art.6/7, Proc. No. 210/2000, Fed. Neg. Gaz., year 6, no.40

Concerning participation of NGOs, there is a critique that preparation of the reports overlooked guidelines on the participation of stakeholders, especially NGOs.²⁰² The combined fourth and fifth report, on the other hand, claimed that national and international NGOs were consulted in the process of fact finding.²⁰³ The report also remarked that NGOs participated in a consultative meeting to validate the country report in line with previous recommendations and country situation.²⁰⁴ It is also inappropriate to disregard the technical and financial support that NGOs, in particular the UNICEF is offering for preparation of reports.²⁰⁵ But, participation of NGOs in submission of alternative reports is invisible. The most recent report to the CoRC recorded that four NGOs took part in submitting alternative reports.²⁰⁶ When one notices the fact that all these alternative reports were submitted by NGOs reside abroad, a suspicion on domestic environment for NGOs is understandable.

However, the reporting history of Ethiopia to the CoRC remains a commendable experience compared to reports delegated to MoFA. One may take note of the facts that initial reports to the HRC and CESCR were made after 17 years of delay and an initial report to CAT took 14 years.²⁰⁷ Hence, it was rightly appreciated that Ethiopia has very mixed reporting record, with an excellent performance under the Convention and a fair one under the CEDAW, but very poor under the other treaties.²⁰⁸ It can be agreed that the Government is more open to be challenged by experts of the CoRC and to subject its policies and laws to their scrutiny. This excellent reporting history may also be partly attributable to availability of high technical and financial support from the UNICEF and other domestic and international NGOs.²⁰⁹

Though the compliance to deadlines of submission of reports to the CoRC is going well compared to other treaties, there is still a room for improvement. It is necessary to note that the

²⁰² See Center for Human Rights Studies, cited above at note 196, p.131

²⁰³ Concluding observation on the Combined Fourth and Fifth Report: Ethiopia, cited above at note 191, par. 8

²⁰⁴ Id., par.9

²⁰⁵ See Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under Article 44 of the Convention, Combined Fourth and Fifth Report: Ethiopia, CRC/C/ETH/4-5, 23 December 2013, par.10

²⁰⁶ http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/LateReporting.aspx last visited on 26/9/2015

²⁰⁷ Id.; There are also four periodic reports which are currently overdue, one each on ICCPR, CEDAW, CERD and CAT.

²⁰⁸ E. Brems, "Ethiopia Before the United Nations Treaty Monitoring Bodies", Afrika Focus, vol.20(2007), no.1-2, Ghent University, p.53

²⁰⁹ For instance the Government acknowledged that UNICEF provided the financial and technical resources required for preparation of combined fourth and fifth report. See Combined Fourth and Fifth Report: Ethiopia, cited above at note 205, par.10

initial report and the third periodic reports were each two years overdue and the consolidated fourth and fifth periodic report was one year overdue. Another concern shadowed the reporting procedure is the time gap between submission of State report and adoption of concluding observations. Typically, we can see that the CoRC adopted concluding observations on the initial report of Ethiopia two years after the submission of the State report. Concluding observation on the second report and combined fourth and fifth periodic reports were made three years past the submission of the reports. Though a possible gap with regard to new developments may be filled with information exchange in the constructive dialogue, the time gap between the submission of State report and adoption of the concluding observations entail a concluding observation which fails to fully depict the updated picture of child rights situation in a State Party.

The Convention imposes a procedural obligation to publicize and disseminate reporting documents to all concerned organs which are required to consider the recommendations in decisions which affect children.²¹⁰ Concluding observations of the CoRC shall be widely available if they are supposed to make real impact. Contextual understanding of the instruments necessitates the publication and dissemination of Ethiopia's human rights reports and feedbacks to the reports. However, it is argued that in view of this obligation, Ethiopia's effort is almost zero.²¹¹ The EHRC and the MoWYCA take the responsibility to disseminate concluding observations and prepare post-reporting conferences.

States adopted various strategies to make recommendations of treaty bodies widely accessible to the lay people. For instance Finland published concluding observations in the publication series of the Ministry for Foreign Affairs and in Sweden, the observations are available online through the Ministry of Foreign Affairs Website.²¹² The EHRC which has a duty to translate and disperse international human rights instruments adopted by Ethiopia,²¹³ and the MoWYCA which is particularly responsible on child rights reporting are expected to craft an organized system of disseminating the human rights audit reports beyond institutional settings.

²¹⁰ Convention on the Rights of the Child, cited above at note 34, Art. 44/6

²¹¹ The African Child Policy Forum, Harmonization of laws relating to children: Ethiopia, p.39; The EHRC, on the other hand, claims that it has so far translated and disseminated a number of concluding observations to various concerned organs. But it's confessed by the EHRC that the practice of the commission is piecemeal and the documents are not accessible outside the institutional settings to the larger public.

²¹² See H. Niemi, National Implementation of Findings by United Nations Human Rights Treaty Bodies: A Comparative Study, Institute for Human Rights, Abo Akademi University, December 2003, p.26

²¹³ See Ethiopian Human Rights Commission Establishment Proclamation, 2000, cited above at note 201, Art.6/8

6.3.2. Concluding Observations of CoRC and Ethiopia's Responses *vis a vis* Sense of Compliance with Recommendations of the CoRC

6.3.2.1. Initial Report

The concluding observation on the initial report was made in the period of building new system of law in the country. The Ethiopian Government reported that it had taken legislative and institutional measures that were necessarily for the realization of the rights of the child.²¹⁴ But poor socio-economic condition of the country and lack of adequate implementation mechanisms were pointed as fundamental obstacles in realization of the rights of the child.²¹⁵

The delegation of Ethiopia positively accepted critiques and admit problems.²¹⁶ The CoRC also recognized self-critical approach of the Ethiopian delegation.²¹⁷ For instance, one of the delegates pledged that "the comments made by members of the CoRC regarding corporal punishment would be duly taken into account, as would their observations concerning the age of criminal responsibility."²¹⁸ While the delegation assured that the recommendations of the CoRC would be duly passed on to competent authorities,²¹⁹ the CoRC thanked the delegation for "the positive way in which it had accepted the CoRC's recommendations".²²⁰ The cooperation that the Ethiopian Government showed to the procedure of the CoRC was admired by the CoRC forefront.²²¹ Particularly, the CoRC appreciated the replies of the Government to the list of issues.²²²

The CoRC's concluding observation primarily appreciated the guarantee of child rights under the Transitional Charter and the draft Federal Constitution, the harmonization process and the place

²¹⁴ The Government reported the ratification and publication of the Convention and the establishment of the MoLSA to take responsibility on child affairs. Initial report: Ethiopia, cited above at note 200, par.3

²¹⁵ *Id.*, par. 7, 8 and 13

²¹⁶ The delegation, for instance, admitted that there were no special measures adopted for AIDS orphaned children though it tried to mitigate the failure by indicating that five AIDS orphaned children had been placed in establishments in Addis Ababa. See Committee on the Rights of the Child, Summary Record of the 349th Meeting, CRC/C/SR.349, 5 March 1997, par.19. However, the delegation also approached some gaps identified by members of the CoRC by rejecting either the problem or defending that appropriate measures were being taken. One may note the defense that lack of registration system was not affecting the rights of the child. See Committee on the Rights of the Child, Summary Record of the 350th Meeting, CRC/C/SR.350, 16 January 1997, par.40

²¹⁷ Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding observations on Initial Report: Ethiopia, CRC/C/15/Add.67, Fourteenth session, 24 January 1997, par.2

²¹⁸ *Id.*, par.36

²¹⁹ *Id.*, par.2

²²⁰ Summary Record of the 350th, cited above at note 216, par.53

²²¹ *Id.*, par.2

²²² *Id.*

given for international law under the Constitution.²²³ However, the CoRC stressed that international instruments should have a direct influence on legislation adopted or envisaged by the States Party.²²⁴ HIV/AIDS, which was highly affecting children of Ethiopia, raised as major concern of the CoRC.²²⁵ There were also recommendations concerning harmful traditional practices, coordination, training, data collection, juvenile justice, child abuse, child labor and adoption.²²⁶

6.3.2.2. Second Periodic Report

Up on the conclusion of considering the initial report, the CoRC requested submission of interim information on measures taken to implement recommendations made by the CoRC. The CoRC also expressed its hope that Ethiopia would submit the interim report within two to three years.²²⁷ However, there are no documented interim replies given before the second periodic report.

The concluding observation on the initial report required the second periodic report to incorporate information on actions taken to implement recommendations.²²⁸ The second periodic report confirmed that information on the recommendations of the CoRC was incorporated.²²⁹ Further, the report identified previous concerns of the CoRC and accompanied them with measures taken by the Government to address the concerns. The Government established a firm belief that the recommendation of the CoRC on seeking international assistance was crucial in realization of socio-economic rights of children.²³⁰ Citing specific paragraph from previous concluding observation on the necessity of independent human rights institution, the second periodic report presented that the establishment of the EHRC “reinforces the recommendation of the CoRC”.²³¹

In other cases, the Ethiopian Government informed that it is progressively addressing the recommendations of the CoRC. Regarding minimum age for marriage, the report indicated that

²²³ Concluding observations on Initial Report: Ethiopia, cited above at note 217, pars.3-6

²²⁴ Summary Record of the 349th Meeting, cited above at note 216, par.15

²²⁵ Concluding observations on Initial Report: Ethiopia, cited above at note 217, par 20, 28 and 35

²²⁶ Id.

