

ETHIOPIA BEFORE THE UNITED NATIONS TREATY MONITORING BODIES

Eva Brems

*Ghent University
Faculty of Law, Department Public Law
Universiteitstraat 4
9000 Gent
Belgium*

e-mail: Eva.Brems@UGent.be

SUMMARY

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Among the many human rights conventions adopted by the UN, seven are known – together with their additional protocols – as the core international human rights instruments:

- *The International Convention on the Elimination of All Forms of Racial Discrimination;*
- *The International Covenant on Civil and Political Rights;*
- *The International Covenant on Economic, Social and Cultural Rights;*
- *The Convention on the Elimination of all Forms of Discrimination against Women;*
- *The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;*
- *The Convention on the Rights of the Child;*

- *The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.*

The main international control mechanism under these conventions is what may be considered the standard mechanism in international human rights protection: state reporting before an international committee. An initial report is due usually one year after joining the treaty and afterwards, reports are due periodically (every four or five years). The international committees examine the reports submitted by the state parties. In the course of this examination they include information from other sources, such as the press, other United Nations materials or NGO information. They also hold a meeting with representatives of the state submitting the report. At the end of this process the committee issues 'concluding observations' or 'concluding comments'. This paper focuses on the experience of one state – Ethiopia - with the seven core human rights treaties. This should allow the reader to gain insights both into the human rights situation in Ethiopia and in the functioning of the United Nations human rights protection system.

Key Words: *United Nations, Human Rights Conventions, State Reporting, Human Rights Situation in Ethiopia*

1. INTRODUCTION

The current international system for the protection of human rights was born on 10 December 1948, the date of the adoption of the Universal Declaration of Human Rights by the General Assembly of the United Nations. Yet, as a resolution of the General Assembly, the Universal Declaration does not have formal binding force. Hence, while the Universal Declaration remains the mother text of human rights and a constant reference point in international relations, lawyers prefer to work with the binding texts that have been adopted since 1948. Among the many human rights conventions adopted by the United Nations, seven are known – together with their additional protocols - as the 'core international human rights instruments': the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD, adopted 21 December 1965), the International Covenant on Civil and Political Rights (ICCPR, adopted

16 December 1966), the International Covenant on Economic, Social and Cultural Rights (ICESCR, adopted 16 December 1966), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, adopted 18 December 1979), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT, adopted 10 December 1984), the Convention on the Rights of the Child (CRC, adopted 20 November 1989) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW, adopted 18 December 1990).

The main international control mechanism under these conventions is what may be considered the standard mechanism in international human rights protection: state reporting before an international committee. An initial report is due usually one year after joining the treaty, and afterwards reports are due periodically (every four or five years). The Committee on the Elimination of Racial Discrimination (CERD), the Human Rights Committee (HRC), the Committee on Economic, Social and Cultural Rights (CESCR), the Committee on the Elimination of Discrimination Against Women (CEDAW), the Committee Against Torture (CAT), the Committee on the Rights of the Child (CRC) and the Committee on Migrant Workers (CMW) are each composed of 10 to 23 independent experts. They examine the reports submitted by the State Parties. In the course of this examination they include information from other sources, such as the press, other United Nations materials or NGO information. They also hold a meeting with representatives of the state submitting the report. At the end of this process the committee issues 'concluding observations' or 'concluding comments'. Drafted in diplomatic language, these nevertheless point out problematic issues from a human rights perspective and include recommendations for change.

In addition to the examination of state reports, the main functions of the supervising committees are the formulation of General Comments - these interpret the content of specific treaty provisions - and the examination of individual complaints. An individual complaint mechanism exists under the ICERD, the ICCPR (additional protocol), the CEDAW (additional protocol) and the CAT. In all these cases, the individual complaint mechanism is optional, because it depends on the

state's ratification of an additional protocol or making of a special declaration.

This paper focuses on the experience of one state – Ethiopia – with the seven core human rights treaties. This should allow the reader to gain insights both into the human rights situation in Ethiopia and the functioning of the United Nations human rights protection system.

