

UNITED NATIONS CHILD RIGHT CONVENTION WITH ITS EFFECTIVE PROCEDURAL WORK AND IMPLICATION IN STATE LEGISLATION

¹MARYAM SULTAN, ²SOBIA BASHIR, ³KIRAN NISAR, ⁴DR RAFIA NAZ ALI, ⁵FAISAL SHAHZAD

¹Lecturer Law School, Bahria University, Islamabad

Maryamsultan.buic@bahria.edu.pk

²Assistant Professor Law College, University of Peshawar

sobiabashir@uop.edu.pk

³Lecturer Law College, University of Peshawar

kirannisar007@uop.edu.pk

⁴Assistant professor, Department of shariah and Law, Islamia college University peshawar

Email: rafia@icp.edu.pk

⁵Assistant Professor, Department of Shariah and Law Islamia College Peshawar

faisal.shahzad@icp.edu.pk

Abstract

This study introduces the formation of the United Nations Child Right Convention and its central theme and aspect of creation. It deals with the structure and procedure of working at UNCRC and the responsibilities of the state parties to be fulfilled. Further, it leads toward outlining the committee reporting procedure with strict checks and balances on ratified states to impose those laws in their national legal system. Therefore findings of it are considered and whether, as a state, we can fulfil the required international standard set by UNCRC for child protection.

Keywords: *United Nations Child Right Convention (UNCRC), International Standards, Ratified States, Universal Periodic Review (UPR), UNCRC monitoring system, State legislation, Child Rights.*

1. INTRODUCTION

International legal documentation is relatively recent regarding children's rights. The Geneva Declaration begins with the five main elements of protection, development, and alleviation, is the first international declaration outlining a child's rights. The Geneva Declaration was the first document to mention children's rights and suggest that adults are responsible for treating children with respect. The League of Nations adopted the Geneva Statement, frequently called the Declaration on the Rights of the Child, in 1924. The League of Nations were created before World War I and eventually served as inspiration for the United Nations (UN). Eglantyne Jebb, along with her sister Dorothy Buxton, was one of the founders of the organization Save the Children. She conceptualized the language of the Children's rights declaration adopted in Geneva. 1959 the United Nations formally ratified the Rights of the Child Declaration. While not legally restrictive, this document tends to favour minors. Families and children are mentioned in Article 13 of the 1948 Universal Declaration on Human Rights. After that, important agreements focused on children's rights, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights. To the extent that they mention measures to be taken for child protection (Fortin, 1998).

This world is not great for children; instead, it is one in which children experience numerous ways, and the explanation of freedoms, in any event, focuses on mitigating trouble. It was only after 1989 that The CRC was ratified by UN General Assembly, which incorporates provisions for legislation for Child's rights in such a manner that the UNCRC puts children first in supporting their freedoms. Part of the UNCRC specifies that children be taught what their margins in the Convention require. The Preamble of the UNCRC is extensive and addresses that the Child is entitled to special regard and assistance, as stated in the Universal Declaration of Human Rights; feel that for the full and peaceful development of their character, children should grow up in a home environment that is filled with joy, love, and understanding; Consider that the Children should be fully prepared to lead a remarkable life in the public eye and raised in the spirit of the objectives stated in the United Nations



Charter; recognize that children worldwide live in challenging circumstances, and those such children require special consideration; Analyze the importance of each person's social advantages and customs in relation to child security and agreeable development and perceive the importance of international collaboration for working on the day-to-day environments of children in each nation, especially in non-industrial countries. The UNCRC is the main legitimately restricting global instrument to address Child freedom exhaustively (Freeman, 2007).

1. **Legally binding international instrument**

The fundamental international mechanism for recognizing children's human rights in all spheres of their existence is the UNCRC; thirty years after CRC implementation, political, legal and societal change in how children are dealt with proceeds to be challenging (Tobin, 2019). Simultaneously, state parties keep doing whatever it takes to integrate provisions of the CRC into National laws (Kilkelly, 2019). Giving constitutional articulation to a child's right proves to be a high apex of lawful insurance regardless of the weather; all over the world, practice differs from instruments that incorporate restricted references to the requirements of children to those that perceive the Child as wholly privileged holders (Tobin, 2005). The procedure of constitutionalizing children's rights is perplexing and dynamic; it begins with the inclusion of children's rights into the Constitution and then, at that point, requires additionally related activities to give genuine significance to that change. These incorporate measures to elevate the Child's admittance to the courts, give effective cures where rights have been disregarded and empower the legal executive and the legitimate calling to interpret and reasonably apply these rights. There are few instances where such methodologies have been a triumph (UNCRC, G. C. N. 2003).