²²⁷ Committee on the Rights of the Child, Summary Record of the 675th Meeting, CRC/C/SR.675, 15 November 2001, par.42

²²⁸ Concluding observations on Initial Report: Ethiopia, cited above at note 217, par.37

²²⁹ Second Periodic Report: Ethiopia, cited above at note 200, par.2

²³⁰ Id., par.98. It was reported that Economic problems which were hindering the implementation of the Convention had been challenged in collaboration with international organizations and NGOs as suggested by the Committee. See Id., par.6

²³¹ Id., par.12

“there has been willingness on the part of the Government to amend such provisions and the recommendation of the CoRC are being addressed.”²³² More clearly, the report declared that “the recommendation of the CoRC concerning the development of a primary health-care system is being implemented by the Government.” There were also some cases in which, though the Government is not fully complying with recommendation of the CoRC, it reaffirmed the support for the suggestions of the CoRC. For instance, the report remarked that a recommendation of the CoRC on birth registration is compatible with the perspectives of the Ethiopian Government.²³³ Despite bulk of measures were listed by the report, the CoRC expressed its disappointment that the recommendations made by the CoRC had not been fully taken into account.²³⁴

The CoRC, at the end, appreciated that the period between the initial report and the second report was a period which witnessed major positive developments in connection with child rights. Adoption of new family code, ratification of basic ILO Conventions, establishment of independent human rights institutions and translation of the Convention were some of the extolled developments.²³⁵ The CoRC also recommended Ethiopia to consider ratification of the two Optional Protocols.²³⁶ Other problems on which the CoRC expressed its deep concern include birth registration,²³⁷ infant mortality,²³⁸ female genital mutilation²³⁹ and sexual exploitation.²⁴⁰

6.3.2.3. Third Periodic Report

Unlike the initial concluding observation, the second concluding observation of the CoRC did not include a paragraph to request a follow up information into the next periodic report. The nexus built, under the third periodic report, between measures taken by the Government and previous recommendations of the CoRC was loose compared to the second periodic report. The CoRC also expressed, in the dialogue, its discontent with lack of information on how Ethiopia

²³² Id., par.9

²³³ Id., par.40

²³⁴ Summary Record of the 675th Meeting, cited above at note 227, par.6

²³⁵ Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding observations on Second Periodic Report: Ethiopia, [CRC/C/15/Add.144](#), Twenty-sixth session, 21 February 2001, pars.3-9

²³⁶ Id., par.78

²³⁷ Id., par. 34

²³⁸ Id., par.52

²³⁹ Id., par.64

²⁴⁰ Id., par.72

had dealt with the CoRC's previous recommendations.²⁴¹ Save for that, the third periodic report tried to incorporate the status of some of the previous recommendations.²⁴² For instance, the minimum age for marriage was reported to be fixed as per the recommendation of the CoRC.²⁴³ Similarly, the Government reported that it is doing its best to establish effective registration system as per the recommendation of the CoRC.²⁴⁴

Major achievements during a period after the second periodic report were the Revised Criminal Code²⁴⁵ and the National Plan of Action on Children.²⁴⁶ The review on the third periodic report also recognized the ratification of ACRWC as important step forward.²⁴⁷ However, the CoRC recommended a need to make comprehensive child law reform.²⁴⁸ Generally, areas on which the CoRC expressed its serious concern include violence,²⁴⁹ street children,²⁵⁰ economic exploitation,²⁵¹ birth registration,²⁵² and infant mortality.²⁵³ Controversially, the CoRC expressed its concern regarding the right to life and survival of the child based on the alleged excessive use of force by the Government during post-2005 election violence.²⁵⁴

6.3.2.4. Combined Fourth and Fifth Report

The CoRC recommended Ethiopia to disseminate recommendations on third periodic report to concerned body for consideration and to take appropriate actions to implement the recommendations.²⁵⁵ Ethiopia reported in its combined fourth and fifth State report that it has made extensive efforts to implement the previous recommendations.²⁵⁶ The report also testified

²⁴¹ Committee on the Rights of the Child, Summary Record of the 1162nd Meeting, CRC/C/SR.1162, 21 September 2006, par.11

²⁴² Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under Article 44 of the Convention, Third Periodic Report: Ethiopia, CRC/C/129/Add.8, 28 October 2005, Foreword, sec.iii

²⁴³ Id., par.58

²⁴⁴ Id., par.85

²⁴⁵ The code has *inter alia* criminalized trafficking and harmful traditional practices. Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding observation on Third Periodic Report: Ethiopia, CRC/C/ETH/CO/3, Forty-third session, 1 November 2006, par.3/B

²⁴⁶ Id., par.3/D

²⁴⁷ Id., par.5/B

²⁴⁸ Id., par.9

²⁴⁹ Id., par.35

²⁵⁰ Id., par.69

²⁵¹ Id., par.71

²⁵² Id., par.31

²⁵³ Id., par.53

²⁵⁴ Id., par.27

²⁵⁵ Id., par.82

²⁵⁶ Combined Fourth and Fifth Report: Ethiopia cited above at note 205, par.11

that it was prepared mainly with the guidance of previous recommendations.²⁵⁷ It was reported that stakeholders from Governmental organs and NGOs also evaluated the report *vis a vis* previous concluding observation.²⁵⁸ However, the report made only few relations between specific measures and previous comments. List of measures taken with reference to the CoRC's recommendations on refugee children is one instance.²⁵⁹ It was also reported that various measures had been taken pursuant to the CoRC's recommendations on juvenile justice.²⁶⁰ The same sort of nexus was made concerning economic exploitation and child labour,²⁶¹ exploitation and sexual abuse²⁶² and sales and trafficking.²⁶³

Another development recorded by the CoRC is the participation of NGOs through submission of shadow reports. Though the shadow reports were submitted by overseas NGOs, they played important role in authenticating claims of the Government on the compliance to the Convention and previous recommendations. The State report, for instance, claimed that the enactment of the Charities and Societies Proclamation had created conducive environment for NGOs.²⁶⁴ A joint submission by NGOs which reminded previous recommendation of the CoRC, on the other hand, accused the Government for restricting the activities of NGOs through the enactment of the Proclamation.²⁶⁵ Had it not been for this information from NGOs, the CoRC's recommendation that the Proclamation shall be repealed would not have been given.²⁶⁶

The CoRC, after conducting an exchange of ideas with delegation of Ethiopia, expressed its recognition and concerns. With an appreciation to various legislative and policy measures taken by the Government for the realization of child, the CoRC forwarded its serious frustration on areas of restrictive environment for NGOs,²⁶⁷ child sexual abuse,²⁶⁸ violence against children,²⁶⁹

²⁵⁷ Id., Foreword

²⁵⁸ Id., par.9

²⁵⁹ Id., par.281

²⁶⁰ Id., par.285

²⁶¹ Id., par.300

²⁶² Id., par.301

²⁶³ Id., par.313

²⁶⁴ Id., par.65

²⁶⁵ The Advocates for Human Rights and The International Oromo Youth Association, Ethiopia's Compliance with the Convention on the Rights of the Child, Report for the Pre-Sessional Working Group of the Committee on the Rights of the Child, 69th Session of the Committee on the Rights of the Child, Geneva, 22-26 September 2014 par.11

²⁶⁶ Concluding observation on Combined Fourth and Fifth Report: Ethiopia, cited above at note 191, par.20/A

²⁶⁷ Id., par.19

²⁶⁸ Id., par.43

harmful traditional practices²⁷⁰ and children with disabilities.²⁷¹ The CoRC also suggested the ratification of the third Optional Protocol and other Protocols which similarly established an individual complaints procedure.²⁷²

6.3.3. Recommendations of the CoRC as Soft Laws: Analysis on the Trend of Ethiopia's Reporting Participation and Reactions to the Concluding observations

This section is dedicated to a critical appraisal on participation of Ethiopia in the reporting process and its reactions to the concluding observations and particularly to the recommendations. With the case of Ethiopia, this analysis shows that concluding observations of the CoRC are soft laws which trigger expectations and produce sense of compliance. The Government of Ethiopia is not legally accountable to give effect for a recommendation of any external entity.²⁷³ However, the Government is aware, at the moment of the adoption of concluding observations, the fact that that there are certain expectations it needs to satisfy.²⁷⁴

The CoRC regularly praised the commitment of the Ethiopian Government to the reporting procedure. The commitment of a State Party to a reporting procedure may be evaluated from the viewpoint of compliance with the deadlines of submission, prompt and sufficient replies to the list of issues, quality of delegation and in-dialogue and subsequent pledges from the State. The almost-ideal observance of the Ethiopian Government to the periodicity of reporting to the Convention deserves to be acknowledged as model for reporting to other treaty bodies.²⁷⁵ Besides, the CoRC regularly appreciated, may be as a matter of routine, the composition of

²⁶⁹ Id., par.45

²⁷⁰ Id., par.47

²⁷¹ Id., par.53

²⁷² Id., pars.73 and 74. The due date to the next periodic report was fixed to be 12 June 2020 and the CoRC indicated that sixth and seventh periodic reports shall be submitted in combination.