2. ETHIOPIA AND THE UN HUMAN RIGHTS COMMITTEES

2.1. Ethiopia's Ratification Record

Ethiopia has been a member of the United Nations since 1945. It is a party to six of the seven core human rights treaties. Ethiopia joined the ICERD in 1976, but did not make the declaration under article 14 that would allow individuals to submit complaints to the CERD. It ratified the CEDAW in 1981, but not the 1999 Optional Protocol. In 1991, Ethiopia joined the CRC, but it has not yet taken any action with respect to the 2000 Optional Protocols on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict. In 1993, Ethiopia joined both the ICCPR and the ICESCR. It has not joined the Optional Protocols to the ICCPR on an individual complaint mechanism (1996) and on the abolition of the death penalty (1989). Ethiopia became a party to the CAT in 1994, but did not make the declaration under article 22 that would allow individual complaints, nor did it join the 2002 Optional Protocol establishing a system of regular visits. Finally, Ethiopia has not taken any action with respect to the ICMW.

This can be considered a good ratification record. The ICMW has been ratified by few states and the substantive protocols that Ethiopia has not ratified are – with the exception of the ICCPR protocol abolishing the death penalty – recent ones, hence ratification may still occur in the near future. It should be noted furthermore, that Ethiopia has not made any reservations under the substantive provisions of any of these conventions.

Successive Ethiopian governments have consistently refused to accept individual complaint mechanisms before the United Nations

committees of independent experts. Since there are no decisions on individual complaints to be examined, this paper will focus on the committees' concluding observations relating to state reports.

2.2. Ethiopia's Reporting Record

One of the problems that is noted in the literature with respect to the reporting mechanism before the UN committees¹ is the huge delay that builds up because states report late or not at all. This pattern can be recognised in the case of Ethiopia. Until now, Ethiopia has delivered 11 reports, but 17 reports are overdue. Under the CERD, Ethiopia delivered reports in 1978, 1979, 1981, 1984, 1985 and 1988, but since then, 8 reports are due. Under the CEDAW, Ethiopia submitted three combined reports in 1993 and two combined reports in 2002. Currently one report is due. Under the CRC, Ethiopia has submitted reports in 1995, 1998 and 2005. Ethiopia has not yet reported under the ICCPR (3 reports due), the ICESCR (3 reports due) and the CAT (3 reports due).

This is a very mixed record, with an excellent performance under the CRC and a fair one under the CEDAW, but very poor under the other treaties. It is remarkable to see regular reporting under the CERD at first, but none under the current regime. And it is troubling to find that Ethiopia has now been a party for over a decade to the ICCPR, ICESCR and CAT, yet has not bothered to submit a single report.

An explanation for this would require an analysis of the national political context as well as of the organisation and dynamics of the relative administrations.

An evaluation of Ethiopia's reporting record would have to conclude, first, that it is very positive that activities are currently going on in the field of human rights reporting, as the most recent reports were submitted in 2002 (CEDAW) and 2005 (CRC). Yet, the total lack of reporting under three treaties is a serious shortcoming. The ICCPR and ICESCR may be considered the main human rights treaties,

¹ Philip Alston, "Effective functioning of bodies established pursuant to United Nations human rights instruments", Final report on enhancing the long-term effectiveness of the United Nations human rights treaty system, UN Doc. E/CN.4/1997/74.

because they include general human rights catalogues, applicable to all individuals and together protect almost all human rights. Moreover, the Convention Against Torture concerns what is arguably the most serious human rights violation that should be on top of the list of any state's priorities.

This unbalanced picture might be due to the fact that Ethiopia joined the CEDAW and CRC earlier, and hence, responsibilities for reporting have been assigned and procedures have been set in motion that may not yet have been cleared out for the other conventions.

On a substantial level the result is remarkable: it appears that the Ethiopian government accepts being challenged by the international community concerning questions with the inclusion of all its citizens, especially the most vulnerable members (women and children), in its policies, but it is more reluctant to see its overall policies and practices challenged in the same way. It is clear that the ICCPR and CAT address issues that do not explicitly come to the fore when discussing women's or children's rights (in particular political freedoms and the prohibition of torture and ill-treatment by state agents). Yet, the ICESCR is different: a state that accepts monitoring under the CRC and CEDAW should not fear the ICESCR Committee, as relatively few issues not covered under the former conventions can be expected to come up under the latter.

The apparent lack of commitment to the CERD is surprising, as this is the treaty that explicitly addresses issues of ethnicity, which take a central place in Ethiopian constitutional law and institutional arrangements.² It remains to be examined whether it might be the case that the Convention's focus on non-discrimination is experienced as problematic in a system based on collective self-determination.³ In March 2006, the CERD Committee sent Ethiopia a list of issues to facilitate the drafting of a report: an answer to this list was due by 31 December 2006.

The eleven reports submitted by Ethiopia to the UN committees, have all been examined – typically two or three years later – by the relevant

² See Christophe Van der Beken, *Decentralisatie en etnische diversiteit in Afrika met casestudy Ethiopië*, Ph.D. Thesis Ghent University, 2006.