1. **Report by States to the Child's Rights Committee**

In accordance with article 43(1) of the Child's Right Convention, which became effective on September 2, 1990, it is possible to create a committee "to examine the progress made by States, Party to the convention" (Assembly, U. G. 1989). There are now 18 members of the committee, each of whom has a four-year term. The four-year term is shocked by the intention that most of the committee will change every time. According to Article 44, State gatherings are required to submit reports. Initially within two years or less of the State party's entry into compliance with the Convention and then on an ongoing basis following that (MacDonald, 2021).

The applicable announcement cycle for this study contains four steps. The state party provides the report, which the committee reviews along with the state party common core document, as the primary stage; Alternative reports & quotes; from NGOs and NHRIs (National Human Rights Institutions) may be presented after the State party report has been submitted. The committee then creates a List of Issues (Lois), highlighting precise areas where more information is required. The State parties' responses to the LOIs make up the third stage. The Committees Concluding Observations (CO) report is the last step. It also includes the deadline by which the States party to the Convention may put forward their subsequent report. Access to information based on the four-stage reports is possible via the Child's rights committee website. This study is focused on the currently portrayed detailing procedure. Another flexible approach will be in place starting in 2019 when the committee will notify the State party of the concerns it wants to address before submitting its report.

1. **Universal periodic review and common core document**

The regulations originally adopted by the Secretary-General in 2006 due to the 1997 and 1998 General Assembly resolutions noting the important Committees; harmonization of human rights reports reflects the ongoing organization of reports to the Child's Rights Committee

- Child's Rights committee
- Economic, social, and cultural rights committee
- Human rights committee
- Elimination of discrimination against women committee
- Committee against torture

These regulations also include a common core document (CCD), which States the party to the Convention must amend as necessary or note, which is not essential when providing a precise settlement report. All-purpose and accurate information about the execution of the agreements to



which the state's party should be included in the CCD. It is then presented to the Secretary-General and distributed to all pertinent treaty Committees to reduce the need for data repetition. In addition to the six advisory groups stated above, the CCD now includes disclosing commitments made under the Committee on Migrant Workers, informed by the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW). The CCD is anticipating that: According to the reports, the current combined rules would allow each settlement body and state that is a party to the Convention to attain a comprehensive image of the execution of the key treaty, laid within the larger perspective of the state human rights international commitments and present a consistent structure in which every committee, working cooperatively with another settlement bodies can operate. Furthermore, the Core Document includes:

State's party should include a narrative of their established organization, including their form of government, electoral system and arrangement of legislative, judicial, and executive branches. State parties are also requested to give information on some strict or standard regulatory regimes that may be present in their jurisdiction. The main document subsequently makes a hypothetical record which may be inspected and used to evaluate State party attributes. Furthermore, it is anticipated that these records will be a great source of information for a similar valid investigation, as follows:

The state should lay out the specific legal framework for securing human rights. Details should be provided specifically on the following:

- (1) Whether, and assuming this is true, what of the rights mentioned in the different human rights instruments are secluded, whether in the Constitution, a bill of rights, an essential regulation, or other national legislation;
- (2) Whether or not human rights treaties have been integrated into the state body of laws;
- (3) What kind of arrangements is made for disparagements, limitations, or on the other hand, limits, and under what circumstances?
- (4) The question of whether administrative authorities, courts, other tribunals, or other administrative authorities can and have directly upheld the arrangements of the various human rights treaties;
- (5) What treatments are available to a person whose rights were infringed, and are there any procedures for the victim to get compensation, payment, or recovery?
- (6) Whether there are any organizations or national mechanisms responsible for managing the execution of human rights, together with mechanisms for the progression of women or those envisioned to deal with the unique circumstances of the aged people with disabilities, children, individuals from native people groupings, exiles and internally displaced individuals, transient workers, unapproved outsiders, non-residents, or others, the composition of such mechanisms, and the individuals who can affect them.
- (7) If the State recognizes the location of any regional court of human rights or other entity, where is it located, and, if so, what types of cases are prosecuted, and how are they developing? As a result of the fact that State Parties have interpreted these rules somewhat broadly, the CCD contains a variety of data. This may be because the reports' authors are so ingrained in their framework and its standards that they do not immediately see the need for clarification and explanation. These give important details about how a State party intends to introduce its arrangement of Human Rights (Freedman, 2013).