²⁷³ The issue of bindingness determines the level of accountability of a State Party at the international human rights system. R. Van Alebeek and P.A. Nollkaemper, The legal status of decisions by Human Rights Treaty Bodies in national law, P. 1, online available at <http://hdl.handle.net/11245/2.109408>, last visited on 22/6/2015. As representing a sovereign State, the Government is only bound to undertakings which are concluded in compliance with the prescribed procedures of international law making with due consideration to national interests as clearly directed by the foreign relations policy principle. See Constitution of the Federal Democratic Republic of Ethiopia, cited above at note 189, Art. 86/1

²⁷⁴ Ethiopia's foreign policy recognizes that international organizations to which Ethiopia is a party may formulate laws that affect inter-State relations. Hence, it is apparent admission that human rights monitoring bodies like the CoRC may put their influence on the international norm creation and interpretation process. See Ministry of Information Press and Audiovisual Department, The Federal Democratic Republic of Ethiopia Foreign Affairs and National Security Policy and Strategy, November 2002, sec.7.1

²⁷⁵ "Ethiopia has an outstanding experience in reporting to the Committee on the Rights of the Child." E. Brems, cited above at note 208, p.53

delegation by the Ethiopian Government as high-level representative²⁷⁶ and cross-sectional delegation.²⁷⁷

Though the CoRC lacks a formal procedure of acceptance and rejection of the outcomes of the reporting process, a State Party under review is allowed to forward its comments on the observations. A practice to give formal and written comments on the recommendations is generally rare and States usually express their opinion in/at the end of the constructive dialogue.²⁷⁸ When we examine the reactions to concluding observations on initial report as instance, the delegation of Ethiopia pledged that the suggestions and recommendations made during the dialogue would be duly taken into account by the Ethiopian authorities.²⁷⁹ Ethiopia's delegations regularly used the words "Ethiopia welcomes", "Ethiopia accepts" and "The Government will duly take in to account" in their closing Statements. These final Statements of the delegations were mainly framed in a way to give the CoRC promises of action and impose on one's State undertakings to alleviate problems identified and to strengthen measures which were underway to improve child rights conditions.

Subsequent State reports are primary means to evaluate whether the State complied with its promises and the CoRC's recommendations. Except for a request to submit interim report on concluding observation of the initial report, the CoRC continued to require Ethiopia to incorporate follow up information into next report.²⁸⁰ Measures taken shall be carefully associated with recommendations rendered by the CoRC. It can be concluded based on facts under the previous section that Ethiopia's reports did not make comprehensive nexus between the reported measures and previous recommendations. The combined fourth and fifth report declared to give high level of attention for previous recommendations. The combined report expressly indicated the fact that previous recommendations have guided the preparation of the report. It was also stated that the report was subject to dialogue with stakeholders to evaluate whether the previous comments were duly implemented. Shadow reports of NGOs performed

²⁷⁶ Concluding observation on Second Periodic Report: Ethiopia, cited above at note 235, par.2

²⁷⁷ Concluding observation on Third Periodic Report: Ethiopia, cited above at note 245, par.2; The quality of the delegation was praised as essential for high quality dialogue and shows serious attention given by the Government to the reporting procedure. Actually, the diversity in the delegation to the dialogue was highly reduced under the combined fourth and fifth State report.

²⁷⁸ It's interesting to note that the MoWYCA has no knowledge on the procedure that the reporting State may give official responses to the comments of the CoRC.

²⁷⁹ Concluding observation on Initial Report: Ethiopia, cited above at note 217, par.2

²⁸⁰ *Id.*, par.37

better by more rigorously substantiating facts with previous recommendations. The shadow reports also tried to create an impression of duty to report on implementation of recommendations by accusing the Ethiopian Government for not specifically responding on what was done in accordance with previous recommendations.²⁸¹

Carefully identifying measures associated, by the Government reports, to previous recommendations, we can see trends of expressions like “reinforced”, “addressed”, “is well taken” and “is being implemented”. But stronger cause and effect relationship is apparent from the expressions in the reports: such as “in line with”, “as per”, “pursuant to” and “with reference to”. These expressions in reporting implementation of recommendations establish the sense of “compliance”, “compliance checker” and “compliance checklist” among the Ethiopian Government, the CoRC and concluding observations respectively. Without a prejudice to a presumption that compliance with recommendations is compliance with the Convention, those approaches of expressions reveal that the reported measures were taken from the perspective of compliance with comments of the CoRC too.

From the “compliance checker” side, the reaction on the level of compliance of the State Party with previous recommendations was a mixed one. The CoRC commonly expressed its concern on recommendations which were not duly implemented by the State.²⁸² Recommendations pertaining to resource allocation, traditional practices, birth registration, child labour, refugee children and juvenile justice are concerns which the CoRC explicitly and identically listed in the last two consecutive observations, as areas on which the Government of Ethiopia graded poor in implementing recommendations.²⁸³ Some of these areas are those the Ethiopian Government reported that it had taken appropriate actions according to previous recommendations. This anomaly is true particularly for juvenile justice and child labour as reported under the combined fourth and fifth State report.²⁸⁴

²⁸¹ For instance, see The Advocates for Human Rights and The International Oromo Youth Association, cited above at note 265, par.39. It is alleged that the Ethiopian Government has not responded to the CoRC’s recommendation to take all necessary measures to raise awareness about children with disabilities.

²⁸² Concluding observation on Second Periodic Report: Ethiopia, cited above at note 235, par.12; Concluding observation on Third Periodic Report: Ethiopia, cited above at note 245, Par. 6 and Combined Fourth and Fifth Report: Ethiopia, cited above at note 205, par.6

²⁸³ Id.

²⁸⁴ Combined Fourth and Fifth Report: Ethiopia, cited above at note 205, pars.285 and 300

6.4. Integration of Concluding Observations of the CoRC into Child Rights Legal Framework

6.4.1. Concluding Observations of the CoRC Initiating National Laws and Policies

One of the purposes of the reporting procedure is to identify policy and legislative gaps.²⁸⁵ Concluding observations are vehicle to transform the reporting process into policy-making process.²⁸⁶ Beside observance to the structure set by the Convention, the development of child related policies and laws by State Party to the Convention should incorporate recommendations provided in the concluding observations of periodic reports on Convention.²⁸⁷

The previous chapter has shown how concluding observations of the CoRC are relevant in developing and determining international laws relevant for children. The domestic status of concluding observations shall also be evaluated from the angle of interplay between the observations and domestic legislative and policy frameworks. It is absolutely futile to claim that enactment of all child relevant laws and policies are exclusively attributable to the impact of recommendations of the CoRC. However, suggestions of the CoRC have directly or indirectly pushed the Government to adopt legislative measures necessary to improve conditions of children. While the motive or objective behind certain legislative and policy actions can be deduced from the documents adopting the actions themselves, one may hardly find, in the documents, source of the initiative. The documents do not mention background processes (like dialogue with human rights bodies) as pushing factor for the rules devised by the Government. For instance, the preamble of the Revised Family Code recognized that one of the purposes of the code was to amend laws on wellbeing of children in accordance with international instruments.²⁸⁸ However, the initiation and guidance given by the CoRC towards the harmonization of child laws was not discussed. In fact, it is also practically incoherent to expect this sort of reference under such general laws.

Hence, alternative methodology to establish the influence of the recommendations in triggering the process of developing subsequent legislative and policy measures is looking in to subsequent

²⁸⁵ P. Alston, "The Purposes of Reporting", in United Nations, Manual on Human Rights Reporting under Six Major International Human Rights Instruments, 1997, p.22

²⁸⁶ H. Niemi, cited above at note 212, p.22

²⁸⁷ Fasil Mulatu Gessesse and Rakeb Messele Aberra, Impact Assessment Report on the Draft National Child Policy of Ethiopia, Center for Human Rights, Addis Ababa University, 2014, p.13

²⁸⁸ The Revised Family Code, 2000, Preamble, par.3, Proc. No. 213/2000, Fed. Neg. Gaz. Extra Ordinary Issue, No. 1/2000

reports of the State Party and Statements of delegations. State reports may embody legislative and policy actions which the Government admits that they are taken as a result of or in accordance with previous recommendations.