³ In that case the situation might be comparable to Belgium's reluctance to ratify the European Framework Convention on National Minorities, because it would upset institutional arrangements expressing a fragile political consensus.

committees. Five of these eleven 'concluding observations' are the object of the analysis in this paper.

Not included are the six reports that have been commented upon by the CERD. The most recent one among these was submitted in 1988 and considered by the committee in 1990. This is too long ago, especially in the light of recent Ethiopian history.⁴

The five documents that are included are:

- the Concluding Observations of the CEDAW Committee issued in 1996 on the combined first, second and third report of Ethiopia submitted in 1993;⁵
- the Concluding Observations of the CEDAW Committee issued in 2004 on the combined fourth and fifth report of Ethiopia submitted in 2002;⁶
- the Concluding Observations of the CRC Committee issued in 1997 on the initial report of Ethiopia submitted in 1995;⁷
- the Concluding Observations of the CRC Committee issued in 2001 on the second report of Ethiopia submitted in 1998;⁸
- the Concluding Observations of the CRC Committee issued in 2006 on the third report of Ethiopia submitted in 2005.⁹

3. THE UN HUMAN RIGHTS COMMITTEES' CONCLUDING OBSERVATIONS ON ETHIOPIA: AN ANALYSIS

3.1. General Observations

The CEDAW Committee labelled the first state report in 1996 as 'frank and honest'¹⁰ and used the term 'frank and constructive' for the dialogue with the state in 2004.¹¹ Yet it noted both times that the state

⁴ From 1974 until 1991, Ethiopia was governed by the socialist Derg regime. The current majority party EPRDF has been in power since then.

⁵ UN Doc. A/51/38, paras.134-163 (hereafter: CEDAW 1996).

⁶ UN Doc. A/59/38 (Part I) paras. 226-273 (hereafter CEDAW 2004).

⁷ UN Doc. CRC/C/15/Add.67 (hereafter CRC 1997).

⁸ UN Doc. CRC/C/15/Add.144 (hereafter CRC 2001).

⁹ UN Doc. CRC/C/ETH.CO.3 (hereafter CRC 2006).

¹⁰ CEDAW 1996, § 138.

¹¹ CEDAW 2004, § 236.

report did not follow the Committee's Guidelines and in 1996 found that these shortcomings were 'obstacles to constructive dialogue'. This problem did not exist under the CRC. The CRC Committee noted in 1997 that the guidelines for reports were respected, even though not all questions asked were answered. It appreciated the 'open and constructive dialogue' and the 'self-critical approach' of the report.¹² In 2001 it noted 'frank and constructive efforts' in the course of 'high quality dialogue'.¹³ In 2006, the CRC Committee welcomed 'the detailed written replies to its list of issues... and the constructive dialogue with a high-level, cross-sectional delegation'.¹⁴

3.2. Obstacles to the Implementation of the Conventions

The format of 'concluding observations' sometimes provides for a specific section dealing with so-called 'factors and difficulties', elements that are recognised by the supervising body as obstacles to full implementation of the Convention and as elements explaining a slow rate of progress.

The CEDAW Committee in 1996 mentioned: "Poverty, deep-rooted customs and traditions, illiteracy, high birth rates and unemployment;" it stated that these were "compounded by the existence of different kinds of laws, national as well as a variety of customary and religious ones."¹⁵ Hence the existence of legal pluralism in Ethiopia is seen by the committee as one of the obstacles for the realisation of women's rights.

The CRC Committee in 1997 mentioned: "Civil war, transition to democracy, interregional and urban/rural disparities in particular with regard to the availability of resources and infrastructure, and the prevalence of certain traditional practices and customs."¹⁶ The Committee also recognised the impact of poverty on the situation of children, pointing amongst others at indicators such as mortality rates,

¹² CRC 1997, § 2.

¹³ CRC 2001, § 2.

¹⁴ CRC 2006, § 2.

¹⁵ CEDAW 1996, § 139.

¹⁶ CRC 1997, § 8.

malnutrition, low levels of school enrolment and immunization coverage.¹⁷

In 2001, it noted "the continuing incidence of natural disasters, including droughts and floods",¹⁸ as well as the period of armed conflict with Eritrea and "the State party's continuing serious socio-economic problems."¹⁹ Under the same heading, the CRC Committee also expressed "its concern at the situation of human rights in general" in Ethiopia.²⁰

3.3. Positive Aspects

Concluding observations on state reports are targeted in the first place at identifying shortcomings in state policy and practice (expressed as 'concerns' of the Committee), and at making recommendations to remedy these. Yet care is always taken to start with a number of positive observations with respect to measures taken and progress made.