1. Universal periodic review

States who are party to the Convention are welcome to present a report as part of the 2006- instituted Universal Periodic Review (UPR) process to outline the steps they just considered to address their state's human rights situation and fulfil its duties (Coalition, 2008). There exist guiding principles for data layout, such as:

Constitution, regulation, approach measures, public legislation, and the foundation of human rights, including state human rights organizations and the extent of international obligations, are national institutional and structural foundations for advancing and insurance human rights. All States which are party to the Convention are audited at a minimum twice and may have just finished their third audit as the UPR is currently in its third phase. Similar to the CCD, while the UPR is related to

universal human rights, the particulars of the legal structure generally pertain to child rights and explicit information is kept in mind for those rights (Szurlej, 2013).

1. Guidance for reporting and conventions structure

Strategically, the Convention had 54 provisions. Receiving reports in opposing ways could have caused problems. Therefore, during the committee's 22nd meeting in 1991, rules for reporting were adopted and distributed. These rules for preliminary reports and the presented edition of the rules for periodic reports were generally reorganized, accepted, and distributed between 2014 and 2015. These two archives specify the format the words should take and the clusters of rights that should be used as subheadings. The committee rationalized that the Conventions provision has been consolidated into distinct sections, with the same significance associated with each right perceived by the Convention in the 1991 rules concerning these categories. Although the board has highlighted the similar significance of these articles' collections, the initial three collections will often handle more broad areas of rights that support the next six collections, which manage all the more barely rights focused on. Although the committee created bundles of articles, other authors have organized the articles into topical groups, such as providing protection and participation. LeBlanc's article collection is one of several examples (LeBlanc & LeBlanc, 1995). The four categories of survival, enrollment, protection and empowerment in UNICEF set are setting the standard, sustenance further, advancement, involvement, and safety. The State party report is described as tending to the groups of items from the committee. It finds that the following information must be provided: Ought to illustrate improvements made and problems faced in attaining complete compliance with the Convention's requirements and, if applicable, the discretionary Protocol. In so far as each group of privileges is concerned, the state that has been a party has to submit details on the steps taken to implement the recommendations made in prior closing impressions of the committee (Doek, Krappmann & Lee, 2020).

The most recent collections of articles are included in the committee's current recurring reporting guideline.

- General measures of implementation (GMI) in connection with Articles 4, 42, and 44, Paragraph 6.
- Wonderful organization The Definition of the Child (DOTC), which only withholds one article,
- Articles 1, 2, 3, 6, and 12 are related to the General Principles (GP). Articles 7, 8, and 13-17 are linked by civil rights and freedom (CRF).
- Violence against children is covered under Articles 19, 24 (3), 28, 2, 34, 37 (a), and 39 (VAC).
- Family environment and alternative care (FEAC) are addressed in Articles 5, 9-11, 18 (1-2), 20, 21, 25, and 27. (4).
- The topics of handicap, basic health, and welfare are covered in Articles 6, 18 (3), 23, 24, and 27 (1-3) (BHW).
- Article 28-31 relates to ELCA (education, leisure, and cultural activities).
- The connection between articles 22, 30, 32, 33, 35, 36, 37, 38 and 40 and special protection measures (SPM).

1. Demand of data

Even while pertinent details on the individual articles are being presented, a few groups also receive a discussion of additional pertinent information that is not explicitly linked to an article. For instance, the following is stated under the subject; violence against Children.

- Abuse of minors (expressions 19, 24, para 3, 28, para 2, 34, 37 (a), and 39). States who are party to the Convention are supposed to give important and recent information concerning the following group:
 - Abuse and neglect are covered in Article 19,
 - While measures to prevent and end all forms of hurtful behaviour, such as early and forced marriage and female genital mutilation, are covered in Article 24, Paragraph 3.
 - Sexual abuse and sexual exploitation are covered in Article 34.
 - The freedom from being subjected to torture or other cruel or humiliating methods of punishment, such as beatings, is covered in Articles 37a and 28, Paragraph 2.



- Article 39 addresses measures to promote social reintegration and physical and mental recovery of the victim child.
- The accessibility of a helpline for children

The first five items listed in section 30 (a through e) are considered by a remark indicating what article each item relates to. The final article in the list is listed under Para. Regardless of the information being presented, the availability of the children's hotline is not identified as tied to a recognized item. Additionally, it should be observed that the Convention makes no mention of the help line's accessibility (Coomaraswamy, 2010).