Earlier recommendations of the CoRC generally suggest harmonization of laws with provisions of the Convention.²⁸⁹ The delegation to the third periodic report reported in this regard that “the CoRC’s previous concluding observations had been taken into account in recent legal reforms and measures to promote the rights of children.”²⁹⁰ Particularly, the initial report called the Government to prohibit corporal punishment.²⁹¹ In its second periodic report, the Government informed the CoRC, reminding the previous recommendation that it had issued interim directive to prohibit corporal punishment in school setting.²⁹² Recommendations of the CoRC up on the initial and second periodic reports have also triggered consideration of ratification of treaties relevant for children. For instance, the second periodic report informed that the Government was appraising ILO Convention No. 138 to ratification in line with the suggestions of the CoRC.²⁹³ The ratification of two substantive Protocols of the Convention was first recommended by the CoRC²⁹⁴ though it was indicated that the UPR recommendation led to the initiation of a process to ratify the Protocols.²⁹⁵

Recommendations regarding legislative measures under concluding observations on the recent two reports more specifically recommended systematic review of laws and adoption of comprehensive child law.²⁹⁶ Though the CoRC has never recommended Ethiopia for adoption of comprehensive child policy, it has so far made a number of recommendations for adoption of appropriate policies on specific child rights problems.²⁹⁷ Recommendations of the CoRC might also be part of the inspirations in the formulation of the draft child policy though there is no any

²⁸⁹ Concluding observation on Second Periodic Report: Ethiopia, cited above at note 235, par.15

²⁹⁰ Summary Record of the 1162nd Meeting, cited above at note 241, par.24

²⁹¹ See Concluding observations on Initial Report: Ethiopia, cited above at note 217, pars.13, 15 and 20

²⁹² Second Periodic Report: Ethiopia, cited above at note 200, par.9

²⁹³ *Id.*, par.86

²⁹⁴ Concluding observation on Second Periodic Report: Ethiopia, cited above at note 235, par.78

²⁹⁵ Center for Human Rights Studies, cited above at note 196, p.8

²⁹⁶ Concluding observation on Third Periodic Report: Ethiopia, cited above at note 245, par.9 and Concluding observation on Combined Fourth and Fifth Report; Ethiopia, cited above at note 191, Par. 9. However, the task of enacting a comprehensive child rights law has not been given significant attention. See Center for Human Rights Studies, cited above at note 196, p.135

²⁹⁷ On education, see Concluding observation on Combined Fourth and Fifth Report: Ethiopia, cited above at note 191, par.62; on child abuse, see Concluding observation on Third Periodic Report: Ethiopia, cited above at note 245, par.45

indication as to what inputs were integrated in the preparation of the policy.²⁹⁸ However, there were other policy measures which were related by State reports to previous recommendations of the CoRC. As instance, back to the initial concluding observation, the CoRC had suggested Ethiopia to give particular attention to children affected by or infected with HIV-AIDS and other vulnerable children.²⁹⁹ The second periodic report provided that the CoRC's recommendation was addressed by a national policy developed by the Government of Ethiopia to alleviate impact of HIV-AIDS on children.³⁰⁰

6.4.2. The Law Making Process and Concluding Observations

From the above discussion, we may conclude that though there are some legislative measures taken as a result of the suggestions of the CoRC, we cannot proudly tell that the recommendations of the CoRC are vigorously influencing law makers to enact laws crucial to improve the situations of children in Ethiopia. Availability of mechanisms which establish systematic network to enable the concluding observations penetrate the law making process is the determinant factor on the strength of the observations to influence the law makers.

From the outset, the principle of good faith dictates States not to defeat the purposes of a treaty with domestic acts.³⁰¹ Good faith and the obligation to harmonize require States not only amendments of domestic laws, instead States shall also make compatibility assessment on prospective laws. Hence, law makers are expected to have comprehensive knowledge about relevant human rights systems. Outputs of treaty bodies may be accepted as vital tools in the process of assessing compatibility of bills in line with treaties. In Finland, for instance, there is a Constitutional Law Committee of Parliament to review the consistency of proposed bill with human rights standards. This parliamentary Committee has significantly drawn attention to the outputs of treaty bodies, both as part of its function of scrutinizing human rights compliance, as well as in other contexts.³⁰²

²⁹⁸ Concerning comprehensive child policy, it is taken as frustrating that the draft child policy failed to put at least the Convention as a reference point and adopt a right based approach. See Fasil Mulatu Gessesse and Rakeb Messele Aberra, cited above at note 287, The Executive Summary

²⁹⁹ Concluding observation on Initial Report; Ethiopia, cited above at note 217, par.28

³⁰⁰ Second Periodic Report: Ethiopia, cited above at note 200, par.55

³⁰¹ Takele Soboka Bulto, The Monist-Dualist Divide and the Supremacy Clause: Revisiting the Status of Human Rights Treaties in Ethiopia, p.142

³⁰² International Law Association, cited above at note 105, par.160

In Ethiopia, since international treaties are placed at least above primary legislations, drafters of laws are required to ensure consistency of legislative proposals with international agreements ratified by Ethiopia and particularly with human rights treaties.³⁰³ However, let alone a possibility of thorough analysis of international treaties and their supporting documents, the drafters are not actually making human rights impact assessment.³⁰⁴

Human right impact assessment may also be part of consideration of proposed bills. Concluding observations may also be relevant in the reading and debate of proposed bills. It was recommended at the Bristol conference on concluding observations that States shall craft a procedure to enable concluding observations integrated into the discussion of bills before the legislature.³⁰⁵ In the absence of formal mechanism to consider the concluding observations, the observations may also be raised by individual members of the legislature during reflections on bills. Besides, Parliamentary Committees may also refer to treaty body materials including concluding observations in discussion of bills.³⁰⁶

Recommendations of human rights monitoring bodies may also be subject to parliamentary debate independently from a proposed bill. In tandem with General Comment 5 on the Convention³⁰⁷ and as the CoRC itself recommends under the auspices of Art. 44/6 of the Convention, concluding observations should be subject of detailed debate in parliaments. The implementation manual for the Convention also underscored in its evaluation checklist that “whether concluding observations are debated in parliament” shall be taken as one element in evaluating whether a State has met its obligations under Art.44/6 of the Convention.³⁰⁸ Hence, the Ethiopian parliament is under obligation to consider the recommendations of the CoRC, in formal and especially dedicated parliamentary meetings.

³⁰³ Drafters are recommended to ascertain that the provisions of the draft bills are consistent with International instruments ratified and adopted by Ethiopia. See Justice and Legal System Research Institute/Justice System Administration Reform Program, Legislative Drafting Manual of Ethiopia, February 2008, Addis Ababa, sec.3.2.3.2; See also Liku Worku, Legislative proposals and application of human right treaties in Ethiopia, online available at www.abysinialaw.com, last visited on 10/8/2015

³⁰⁴ Id. Various factors militate against this function of the drafters; including lack of translations of human right treaties and decisions of international organs and the decentralization of the drafting system.

³⁰⁵ University of Bristol, cited above at note 99, p.4

³⁰⁶ International Law Association, cited above at note 105, par.160

³⁰⁷ Committee on the Rights of the Child, General Comment 5, General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6), CRC/GC/2003/5, 27 November 2003, par.73

³⁰⁸ R. Hodgkin and P. Newell, cited above at note 118, p.654

In fact, consideration of concluding observation either as part of discussion on proposed bills or with exclusive focus on recommendations of the treaty body, is highly dependent on the awareness of the members of the parliament as to the reporting procedure and particularly about the concluding observations. Inclusion of members of the parliament in the human rights report preparation and dialogue is highly important to create consciousness on the law makers about legal gaps on the country's child rights framework. A practice from South Africa is exemplary in this regard. All reports of South Africa to be submitted to human rights monitoring bodies are debated in parliament to evaluate whether the reports reflect the true picture of human rights situations in the country.³⁰⁹ Members of parliament are also regularly included in national delegations to the treaty bodies, to ensure that they better understand the treaty bodies' recommendations.³¹⁰ The reporting procedure in the Ethiopian legal system lacks such all-stages coordination between the reporting bodies and the law makers. Hence, dissemination of the recommendations to the law making organs by the MoWYCA is indispensable to fill the information gap.

Finally, concluding observations are also relevant for those lobbying for change in laws.³¹¹ Accordingly, the reference of concluding observations may take the form of submission of opinions by NGOs and other interest groups in the preparation and discussion of a bill. It is cited as instance that a submission to Finland's Parliamentary Committee reproach the Finland Government referring to the concluding observations and criticized Finland for lack of coordination among authorities.³¹² Among other factors, the Charities and Societies Proclamation is primarily blamed for highly inhibiting NGOs in Ethiopia from engaging in such sort of activism.³¹³

³⁰⁹ The Human Rights Law Centre & the International Service for Human Rights, Domestic Implementation of UN Human Rights Recommendations: A Guide for Human Rights Defenders and Advocates, 2013, p.14, p.13

³¹⁰ Id.

³¹¹ International Law Association, International Human Rights Law and Practice: Interim Report on the Impact of Findings of the United Nations Human Rights Treaty Bodies on National Courts and Tribunals, New Delhi Conference, 2002, par.27

³¹² International Law Association, cited above at note 105, par.160, Footnote 354

³¹³ Concluding observation on Combined Fourth and Fifth Report: Ethiopia, cited above at note 191, par.19

6.5. Concluding observations of the CoRC and Programmes and Plans of Action Relevant for Children

The creation of national plans action and programmes could also take into account content of concluding observations.³¹⁴ Recommendations of the CoRC are shown to be important factor and input for devising general development programmes and human rights action plans as well as preparation of comprehensive child focused plans of action and plans of action targeted to tackle particular child right concern.