Under the CEDAW, these positive aspects are:

- political will, noted with respect to international commitments in the Beijing Conference,²¹ and expressed in a national policy for the advancement of women, policies with gender perspective, and women's focal points in decision-making bodies;²²
- affirmative action policies for women at university level²³ as well as in the civil service;²⁴
- in 1996, the Committee noted a high percentage of women participating in local government;²⁵
- in 2004, it mentioned the revision of the family code and penal code to eliminate discriminatory provisions and also gender mainstreaming in the school curriculum.²⁶

¹⁷ Ibid.

¹⁸ CRC 2001, § 10.

¹⁹ CRC 2001, § 11.

²⁰ CRC 2001, § 11.

²¹ CEDAW 1996, § 141.

²² CEDAW 1996, § 140; CEDAW 2004, § 239.

²³ CEDAW 1996, § 143; CEDAW 2004, § 240.

²⁴ CEDAW 2004, § 240.

²⁵ CEDAW 1996, § 142.

Under the CRC, the following points were mentioned:

- a similar political commitment to improve the situation of children, expressed in the establishment of committees at different levels as well as a national plan of action;²⁷
- a number of elements in the legal framework: in 1997, the Committee noted the fact that the constitution and domestic law both incorporate children's rights standards,²⁸ and in 2001 it mentioned the translation of the Convention (by state and NGOs) into 11 official languages, the ratification of the ILO Conventions on child labour and the new family code amending some problematic provisions;²⁹ in 2006, the Committee mentioned the ratification of several other conventions³⁰ and the Revised Family Code setting 18 years as the minimum age for marriage for both girls and boys,³¹
- in 1997, efforts by the government together with international and non-governmental organisations in the field of information campaigns on HIV/AIDS as well as on harmful traditional practices;³² in 2006, Ethiopia was congratulated for its free anti-retroviral programme and for the criminalization of harmful traditional practices in the 2005 Criminal Code, as well as the criminalization of most forms of human trafficking;³³
- also in 1997, the Committee welcomed the fact that primary education had been made free (but it regrets that it is not compulsory),³⁴

²⁶ CEDAW 2004, § 238 and 240.

²⁷ CRC 1997, § 5; CRC 2006, § 3 (national Plan of Action for Children 2003-2010).

²⁸ CRC 1997, § 3.

²⁹ CRC 2001, §§ 3-4 and 8.

³⁰ CRC 2006, § 5: The Convention of the International Labour Organization No. 29 concerning Forced or Compulsory Labour and No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, both on 2 September 2003; The African Charter on the Rights and Welfare of the African Child on 2 October 2002; The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and Their Destruction on 17 December 2004.

³¹ CRC 2006, § 3.

³² CRC 1997, § 6.

³³ CRC 2006, § 3.

³⁴ CRC 1997, § 7.

- in 2001, the Committee noted some general measures for human rights including children's rights: review of legislation, establishment of the Commission on Human Rights and of the institution of Ombudsman.³⁵ It noted Ethiopia's significant efforts in the assistance to refugees,³⁶
- It also mentions a number of specific measures: the interim prohibition of corporal punishment in schools, efforts for child participatory education and integrating children's rights into school curricula; AIDS awareness clubs in high schools and childcare and protection units in 10 police stations in Addis Ababa.³⁷

3.4. Most Urgent Concerns

Concluding observations on state reports do not normally use the language of 'violations'. They express 'concerns' – although some matters of concern would manifestly constitute human rights violations if they were considered by a court. The Committees establish a certain hierarchy in their observations by occasionally using the term 'great concern' or 'deeply concerned'. Or they make certain recommendations 'as a matter of priority'. From the examination of the concluding observations of the CRC and CEDAW Committees on Ethiopia, the following appear to be the most urgent and most serious matters in the eyes of the committees.

a) *Certain Harmful Cultural Practices*

Widespread *FGM (Female Genital Mutilation)* is a 'great concern' of the CEDAW Committee in 1996³⁸ and of the CRC Committee in 2001;³⁹ the CEDAW Committee also noted *early marriage* as a great concern⁴⁰ and the CRC Committee in 1997 recommended as a matter of priority the abolition of the minimum age of marriage for girls at 15 (as opposed to 18 for boys).⁴¹ Both committees later welcomed the

³⁵ CRC 2001, §§ 3 and 5.