1. **UNCRC monitoring system**

As Freeman wraps up:

Although we still have a ways to go, we have made great strides in recent years. There is currently a serious if fundamental, exploration into children's rights. At UNCRC, we have a standard and a starting point from which we can construct (Freeman, 2010). At the same time, accounting for the legal conception. The details system and the checking framework were other focus areas for Cohen. She observed the unique feature of Article 45, which grants the committee more authority than simply looking at the reports provided by the States who are party to the Convention, allowing these to consider multiple sources for information, offer specialized support, and solicit the Secretary-General to embrace for own sake concentrates on specific problems connecting to the privileges of children (Assembly, 1989). She discovered in 1999 that 58 out of 191 States who are party to the Convention have been unsuccessful in putting forward their underlying report, among several of them detailing doing so up to a year late. (Cohen, 1999)

1. **The new revealing methodology for the reporting procedure**

A new, enhanced, revealing technique is available for States who are party to the Convention, and September 2019 is the due date for their next report. If the new cycle has been recognized by the state who is a party to the Convention, the committee will submit a specific information request additionally to up to thirty questions (the LOIPR, or List of Issues Before Reporting); the state which is a party to the Convention, respond to the questions constitutes their details. Due to the fact that this contact occurs before the LOIPR, it also affects the date on which partner entries are anticipated. State parties are welcome to accept the new methodology when their upcoming report is due. The UK has adopted the new approach, and the LOIPR is set to take place in February 2021, with the UK's most current report due in February 2022. The new work on exposing technique is presented with the implication that the format of the Committee CO reports is still unknown. Would they exclusively discuss the issues raised in the LOIPR, or will they include them in more in-depth cluster observations?

1. **As a legal structure**

This paper provides use of the hypothesis that the declaration can be seen as a useful framework for evaluating national detection and execution of the rights of children. This notion is derived from writing on child rights, where important notable topics concerning various legal systems affect or are related to children's rights. The Convention has been described as an optimistic text and legally enforceable directive, making it an odd legitimate creature for a lawyer. It is not a regulation defining the recognized concept of rights (Garbarino & Briggs, 2014).

Davidson encourages a review of the Convention's strengths and weaknesses and notes suitably in response to claims that the CRC is ineffective since it has no authorization teeth that: The CRC is not considered a criminal implementation resolution, relatively outlining specific legal rights of the Child to be secluded from unfair and unsafe handling, it gives a strong legal framework which administrators and reformers could use to advocate for domestically implemented practices and policies that uphold those rights in their own countries. The central question of this review examines why the Convention makes a significant legal structure that lawmakers and reformers can and ought to use, looking at how the committee implements the Convention after states have ratified it and then, more precisely, examines the fundamentals among state Parties, the legal form of incorporation to which the committee has replied (Chung, Wallace, Kim, Kalyanasundaram, Andalman, Davidson & Deisseroth, 2013).



Consideration must be given to the Convention's wider effects on domestic and foreign law. Ever since convention ratification, there has been speculation that the regional human rights system could be impacted by the Convention's standing as an international law treaty. This argument has gained weight due to the agreements already existing in international law as universally recognized children's legal rights. The situation with the Convention and the greater ratification rates resulting from the extensive global coordination with the intricate system (regardless of whether certain State parties have, as was shown once) create an important source of information on children's rights. Cynthia Price Cohen, a writer who focused more on the CRC jurisprudence, claimed that the UNCRC is a legal document but is not considered law in the traditional logic (Cohen, 1997).

She observed 1998 that states Parties operated in secrecy since they were expected to translate the Convention independently, without any formal instructions for how it should be resolved. The committee will reach a conclusion regarding their level of effectiveness, in this case, of children's rights, the foundation of which is international law. The essential premise of this paper is that the UNCRC should be legally incorporated, and there are several ways to do this. Numerous pieces of writing have been written on it, including Gran's imaginative and combative thesis, Comparing Children Rights: Introducing the Children Rights Index, recording legal rights or evaluating the effectiveness of domestic law as it currently stands. However, this review contains two perspectives that can be deemed dangerous. Voting is a right considered risky because it is not included in the UNCRC in the first place, and in some States parties, where the period of more significant part is not mentioned, this is derived as the voting-age threshold. As a result, if you can vote at 16, you lose your Child's rights and become an adult. Furthermore, his evaluation only considers national laws and does not consider a single body of laws (both international and domestic legal norms approved by a state (Gran, 2010).