Recommendations for improvement of policy framework and adoption of appropriate programmes are mainly related to the socio-economic rights of the child on which State Parties have relatively wider margin of actions and the CoRC may only cautiously call for specific measures. For instance, in its initial concluding observations, the CoRC expressed its concern on the impact of poverty on the wellbeing of children. Illustrating the problem with high infant mortality, malnutrition, low level of education coverage and other indexes,³¹⁵ the CoRC suggested Ethiopia to allocate maximum available resource and give priority to realize the socio-economic rights.³¹⁶ The second periodic report reminded this concern of the CoRC in a section which reported the adoption of five years development program. Ethiopia reported major macroeconomic measures which were directly or indirectly pertinent to the rights and welfare of children.³¹⁷

The CoRC suggested in its concluding observations that plans of action adopted by State Parties shall be guided by the goals and strategies set by summit of the “World Fit for Children”.³¹⁸ Ethiopia has so far prepared and implemented two comprehensive national plans of action on children; 1996-2000 and 2003-2010. Though Ethiopia began to develop plan of action on children prior to the first report, the recommendations of the CoRC were relevant in shaping the underlying strategies and objectives of the plans by putting the outcome of the “World Fit for Children” summit as implementation guiding instrument. For instance, far after the second plan of action was adopted by Ethiopia, the CoRC recommended the State to take in to account the

³¹⁴ University of Bristol, cited above at note 99, p.4

³¹⁵ Initial Report: Ethiopia, cited above at note 200, par.12

³¹⁶ Id., par.28

³¹⁷ Second Periodic Report: Ethiopia, cited above at note 200, par.5

³¹⁸ See Concluding observations: Ireland, cited above at note 162, par.12 and Committee on the Rights of the Child, Consideration of Reports submitted by States Parties under Article 44 of the Convention, Concluding observations on Second Periodic Report: Algeria, [CRC/C/15/Add.269](#), Fortieth session, 12 October 2005, par.15

outcome document of the summit in implementing the plan of action.³¹⁹ In fact the country also reported that the plan of action revolved around the central theme of the “World Fit for Children”.³²⁰

The CoRC’s recommendations were also important in preparation of plans of action targeted specific group of children or specific area of child right. For instance, the CoRC had recommended in its concluding observation on the third periodic report that Ethiopia shall adopt plan of action to prevent and combat child labour as per relevant ILO Conventions.³²¹ The Government reported under its next report that it adopted nation-wide plan of action to eliminate the worst form of child labour.³²²

Unlike legislative measures which might adopted with direct or indirect influence from the CoRC’s comments but lacks acknowledgement to this fact, express recognition of the recommendations of treaty bodies as one pushing factor into plans of actions is not implausible. As discussed above, the CoRC urged Ethiopia, at different period, to adopt appropriate plans of action to tackle particular problems affecting children. Besides, the UPR called Ethiopia to prepare a National Human Rights Action Plan.³²³ It is expressly recognized by Ethiopia’s National Human Rights Action Plan that reports submitted to human rights bodies and the corresponding recommendations was taken as sources in the preparation of the Action Plan.³²⁴ Hence, it can be deduced that the recommendations of the CoRC were also important in guiding formulation of the action plan, or at least the part of human rights of children.

Finally, it is also important to note that recommendations of the CoRC may guide activities of an organ entrusted to coordinate implementation of the Convention. Concluding observations of the CoRC begin to integrate in to the child rights system from the point of affecting the plans of action of the reporting organ, the MoWYCA. The MoWYCA’s annual action plan for the 2015/16 budget year reveals that concluding observation of the CoRC on the combined fourth and fifth report will play crucial guiding role. Being stratified to all relevant sectors, the recommendations of the CoRC will serve as guidance to measures necessary in each sector and

³¹⁹ Concluding observations on Third Periodic Report: Ethiopia, cited above at note. 245, par.13

³²⁰ Third Periodic Report: Ethiopia, cited above at note 242, par.34

³²¹ Concluding observation on Third Periodic Report: Ethiopia, cited above at note 245, par.72

³²² Concluding observation on Combined Fourth and Fifth Report: Ethiopia, cited above at note 191, par.30

³²³ UPRInfo, Responses to Recommendations: Ethiopia, as of 1/4/2010

³²⁴ The Federal Democratic Republic of Ethiopia, National Human Rights Action Plan 2013-2015, P. 8

as signpost for specific goals.³²⁵ Besides, implementation of the recommendations of the CoRC is independently set to be one of the general goals of the annual action plan.

6.6. Concluding observations as Interpretative Guide for Child Rights: the Reality and the Possibility

6.6.1. Factors Relevant for Citation of Concluding observations in Litigations

Literatures and international law reports testified that treaty body outputs generally have become relevant interpretative source for many national courts.³²⁶ Findings of treaty bodies may be utilized in the interpretation of Constitutional and statutory human rights laws.³²⁷ The practice of citation of findings of treaty bodies is highly attributable to domestic factors relevant to amenability of domestic courts and factors related to the findings themselves.³²⁸ Common law countries are liberal to cite findings of treaty bodies.³²⁹ Africa, Arab and Latin States have no identifiable judicial practice in this regard.³³⁰ Courts in most civil law countries make little use of international law in interpreting Constitutional provisions.³³¹ More specifically, interaction of domestic courts with treaty body findings is directly related to direct applicability of human rights treaties or the presence of substantively comparable domestic human rights provisions.³³² Hence, the fact that human rights treaties have not been incorporated in national law will influence the role which treaty body outputs play in national court proceedings.³³³

³²⁵ Id.

³²⁶ Courts are referring to General Comments, views on individual complaints and concluding observations in the interpretation of Constitutional and statutory human rights laws, as well as other domestic laws. See M. Kanetake, "Domestic Courts' Engagement with UN Human Rights Treaty Monitoring Bodies: A thematic report for the ILA Study Group on Principles on the Engagement of Domestic Courts with International Law", INTERFACES Research Paper 05 (2014), ACIL 2014-05, available at SSRN as last visited on 11/7/2015; International Law Association, cited above at note 105, par.175

³²⁷ In monist States, the findings are instrumental to inform the content of relevant human rights treaties. On the other hand, in dualist States the findings may be employed in the construction of domestic legislations enacted to give effect to the treaties. It is also argued that there may also be interpretive relevance of the findings for the interpretation of domestic laws which are not exactly adopted for the domestic implementation of particular Human rights treaties. See for more M. Kanetake, Id.

³²⁸ Id.

³²⁹ Id.

³³⁰ International Law Association, cited above at note 105, par.29, Footnote 28

³³¹ M. Killander & H. Adjlohoun, "International law and domestic Human Rights litigation in Africa: An introduction", in Magnus Killander (ed.), International law and domestic Human Rights litigation in Africa, Pretoria University Law Press, p.4

³³² International Law Association, cited above at note 105, par.182

³³³ R. Van Alebeek and P.A. Nollkaemper, cited above at note 273, p.68

Public and judicial awareness of the findings is also indispensable factor.³³⁴ Besides, the entrenchment of separation of power is also cited as equally determinant factor.³³⁵

6.6.2. The Law on Application of Treaties

Legally speaking, reference to international laws in to domestic ligations may take the form of direct application or indirect application.³³⁶ Both direct and indirect application of treaties are possible under the Ethiopian legal system. Concerning direct application, the FDRE Constitution has incorporated international treaties ratified by the parliament as laws of the land.³³⁷ Direct application of treaties is also recognized by the Federal Courts Proclamation.³³⁸ On the other hand, indirect application of treaties is enabled through the principle of treaty-consistent interpretation.³³⁹ The principle of consistent interpretation refers to the principle that requires domestic organs to interpret Constitutional and other laws in conformity with a rule of international law.³⁴⁰ The judiciary,³⁴¹ House of Federation³⁴² and other organs³⁴³ are required to

³³⁴ See M. Kanetake, cited above at note 326, p.25; For those judges who are familiar with the findings of treaty bodies, the latter can be sources of inspiration. See M. Scheinin, "Domestic Implementation of International Human Rights Treaties: Nordic and Baltic Experiences" in P. Alston and J. Crawford (eds.), The Future of UN Human Rights Treaty Monitoring, 2000, p.240

³³⁵ The more faithful the judicial organs are to the legislative authority of political organs, the less amenable the courts are to non-binding international instruments. See M. Kanetake, cited above at note 326, p.27; See also M. Kanetake and A. Nollkaemper, "The Application of Informal International Instruments Before Domestic Courts", The George Washington International Law Review, vol.16, p.803

³³⁶ David Sloss, Domestic Application of Treaties, Santa Clara Digital Commons, 2011

³³⁷ Constitution of the Federal Democratic Republic of Ethiopia, cited above at note 189, Art.9/4

³³⁸ Federal Courts Proclamation, 1996, Art.3/1 and Art.6/1/A, Proc. No. 25/1996, Fed. Neg. Gaz., year 2, no.13

³³⁹ Constitution of the Federal Democratic Republic of Ethiopia, cited above at note 189, Art. 13/2

³⁴⁰ According to this principle, international rule is used to construe a rule of national law. A space for interpretation in the contents of the provision of national law is the basic condition for the applicability the principle of consistent interpretation. See Gerrit Betlem and Andre Nollkaemper, "Giving Effect to Public International Law and European Community Law before Domestic Courts: A Comparative Analysis of the Practice of Consistent Interpretation", EJIL, vol.14(2003), no.3, p. 3.

³⁴¹ Having in mind the Constitutional duty shouldered by courts to protect human rights, it is awry to deny courts the power to determine the scope and meaning of human rights provisions of the Constitution. See Constitution of the Federal Democratic Republic of Ethiopia, cited above at note 189, Art.13/1.