³⁶ CRC 2001, § 9.

³⁷ CRC 2001, § 6.

³⁸ CEDAW 1996, § 148.

³⁹ CRC 2001, § 64.

⁴⁰ CEDAW 1996, § 149.

⁴¹ CRC 1997, § 27.

fact that the minimum age of marriage had been set at 18 years for both sexes,⁴² but the CEDAW Committee expressed concern about the persistence of this practice⁴³ and the CRC Committee stated it was 'specifically concerned' over the high percentage of early marriages and early pregnancies, as these have a negative impact on girl's health.⁴⁴

b) Gender-based Violence

The incidence of violence against women and girls and the insufficiency of measures to eradicate it was another great concern of the CEDAW Committee in 1996.⁴⁵ This concern was repeated in 2004 (though not with the same emphasis).⁴⁶ The Committee pointed at the lack of specific legislation and systematic data collection, in particular on domestic violence. It noted the incidence of rape and mentioned in addition that the crime of abduction was not systematically prosecuted, but was rather addressed through discriminatory customary laws and practices. The CRC Committee in 2001 stated that violence against women has a negative impact on children and may lead to child abuse.⁴⁷

c) Juvenile justice

In 1997, the CRC Committee showed itself 'deeply concerned' about the system of juvenile justice, in particular about the age of criminal responsibility at 9 years and the treatment of children as adults from the age of 15.⁴⁸ This concern was repeated (though not with the same emphasis) in 2001 and 2006.⁴⁹ The Committee then added the issue that there was only one specialised youth court, fearing that international juvenile justice standards may not be available before adult courts.

Moreover, the Committee 'particularly recommended' the abolition 'as a matter of priority' of a number of legal provisions, concerning the

⁴² CEDAW 2004, § 253; CRC 2006, § 3.

⁴³ CEDAW 2004, § 253.

⁴⁴ CRC 2006, § 57.

⁴⁵ CEDAW 1996, § 148.

⁴⁶ CEDAW 2004, §§ 255-256.

⁴⁷ CRC 2001, § 46.

⁴⁸ CRC 1997, § 20.

⁴⁹ CRC 2001, §§ 28-29, §§ 76-77; CRC 2006, §§ 77-78.

sentencing of children to *corporal punishment*, the acceptance in the civil code of 'light bodily' punishment as an educational measure within the family, and the limitation of the *child's right to counsel* when he or she may be represented in legal proceedings by parents or a legal guardian.⁵⁰ The concerns with respect to corporal punishment were repeated (though not with the same emphasis) in 2001 and 2006: the Penal Code still allows "reasonable chastisement" and in practice corporal punishment is still widespread at home, in schools and in other settings.⁵¹

d) Health

The CRC Committee in 2001 was deeply concerned about the extremely high infant mortality rates and low life expectancy, "in particular, at the high incidence of malaria and tuberculosis and their effects upon children, at the fragile health infrastructure, limited health awareness among the public ... that implementation of health policies has been slow and that only limited progress has been achieved in this area."⁵² In 2006, the same committee expressed deep concern "that infant, under-five and maternal mortality remain very high."⁵³ The high incidence of malaria also remains among its (ordinary) concerns. Moreover, an additional deep concern was expressed "over the HIV/AIDS infection rates, and that children and women of child-bearing age remain highly vulnerable to contracting HIV/AIDS. Specifically, the Committee is concerned that testing and counselling are lacking as well as a strategy on how to support and counteract discrimination against children who have contracted or lost their parents to HIV/AIDS."⁵⁴

e) Education

In 2001, the CRC Committee showed deep concern "at the very low rates of primary and secondary school enrolment, at the especially low

⁵⁰ CRC 1997, § 27.

⁵¹ CRC 2001, §§ 38-39; CRC 2006, §§ 33-34.

⁵² CRC 2001, § 52.

⁵³ CRC 2006, § 53.