CONCLUSION

Whereby ratified treaties are seen as reliable laws. This is a stance that is both risky and strong. The legal right is therefore established per the requirements of the treaties. This is problematic because it precludes the possibility that some State parties may already have the relevant legislation. The merger should imply that the convention provisions can be directly invoked while being closely supervised by the courts and implemented by nationalized experts and that any customary or local laws must comply with the Convention for the Convention to take precedence over domestic law. According to the Vienna Convention on the Law of Treaties article 27, whenever a legal controversy arises, the Convention should always take precedence (Gran, 2010).

REFERENCES

- [1] Assembly, U. G. (1989). *Convention on the Rights of the Child*. United Nations, Treaty Series, 1577(3), 1-23.
- [2] Assembly, U. G. (1989). *Convention on the Rights of the Child*. United Nations, Treaty Series, 1577(3), 1-23.
- [3] Chung, K., Wallace, J., Kim, S. Y., Kalyanasundaram, S., Andalman, A. S., Davidson, T. J. & Deisseroth, K. (2013). *Structural and molecular interrogation of intact biological systems*. *Nature*, 497(7449), 332-337.
- [4] Coalition, O. (2008). *United Nations Human Rights Council Universal Periodic Reviews (UPR) Indonesia Report*. Website: http://www.oslocoalition.Org/resources_upr_reviews.Php [Accessed March 9 2011].
- [5] Cohen, C. P. (1997). *The Jurisprudence of the Committee on the Rights of the Child*. *Geo. J. on Fighting Poverty*, 5, 201.
- [6] Cohen, C. P. (1999). *Implementing the UN Convention on the Rights of the Child*. *Whittier L. Rev.*, 21, 95.
- [7] Coomaraswamy, R. (2010). *The optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict-towards universal ratification*. *The International Journal of Children's Rights*, 18(4), 535-549.
- [8] Doek, J., Krappmann, L., & Lee, Y. (2020). *The role of the committee on the Rights of the Child in monitoring child abuse and neglect*. *Child Abuse & Neglect*, 110, 104517.
- [9] Fortin, J. (1998). *Children's rights and the developing law*. London, UK: Butterworths. p.p 35



- [10] Freedman, R. (2013). *The United Nations Human Rights Council: A Critique and Early Assessment*. Routledge.
- [11] Freeman, M. (2007). *Why it remains important to take children's rights seriously*. *The International Journal of Children's Rights*, 15(1), 5-23.
- [12] Freeman, M. (2010). *The human rights of children*. *Current Legal Problems*, 63(1), 1.
- [13] Garbarino, J., & Briggs, A. (2014). *An approach to assessing 'accountability in implementing the UN Convention on the Rights of the Child: Implications for school psychology*. *School Psychology International*, 35(1), 29-35.
- [14] Gran, B. (2010). *Comparing children's rights: Introducing the children's rights index*. *The international journal of Children's Rights*, 18(1), 1-17.
- [15] Kilkelly, U. (2019). *The UN Convention on the Rights of the Child: incremental and transformative approaches to legal implementation*. *The International Journal of Human Rights*, 23(3), 323-337.
- [16] LeBlanc, L. J., & LeBlanc, L. J. (1995). *The Convention on the Rights of the Child: United Nations lawmaking on human rights (Vol. 3)*. University of Nebraska Press.
- [17] MacDonald, F. E. (2021). *International Children's Rights: A Comparative Study of 52 State Parties Concluding Observation Reports, Investigating, Implementation and Legal Incorporation of the UNCRC*. University of South Wales (United Kingdom).
- [18] Szurlej, C. (2013). *Universal Periodic Review: a step in the right direction? (Doctoral dissertation, Middlesex University)*.
- [19] Tobin, J. (2005). *Increasingly seen and heard: the constitutional recognition of children's rights*. *South African Journal on Human Rights*, 21(1), 86-126.
- [20] Tobin, J. (Ed.). (2019). *The UN Convention on the Rights of the Child: A commentary*. OUP Oxford.
- [21] UNCRC, G. C. N. (2003). *5: General Measures of Implementation of the Convention on the Rights of the Child (arts 4, 42 and 44 (6)), 34th sess, UN Doc CRC (Vol. 12). GC/2003/5.1*