³⁴² The House of Federation Proclamation adopted the wording of Art.13/2 of the Constitution for a Constitutional interpretation on human rights. See A Proclamation to Consolidate the House of the Federation of the Federal Democratic Republic of Ethiopia and to Define its Powers and Responsibilities, 2001, Art.7/2, Proclamation No. 251/2001, Fedreal Negarit Gazeta, year 7, no.41. A provision from the previous Council of Constitutional Inquiry Proclamation which provided that an interpretation of human rights provisions of the Constitution shall be made in conformity with international instruments adopted by Ethiopia is omitted in a recent Proclamation. See Council of Constitutional Inquiry Proclamation, 2001, Art. 20/2, Proc. No. 250/2001, Fed. Neg. Gaz., year 7, no.41 and A Proclamation to Re-Enact for the Strengthening and Specifying the Powers and Duties of the Council of Constitutional Inquiry of the Federal Democratic Republic of Ethiopia, 2013, Proc. No. 798/2013, Fed. Neg. Gaz., year 19, no.65

³⁴³ The EHRC also has the power to explore the meaning of human rights provisions in a process of investigating complaints. Therefore, a wide range of organs of the Government which apply human rights provisions in the

interpret human rights in consistent with treaties adopted by Ethiopia. The same principle is adopted word by word into the Proclamation which defined the powers of the HOF.³⁴⁴

6.6.3. The Practice and the Constraints on Citing Concluding Observations in Litigations

The reference to child rights treaties by the Ethiopian judiciary has taken a new momentum with the bold move by the law making Supreme Court cassation bench.³⁴⁵ The Bench made explicit reference to Convention in three cases whereas implied reference to the Convention is apparent from one case.³⁴⁶ We can also appreciate that, unlike the worldwide trend, the Court tended to make direct application of the Convention.³⁴⁷ Best interest of the child *vis a vis* other rights of the child was the primary issue in the cases.³⁴⁸ Contrarily, no child right case has so far been referred to the HOF.

It is in fact too idealistic to search for a domestic case in which a concluding observation is cited. The situations which make the reference to concluding observation too far to envision can broadly be related to the status of application of child rights treaties and the manner of application of the treaties. Though the actual impact that the Supreme Court's initiative made on

exercise of their power have at least implied power to interpret human rights provisions of the Constitution. See Ethiopian Human Rights Commission Establishment Proclamation, 2000, cited above at note 201, Art.7

³⁴⁴ A Proclamation to Consolidate the House of the Federation of the Federal Democratic Republic of Ethiopia and to Define its Powers and Responsibilities, 2001, cited above at note 342, Art.7/2

³⁴⁵ Tsedale Demsie v. Kifle Demsie, (Federal Supreme Court Cassation Bench, 2000), Journal of Federal Supreme Court Cassation Decisions, vol.5, file no.23632, p.188

³⁴⁶ The three cases in which the Bench made explicit reference to the Convention are: Tsedale Demsie v. Kifle Demsie, Id; Etsegenet Eshetu v. Selamawit Nigusse, (Fed. Sup. Ct. Cass. Ben., 2001), J.Fed.Sup.Ct.Cass.Deci., vol.8, file no.35710, p.243; Francis Pastor v. Dukman Venno et al., (Fed. Sup. Ct. Cass. Ben., 2002), J.Fed.Sup.Ct.Cass.Deci., vol.10, file no. 44101, p.41. The Bench also impliedly referred to Convention by citing "relevant international instruments adopted by Ethiopia". See Betezata Children Homes Association et al., (Fed. Sup. Ct. Cass. Ct., 2002), J.Fed.Sup.Ct.Cass.Deci., vol.10, file no. 52691, p.72; The pioneer of all these cassation decisions was made on an issue which interplay best interest of the child with appointment of guardianship. In this case the court cited Art. 3 of the Convention (on best interest of the child) besides the Constitutional provision on best interest of the child. See Tsedale Demsie v. Kifle Demsie. More advanced analysis of the Convention was applied by the Supreme Court in another case which however involved the same issue of best interest of the child *vis a vis* guardianship. The court, citing the ACRWC and the Convention, reaffirmed that treaties are part of the laws of Ethiopia. The verdict of the court has referred provisions from the Constitution and the two instruments to support the duty to take primary consideration of best interest of the child. More decisively the court fully relied on the two instruments to hold that views of the child shall be heard in a matter which affects him/her and the views shall be given appropriate weight taking in to account the child's age and evolving capacity. This ground-breaking analysis of international instruments by the Supreme Court is an important maneuver towards impelling all courts of the State to accept law suits with a cause of action based on violation of provisions of treaties even though there is no comparative provision into other laws of the country. See Etsegenet Eshetu v. Selamawit Nigusse.

³⁴⁷ A worldwide research indicated that 90% of domestic cases which cited the Convention employed the Convention as interpretative guide whereas only in 10% of the cases that the judges directly applied the Convention with full force of law. See Child Rights International Network, CRC in Court: The Case Law of the Convention on the Rights of the Child, 2012, p.4

³⁴⁸ This is also the international trend. See Child Rights International Network, Id., p.14.

the permeability of courts to child rights treaties requires further research, it was alleged that the court's move has increased court decisions which cite the Convention.³⁴⁹ The trend of citing child rights treaties is promising but no one may confidently argue that the status of application of child rights treaties is satisfactory.³⁵⁰ Hence, the still-poor level of application of treaties before domestic litigations is indirectly imputable for incapability of concluding observations which could have assisted application of the treaties.

But the main constraint which makes consideration of concluding observations into litigations hard to imagine is the method of application of treaties. Though the status of application of treaties is witnessed as promising, a look into the above mentioned judgments by the apex court shows that legal analyses of our courts are too shallow to reach concluding observations. The legal analysis the judges are hardly robust and comprehensive. Besides, judicial consciousness of the observations shall, at the outset, be subject to broader scrutiny. In four cases which the court makes reference to the Convention, the court cited the provisions of the Convention to support its already reached position or in addition to the corresponding Constitutional provisions instead of analyzing meaning of the treaty provisions and reach to a conclusion. In fact this is an instance for the broader picture of less liberal analysis by civil law judges. It is indicated that the authority of Common law judges which extends to making of rules would be one of the favorable factors that facilitate the judicial reference to non-binding international documents.³⁵¹ It is suggested that a judicial directive to facilitate consistent practice in application of treaties is necessary.³⁵² Welcoming the growing tendency to apply treaties, the guidance is mandatory to ensure more analytical, organized and comprehensive application of treaty provisions.

³⁴⁹ Girmachew Alemu and Yonas Birmeta, Handbook on the Rights of the Child in Ethiopia, p.26

³⁵⁰ Though Ethiopia is a monist State in which an international treaty becomes part of the law of the land by the fact that it is ratified by a domestic act, the status of application of treaties remains subject to controversy. It is, in fact, proved to be a myth that monism promote the applicability of international instruments in to domestic legal system. Courts in many traditionally dualist African countries use international law to a larger degree than explicitly monist countries like Ethiopia. See M. Killander & H. Adjolohoun, cited above at note 331, p.4. The equivocality surrounding the application of international treaties in to domestic litigation was mainly triggered by an issue of publication. Whether publication of treaties before the Federal Negarit Gazeta is a legal requirement or not had been hub of major academic controversies and a pretext for skepticism of courts though the Supreme Court has later established the right practice by applying unpublicized treaties including the Convention. Though the issue on publication seems to be resolved, the application of treaties is still meager. This shows that availability of domestic mechanism to make treaties consumable before courts of law is a practical necessity, beyond a question of law.

³⁵¹ M. Killander & H. Adjolohoun, Id., p.27

³⁵² Center for Human Rights Studies, cited above at 196, p.132

In jurisdictions which have well entrenched experience of application of treaties, international law itself provides the principles for interpretation of the treaties. It was indicated in the previous section that in accordance with the proper and modified application of principles of human rights treaty interpretation, concluding observations are relevant in establishing a particular form of subsequent practice in interpreting provisions of a treaty.³⁵³ Though Ethiopia is not party to the VCLT, principles of treaty interpretation developed as customary international law would be applicable if our courts reached a capacity to analyze supplementary documents in order to construe meaning of a particular treaty provision.³⁵⁴

The generality of the principle of consistent interpretation is another concern related to the method of application of treaties. The Constitutional provision and the HOF Proclamation on interpretation of human rights does not tell us sources eligible to be considered in the interpretation of human rights provisions.³⁵⁵ The HOF and the CCI were empowered to develop and implement specific principles of Constitutional interpretation.³⁵⁶ However, neither the HOF nor the CCI has prescribed rules of interpretation which *inter alia* guides instruments eligible to be considered in the process of interpretation of human rights brought before the organs as point of contention.

The principle of consistent interpretation is instrumental in creating the link between domestic human rights law, in particular Constitutional law and international human rights instruments. In the course of interpreting an international rule, citations by domestic judges to a treaty provision can serve as a bridge to interpretative legal materials.³⁵⁷ This is the rational course when one considers the fact that international instruments themselves couched in similar to or more general terms than Constitutional stipulations and may not provide much aid to the interpretation of the

³⁵³ W. Sandholtz, "How Domestic Courts Use International Law", Fordham International Law Journal, vol. 38(2015), p.614-615

³⁵⁴ Article 34 of the VCLT reads as "nothing in Articles 30 to 33 precludes a rule set forth in a treaty from becoming binding on a third State as a customary rule of international law."