⁵⁴ CRC 2006, § 55. A concern about HIV/AIDS had earlier been expressed by both committees (CEDAW 1996, § 161; CRC 2001, §§ 58-59).

rate of enrolment among girls and the very high drop-out rate."⁵⁵ In 2006, the same committee welcomed the improved enrolment rate in primary schools, as well as increased budget allocation for education, but remained "seriously concerned that primary education is still not free nor compulsory and that net enrolment is still very low."⁵⁶ The drop-out rate remains one among many other concerns in the area of education.⁵⁷ Other concerns raised by the committees in the area of education included sexual harassment of girls at school and lack of vocational training programmes,⁵⁸ school fees in primary education, overcrowding of schools, low transition rate to secondary school, insufficient number of trained teachers and available school facilities, absence of budget allocations for pre-primary schools and the poor quality of education.⁵⁹

f) Sexual Exploitation

In 2001, the CRC Committee was "deeply concerned at reports of sexual exploitation, prostitution, rape and other sexual abuse of children."⁶⁰ In 2006, the Committee welcomed initiatives by the state to combat sexual exploitation, but a deep concern remained concerning the lack of information on the extent of the problem and the number of children affected by sexual abuse and exploitation,⁶¹ as well as the sale and traffic in children.⁶² The CEDAW Committee, dealing with adult women, used the term 'prostitution' rather than 'sexual exploitation', and expressed concern – not 'deep concern' - at its prevalence.⁶³

⁵⁵ CRC 2001, § 66. Before being thus raised as a priority concern, these issues had already emerged as a shared concern of the CRC Committee (1997, § 17) and the CEDAW Committee (1996, § 151).

⁵⁶ CRC 2006, § 63.

⁵⁷ Ibid.

⁵⁸ CEDAW 1996, § 151.

⁵⁹ CRC 2006, § 63.

⁶⁰ CRC 2001, § 72.

⁶¹ CRC 2006, § 73.

⁶² CRC 2006, § 75.

⁶³ CEDAW 1996, § 149.

g) Discrimination and Vulnerable Groups of Children

The CRC Committee recommends in its most recent observations that Ethiopia should make combating discrimination against vulnerable girls a national priority. The Committee identifies many groups of children that suffer discrimination,⁶⁴ but emphasises in particular the vulnerability of girls, who "remain victims of harmful traditional practices, deprived of education (primary and secondary), victims of sexual and physical violence as well as commercial exploitation."⁶⁵

In addition, a serious concern is expressed about torture, cruel and degrading treatment by the police and the military of vulnerable groups of children, such as children belonging to ethnic minorities.⁶⁶ In 2006, the CRC Committee was also deeply concerned about the fate of street children⁶⁷ and about the prevalence of child labour.⁶⁸

h) Birth registration

The registration of children at birth may seem like a simple administrative matter, but it is in fact important leverage for the enjoyment of many rights – children who are not registered, do not officially 'exist' and hence cannot receive social nor other benefits. In 2006, the CRC Committee was "deeply concerned that a very large number of children are neither registered at birth nor at a later stage."⁶⁹

i) Poverty

The CRC Committee is deeply concerned about the widespread poverty in Ethiopia and the impact of extreme poverty on children, in particular "the increasingly large numbers of children who do not enjoy the right to an adequate standard of living, including access to

⁶⁴ CRC 2006, § 24: "girls, children with disabilities, children living in poverty, refugee children, children affected by and/or infected with HIV/AIDS and children belonging to ethnic minorities."

⁶⁵ Ibid.

⁶⁶ CRC 2006, § 35.

⁶⁷ CRC 2006, § 69. This was already an ordinary concern in CRC 1997, § 19 and CRC 2001, §§ 74-75.

⁶⁸ CRC 2006, § 71. This was already an ordinary concern in CRC 1997, § 19 and CRC 2001, §§ 74-75.

⁶⁹ CRC 2006, § 31. Before being thus raised as a priority concern, registration had already emerged as a common concern of the CRC Committee (1997, § 15; 2001, § 34 – 'deep concern') and the CEDAW Committee (2004, § 253).

food, clean drinking water, adequate housing and latrines"⁷⁰ and children living in extreme poverty as a result of their being deprived of parental care, because of AIDS or other reasons.⁷¹

j) Human Rights Institutions

In 2006, the CRC Committee recommended as a matter of priority that the state should ensure "the efficient operation of both the Human Rights Commission and Ombudsman", in full compliance with all relevant international principles.⁷² These institutions were established by law in 2000. The Committee "understands that the Offices commenced operation in 2005 but regrets the lack of information on their work."⁷³

k) Police and Military Behaviour in a Context of Political Upheaval

The CRC Committee "is deeply concerned over the information concerning the direct impact on children of events following the November 2005 demonstrations which involved arbitrary mass detentions, excessive use of force by the police and the military causing deaths and physical injuries, including by gunshots, of numerous children. The Committee is particularly disturbed to learn that schools were attacked under the pretext that children were involved in demonstrations. Among the children affected, the Committee notes an elevated number of vulnerable children belonging to ethnic minorities as well as street children. The Committee urges the State party to take urgent measures to ensure respect for the civilian population and protect vulnerable groups, such as children of ethnic minorities and street children, from excessive use of force."⁷⁴

In addition, the Committee "is especially concerned at the lack of awareness of children's rights displayed by the police during the post-election events, despite having received considerable relevant training."⁷⁵ Moreover, in this context, children's rights issues are to

⁷⁰ CRC 2006, § 61.