³⁵⁵ Getahun Kassa, "Mechanisms of Constitutional Control: A Preliminary Observation of the Ethiopian System", Afrika Focus, vol.20, (2007), no.1-2, p.87;

³⁵⁶ A Proclamation to Consolidate the House of the Federation of the Federal Democratic Republic of Ethiopia and to Define its Powers and Responsibilities, 2001, cited above at note 342, Art.7/1 and The Council of Constitutional Inquiry Proclamation, 2001, cited above at note 342, Art.20/1. The fact that both organs are authorized to identify and implement principles of interpretation was criticized as it might cause overlap. Getahun Kassa, Id.; However, the power of the CCI to adopt principles of interpretation was omitted from new Proclamation No. 798/2013.

³⁵⁷ Melissa A. Waters, "Creeping Monism: The Judicial Trend toward Interpretive Incorporation of Human Rights Treaties", COLUM. L. REV., vol.628(2007), cited in W. Sandholtz, cited above at note 353, p.615

human rights provisions of the Constitution.³⁵⁸ Therefore, findings of treaty bodies can be used to inform the interpretation and application of domestic human rights laws.³⁵⁹ For instance, the South African Constitution provides that courts ‘must consider’ international law (binding and non-binding) in interpreting the Bill of Rights.³⁶⁰ However, it is awry to denounce that the value to be attached to each component of the mammoth of international human rights instruments will vary.³⁶¹ Based on the principle of consistent interpretation, citation to concluding observations may take the form of Constitutional interpretation and Constitutional review of byelaws.³⁶²

Under Ethiopian Constitutional Law, Adem argues that “declarations, resolutions, and other *soft laws* (emphasis added), which by their nature may not be ratified, are also relevant in moulding

³⁵⁸ M. Killander & H. Adjolooun, cited above at note 331, p.16

³⁵⁹ The Human Rights Law Centre & the International Service for Human Rights, cited above at note 309, p.14. In fact, Judges have a large crowd to pick from, thus, they are required to be cautious in referring to those instruments while using them for interpretation. This requires well entrenched knowledge of the judges about the scope and pertinence of international norms on an issue at hand. See R. Rana, Could Domestic Courts Enforce International Human Rights Norms? An Empirical Study of the Enforcement of Human Rights Norms by the Indian Supreme Court Since 1997, online available at <http://ssrn.com/abstract=1424044>, p.45.

³⁶⁰ Constitution of the Republic of South Africa, 1996, Sec. 39/1/B Pertaining to child rights provisions, the Constitutional provision was interpreted as it would include the Convention, the ACRWC, General Comments, Country Reports and other documents produced by the committees in charge of implementing these treaties. This means, as one of the CoRC’s outputs in the interpretation of the Convention, South African courts are required to consider concluding observations of the CoRC. See S. Rosa and M. Dutschke, Child Rights at the Core: A Commentary on the Use of International Law in South African Court Cases on Children’s Socio-economic Rights, A Project 28 Working Paper, Children’s Institute, University of Cape Town, May 2006, p.18

³⁶¹ The duty to ‘consider’ does not mean a duty to ‘apply’ an interpretation rendered by the treaty bodies but it means that the courts must at least take note of the non-binding materials as well. Judges do not refer the findings of the treaty bodies out of sense of obligation; instead the citation is basically triggered by the persuasiveness of the findings. See M. Kanetake, cited above at note 326, p.14. Of course, this viewpoint is save for exceptional cases like the Vishaka case which promoted recommendations of a treaty body as having the nature of law, in default. In the *Vishaka* case, the Supreme Court of India puts a dictum that recommendations of committee on CEDAW shall be taken as a reference for interpretation of the Indian Constitution. The court also held that “in the absence of the domestic law to provide for the effective enforcement of the basic human right of gender equality as generally guaranteed under the Indian Constitution, employers in work places as well as other responsible persons and institutions shall observe the recommendations of the committee on CEDAW.” See R. Rana, cited above at note 359, p.39

³⁶² For instance, in a Constitutional challenge to a provision of Criminal Code of Canada, Judge Arbour, citing the CoRC’s Concluding Observations on Canada in which the CoRC recommended Canada to remove a provision which allows chastisement by parents, expressed his dissent against a Constitutional interpretation of the Ontario Supreme Court. *Canadian Foundation for Children, Youth and the Law vs. Canada* (Supreme Court of Ontario), 2004, cited in International Law Association, cited above at note 311, par.24; Similarly, in a litigation to review Constitutionality of a provision of the Civil Code on child born outside wedlock, four justices of the Supreme Court of Japan referred to the Concluding observations of the Human Rights Committee to support their dissenting and separate opinions. International Law Association, cited above at note 105, par.107; Courts may also attach importance to what the treaty body does not mention in its Observations. In an issue whether retention of DNA materials of minors is in line with the Convention, Dutch Court remarked that it is relevant to note that the CoRC had not condemned the Netherlands over the law, which allows the retention, in its concluding observations on the Netherlands. R. Van Alebeek and P.A. Nollkaemper, cited above at note 273, p.64

the meaning of the Constitutional rights provisions.”³⁶³ Hence concluding observations of the CoRC which suggests certain line of interpretation of child rights are important in the determination of meaning of child rights provisions of the Constitution.³⁶⁴ “In pursuing the greater cause of protecting the rights and welfare of children, such instruments provide incontestable scales of moral fortitude, and extend practical guidance.”³⁶⁵ Hence, a prescribed and creative adherence to the principle of consistent interpretation will lead organs of the Government to consider concluding observations.

6.7. Chapter Conclusion

While reporting is the primary tool to monitor human rights in Ethiopia, Ethiopia’s reporting history to the CoRC is leading in terms of complying with periodicity and participation. This is mainly due to the fact that enforcement of child rights treaties is handed to a particular organ which is also delegated to report. Concluding observations which are the output of the reporting procedure are not legally binding on Ethiopia since they are not adopted within the framework of making international law and undertaking international obligation. However, deeper investigation into the interaction between the Ethiopian Government and the expert CoRC proves that the former is not free to overlook the recommendations of the latter. The Government’s sense of obedience to the non-binding “do and don’t” of the CoRC is apparent from four trends.

First, though the CoRC has no a formal system for State Parties to accept or ratify recommendations, the Government is forwarding its comments, most of the time acceptance, on the suggestions of the CoRC in or at the end of the dialogue. The Government is admitting problems identified in the dialogue and making pledges to alleviate the troubles in accordance with the suggestions of the CoRC. The promises are being made with strong commitment like “Ethiopia welcomes”, “Ethiopia accepts” and “The Government will duly take into account”. Hence, the Government is aware that there are expectations which it needs to satisfy before the next report.

Second, the Government is reporting on what has been done to comply with the recommendations. State reports report on what has been done to implement provisions of the

³⁶³ Adem Kassie Abebe, The Potential Role of Constitutional Review in the Realization of Human Rights in Ethiopia, Doctoral Thesis, University of Pretoria, 2012, p.162

³⁶⁴ Id.

³⁶⁵ Center for Human Rights Studies, cited above at note 196, p.1

Convention. The fact that the report on implementation of the Convention is being prepared from the perspective of what has been done to implement the CoRC's recommendations shows that the recommendations are serving as direct checklist of compliance. The report of compliance goes to the extent of citing specific recommendation from previous concluding observation and then specifying what has exactly been done to meet the comment. This creates a cause and effect relationship between the recommendation of the CoRC and the measure taken by the Government. In fact, the recommendations of the CoRC may not be sole pushing factor in all measures mentioned in reports but it is clear, at least for those measures which were explicitly linked with previous recommendations that the recommendations of the CoRC are one of the reasons for the measures and they had played a propelling role.

Third, the reaction of the compliance checker to the compliance report of the Government is also relevant. The CoRC expresses its appreciation or discontent on the quality of nexus between measures claimed to be taken and previous recommendations. The CoRC is calling for comprehensive recommendation-measure relationship between previous concluding observations and present State report. The CoRC is also expressing its disappointment and deep concern on recommendations which it believes that they are not implemented by the Government.

Finally, external bodies, particularly NGOs' accusations of the Government through alternative reports, alleging that the Government is not acting in accordance with the CoRC's recommendations and it's not reporting on what measures taken to address the suggestions of the CoRC shows that the Government is required at least to consider the recommendations of the CoRC.

On the other hand, though concluding observations are not law in Ethiopia's domestic child rights laws, they are legally relevant by propelling enactment of laws and adoption of policies. Their relevancy can be seen from the angle of direct nexus made by State reports between particular recommendation of the CoRC and particular legal development including ratification of child rights treaties and enactment of laws relevant for children. The initiating role of concluding observations may also be acknowledged by the enacted documents themselves like the Ethiopian Human Rights Action Plan did. However, the concluding observations are facing hard fenced and hardly permeable law making process which in effect is weakening the

recommendations' access to the table of the law makers to make real impression on laws which affect children.

As a monist State, it is expected that findings of treaty bodies are relevant in interpreting treaties which are bound to be directly applicable. The laws of treaty interpretation entrenched under VCLT and custom would have been mechanisms legitimating reference to concluding observations of the CoRC. Though familiarity of child rights treaties before Ethiopian courts has taken positive paradigm shift, the reference to the treaties disappointingly lacks detailed analysis on the construction of the rights under litigation. Text restricted analysis of law, as prominently civil law legal system, well entrenched separation of power and lack of judicial discourse and awareness of concluding observations are also factors which strangled creative utilization of the observations in interpreting child rights provisions.