⁷¹ CRC 2006, §§ 37-38.

⁷² CRC 2006, § 15.

⁷³ CRC 2006, § 14.

⁷⁴ CRC 2006, § 27.

⁷⁵ CRC 2006, § 20.

such an extent intertwined with general human rights issues that the CRC Committee's serious concerns do not remain restricted to the field of children's rights: "The Committee is seriously concerned over restrictions placed upon civil society since the elections in 2005 and, in particular, regrets the arbitrary mass detentions, including of children, that place severe restrictions upon the freedom of expression which is a fundamental element of a free civil society."⁷⁶

D) Lack of Government Commitment

The most remarkable deep concern is one of a general nature, expressed by the CRC Committee in 2001, casting doubt on the Ethiopian government's authentic commitment to children's rights "particularly in the context of high military expenditure, the Committee is deeply concerned that the State party has not sought to implement the Convention to the maximum extent of available resources."⁷⁷ This implies insufficient budgetary allocation to implement policies and plans in favour of children's rights. In the preceding paragraph, the Committee had noted that some relevant budgets had been decreased since the submission of the initial report.

3.5. Shared Concerns of the CEDAW Committee and the CRC Committee

Several among the priority concerns enumerated above were raised by both the CEDAW Committee and the CRC Committee, though not necessarily with the same strong emphasis. This is specifically the case for the issues of birth registration, education rights and HIV/AIDS. Below are some other issues that have been mentioned by both committees.

Harmful Cultural Practices

Two practices – female genital mutilation and early marriage – are raised as priority concerns (cf. supra). Yet the CRC Committee also mentions some harmful practices against children that do not exclusively affect girls: one is the persistence of discriminatory social attitudes against vulnerable groups of children, such as the girl child,

⁷⁶ CRC 2006, § 22.

⁷⁷ CRC 2001, § 18.

disabled children, children born out of wedlock and children affected by HIV/AIDS.⁷⁸ In 2001, it added the practices of uvulectomy, milk-teeth extraction and forced marriage.⁷⁹ In 2006, the concern about forced marriage was specified as being about the widespread practice of "forced and early marriages of girls through abduction."⁸⁰

The CEDAW Committee additionally mentions some harmful practices against adult women: widow inheritance and 'strong stereotypical attitudes in respect of the roles and responsibilities of women and men in the family and society'.⁸¹ In 1996 it added that all existing customary laws should be reviewed in view of their compatibility with international and national law.⁸²

Health care

Health care affects all people, including of course women and children. Both Committees have stressed the importance of primary health care. The CEDAW emphasises access to reproductive health, family life education and family planning services,⁸³ adding in 2004 a concern about maternal mortality and clandestine abortion.⁸⁴ The CRC Committee in 1997 proposed to give budgetary priority to the development of a primary health care system, which would develop a culture of nutrition, hygiene and sanitation.⁸⁵ In 2001, it also pointed at insufficient provision of mental health care facilities and in both 2001 and 2006 at the situation in adolescent health care, in particular the high incidence of early pregnancy and sexually transmitted diseases.⁸⁶ In 2006, the CRC Committee added concern at "the low coverage of vaccinations, the prevalence of malaria, low breastfeeding rates and the high incidence of malnutrition."⁸⁷ It noted moreover that medical facilities are concentrated in the urban areas, resulting in

⁷⁸ CRC 1997, § 14.

⁷⁹ CRC 2001, § 64.

⁸⁰ CRC 2006, § 59.

⁸¹ CEDAW 2004, § 251.

⁸² CEDAW 1996, § 154.

⁸³ CEDAW 1996, § 160.

⁸⁴ CEDAW 2004, § 257.

⁸⁵ CRC 1997, § 28.

⁸⁶ CRC 2001, §§ 60-63. CRC 2006, §§ 57-58.