Child rights treaties may also serve to interpret domestic child right laws. Comparative jurisprudence shows that the observance of the principle of treaty consistent interpretations of Constitutional child rights necessarily lead to construction of meaning of binding treaties through non-binding instruments like concluding observations. In Ethiopia's case, the Constitutional interpretation provision remains unelaborated by specific rules which will guide what specific human rights documents the HOF, courts or other organs shall take into account in consistently interpreting human rights provisions of the Constitution.

Chapter Seven: Conclusion

This thesis examined how the CoRC is affecting the making and interpretations of international and domestic child rights law systems through its concluding observations. By the status of the concluding observations, this research assessed whether the recommendations have nature of law on the one hand and what are the impacts of the concluding observations to the law and its interpretation on the other. These two issues were evaluated from the international perspective as well as domestically, taking the case of Ethiopian legal system.

Concluding observations of the CoRC are non-binding on State Parties. States do not agreed to be bound by the standards of the CoRC. As entrenched in various scholastic analyses, any attempt to promote concluding observations as law is incompatible with the nature of the process for adopting the observations. States have also emphatically expressed the recommendatory nature of concluding observations in various cases. Hence, States are not legally bound to implement the 'do' and 'don't' of the concluding observations. Instead, by providing interpretations of treaties; by requiring States 'to do and not to do', which establish expectations on the side of the CoRC and impose sense of compliance on State Parties, as it can be deduced from the report of compliance and other reactions of the State Parties to the comments of the CoRC; recommendations of the CoRC are soft obligations.

This was also true with regard to Ethiopia. The Government of Ethiopia has better record of compliance with the Convention's reporting obligation. The CoRC regularly praised the commitment of the Ethiopian Government to the reporting procedure, in particular to the constructive dialogue. The positive perception towards the dialogue with the CoRC is also clear from the open-mindedness of the Government's delegations to admit problems and act in line with the comments of the CoRC. The delegation of Ethiopia expressly accepted recommendations and made promises that the recommendations of the CoRC would be duly taken into account by the Ethiopian authorities. State reports also presented measures taken to implement provisions of the Convention as complying with recommendations of the CoRC. Whatever else the factor which propelled those actions could be, the cause and effect relationship built by the Government between its actions and the CoRC's recommendations is important proof that the Government feels that it is not totally free to disregard comments of the CoRC. The Government is aware at the adoption of concluding observations that there will be

expectations, set by the CoRC, which it needs to address before the next report. Therefore, concluding observations of the CoRC are soft obligations imposed up on Ethiopia as a Party to the bills of child rights.

Concluding observations of the CoRC, besides imposing sense of compliance, have legal obligations on State Parties to disseminate, duly consider and debate the recommendations of the CoRC. These obligations are emanated from the Convention as interpreted by the CoRC through its general comment and concluding observations. However, the parliament of Ethiopia has never debated the concluding observations of treaty bodies. Besides, let alone to consider concluding observations of the CoRC on activities relevant to children, the consciousness of organs of the Government, apart from the reporting organ, about the recommendations of treaty bodies is thwarted by lack of systematic mechanism of dissemination of the concluding observations. The practice of concerned Government organs is piecemeal and the documents are not accessible outside the institutional settings to the larger public.

Once we resolved the legal nature of concluding observations and reached to the conclusion that they are not law, their status was evaluated from the perspective of their interplay with the laws on the rights of the child. This analysis was made in two perspectives; one, from the possibility that concluding observations may trigger development of new international norms and two, on the interaction of the concluding observations with the traditional sources of international child rights law.

First, the paper discussed on some of areas of child rights on which concluding observations of the CoRC liberated from the original construction of provisions of the Convention with a pretext of interpreting the Convention. This practice of the CoRC was justified by the “living instrument approach” which calls for progressive interpretation of human rights treaties. However, the practice is only a preliminary temptation to the State-centered process of law making. State consent firmly remains the basis of international law. The relevancy of the concluding observations of the CoRC is, thus, facilitating and mobilizing the consent of States required to establish new norms on child rights international law. The resulting consent of State may be expressed by making domestic legal reforms and other measures or deduced from reactions in constructive dialogue and next State reports. Positive responses and legal adjustments concerning corporal punishment are quintessential in this regard.

Second, the relevancy of the concluding observations to the existing schema of international child rights laws was examined. Concluding observations of the CoRC, being instruments to express understanding of the bills of child rights, they are worthy to the status of subsidiary means for the determination of the rules of law under the Convention and customary law. They are important guide towards the primary sources of international child rights law. Concluding observations are also relevant to the proof of custom. Though the practices of the CoRC, which is not an inter-governmental organization, neither qualify as State practice nor represent the belief of State Parties, the reporting procedure and reactions of States on concluding observations of the CoRC are important in demonstrating the practice and belief of States.

The other side of the coin of status of concluding observations of the CoRC under child rights laws focuses on implication of recommendations of the CoRC on domestic child rights framework. The implications on laws relevant to children vary based on the level of permeability of the domestic law making and policy formulation process to the observations of the CoRC. It was indicated that there are no normatively and practically conducive environment for consideration of concluding observations in the process from drafting to enacting laws. The reporting procedure lacks all-stages coordination between the reporting bodies and the law makers. There is no formally established system to flow the recommendations from the reporting body to the law and policy makers. Consequently, the parliament is not in a position to make the debate on concluding observations as required by the Convention.

We cannot also find a legal or policy document which expressly recognizes the source of motive as recommendations of treaty bodies. Alternatively to the lack of clear recognition to the influence of recommendations of the CoRC in the legal reforms that the country undergoes so far, an analysis was made on the cause and effect relationship between the CoRC's comments and measures reported under next reports of the Government, with utmost caution of identifying only those legislative and policy outcomes which were explicitly related by the Government with previous recommendations of the CoRC. As such we can deduce that the concluding observations of the CoRC has influenced major child law reforms including ratification of the Optional Protocols, enactment of the revised family code and the law on registration of vital events.

The same method of analysis revealed that the recommendations of the CoRC were important ingredient in the formulation and implementation of various children specific action plans. We may also find an express reference to recommendations of treaty bodies as input to an action plan, the Ethiopia's action plan on human rights. Hence, it is plausible to conclude that the recommendations of the CoRC guided the section of human rights of children in the action plan.

The status of concluding observations of the CoRC was also investigated from the perspective of interpreting the bills of child rights and domestic child relevant laws. Due to the normative justification of "implied power" and the factual situation that human rights treaties are not reciprocal treaties, it was established that the responsibility of interpretation of human rights treaties shall primarily rest on treaty expert bodies. The CoRC rigorously exerted its interpretation hammer on various provisions of the Convention. State Parties do not doubt the very authority of the CoRC to interpret the provisions of the Convention; instead their reaction focuses on the accuracy of interpretations of the CoRC. However, the interpretations by the CoRC do not oust inherent authority of States to interpret their agreements. Hence, the interpretation of the bills of child rights is incumbent up on community of interpreters.

One way that practices of domestic organs of the Government and concluding observations of the CoRC may intersect to result authoritative interpretation, as per the law of treaty interpretation, is the interpretation by subsequent practice. Though subsequent practice strictly represents subsequent state practice, the growing role of treaty bodies in interpretation of human rights treaties has brought in to light the relevancy of practices of treaty bodies in determining subsequent practices of States. Hence, interpretations by the CoRC through concluding observations may amount to subsequent practice conditioned on implicit submission by State Parties through conducts or express recognition to the practice of the CoRC.

Concluding observations of the CoRC may also serve as supplementary materials supporting interpretation of domestic laws relevant to children. It was indicated with practical instances that domestic courts are using concluding observations in interpreting child rights provisions. Besides the quality of the concluding observations and legitimacy of the CoRC which adopted the observations, the practice of citation of concluding observations in domestic litigations and proceedings is highly attributable to factors relevant to permeability of domestic courts.

In Ethiopia, there is no domestic law which regulates the interpretative relevance of findings of treaty bodies. The reference to concluding observations into domestic litigation is also far from reality. The factors which militate against the interpretative relevance of concluding observations were treated in to two broader problem areas: the status of application of treaties and the method of application of the treaties.

First, treaties that are declared to be part of the law of the land do not satisfactorily utilized in domestic cases. Second, the application of the treaties is not analytical and comprehensive. This inhibits consideration of supplementary documents to support interpretation of treaties. In fact, civil law judges are more faithful to the principle of separation of power, and less liberal in their analysis of the law. Hence, Ethiopian judges are less likely to apply non-binding instruments in interpretation of treaties. Besides, the Constitutional provision on interpretation of human rights does not tell us as to how (based on what principles and sources) we should interpret human rights provisions. The principle of consistent interpretation is crucial in abridging the application of domestic child rights laws with the findings of the CoRC. A variety of additional texts and documents, though not embodying legal obligations, can serve as aids to interpretation of international legal norms. A proper and creative adherence to the principle of treaty-consistent interpretation will lead organs of the Government which engaged in interpretation of child relevant laws to consider concluding observations.

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