⁸⁷ CRC 2006, § 53.

exclusion of the majority of the population from necessary health services.⁸⁸

State Responsibilities in a Federal Structure

An interesting issue that is alluded to by both committees is the impact of the federal state structure on human rights protection. On the one hand, this is an issue because some matters are within the powers of regional authorities; hence legislation and policies have to be adopted in all regions. The CEDAW Committee in 2004 was worried that the federal state structure might slow down changes to improve women's rights: "The Committee urges the State party to enforce the supremacy of the Constitution over regional laws and encourages it to proceed, as a matter of urgency, with the full implementation of the provisions of the Convention throughout the country, including through enhanced cooperation between the federal and regional governmental bodies and institutions, so as to achieve uniformity of results in the implementation of the Convention. Also, the federal government must ensure that all regional governments adopt and duly implement the revised Family Code."⁸⁹ In 2006, the Committee was concerned that the newly created Ministry of Women's Affairs "lacks sufficient resources and the ability to establish coordination at the regional, zone and Woreda levels."⁹⁰

On the other hand, the structure itself might mean a risk for some rights, in particular those of ethnic minorities. The CRC Committee in 2001 expressed concern "that children and their families who are members of ethnic groups which are in a minority in a particular region, or which are not in control of the region's administration, face discrimination."⁹¹

Other Concerns

In addition, both Committees complain about a lack of statistical data which are the basis for evaluating a situation and for measuring

⁸⁸ Ibid.

⁸⁹ CEDAW 2004, § 242.

⁹⁰ CRC 2006, § 10.

⁹¹ CRC 2001, § 30.

progress and making comparisons. This lack of data includes lack of information on specific categories of women or children.⁹²

Both Committees worry that the mechanisms and institutions that have been created (and that are noted under 'positive aspects') might have too little power and too little resources to actually make a difference.⁹³

Both Committees encourage the state to increase its cooperation with NGOs. The CEDAW Committee states that they should be consulted in the preparation of the state report.⁹⁴ The CRC Committee says that the legislative network governing the work of NGOs is to be updated.⁹⁵

3.6. Additional Concerns of the CEDAW Committee

While the CRC Committee abstains from comments on the general development of rights protection in the state, the CEDAW Committee in 2004 commented with concern on the "slow progress in the implementation of the provisions of the Convention" since the consideration of the previous report in 1996.⁹⁶

Specific issues taken up by the CEDAW Committee and not by the CRC Committee usually affect mostly adult women: political rights and economic rights.

In the political sphere, the Committee regrets the low representation of women at higher decision - making levels.⁹⁷ In the economic sphere, the Committee mentions discrimination in the labour market, especially in the emerging private sector. It recommends temporary special measures to remedy this.⁹⁸ The Committee is also concerned about the increasing number of women migrating in search of work and their vulnerability to violence, exploitation and trafficking.⁹⁹ Finally it

⁹² CEDAW 2004, § 249; CRC 2001, §§ 22-23; CRC 2006, § 18.

⁹³ CEDAW 1996, § 145; CEDAW 2004 §§ 245-246; CRC 2001, §§ 17-21; CRC 2006, §§ 10-17.

⁹⁴ CEDAW 2004, § 270.

⁹⁵ CRC 2001, § §§ 26-27. Also CRC 2006, §§ 22-23.

⁹⁶ CEDAW 2004, § 240.

⁹⁷ CEDAW 1996, § 150; CEDAW 2004, §§ 263-264.

⁹⁸ CEDAW 2004, §§ 261-262.

⁹⁹ CEDAW 2004, § 265.

emphasises poverty reduction for women; the Committee insists on the integration of gender perspectives in poverty reduction programmes and the participation of rural women in the formulation, implementation and evaluation of such programmes. In addition, it calls upon the state to put in place policies to protect women's right to property and to ensure that women have access to land and water resources on an equal basis with men.¹⁰⁰

3.7. Additional Concerns of the CRC Committee

First, there are a number of general remarks that the CRC Committee has made in each of its reports on Ethiopia. One is the lack of publication of the CRC in the Official Gazette, which makes it difficult even for legal professionals to have access to it.¹⁰¹ Another is the lack of awareness and understanding of the principles and provisions of the Convention. In order to remedy this, the Committee recommends among other things, the training of relevant personnel.¹⁰²

In addition, there are numerous child-specific human rights violations that have been highlighted in one or several concluding observations of the CRC on the state reports of Ethiopia. The list below summarises these issues and thus provides a sorry account of many challenges facing Ethiopia with respect to children's rights.

Children's rights are usually subdivided into three categories (the so-called "three P's"): *protection rights*, *participation rights* and *provision rights*.

In the field of *protection rights*, the Committee has expressed concern that the lack of conformity of adoption systems with CRC requirements may make children vulnerable to human rights abuses,¹⁰³ that widespread unofficial (illegal) adoption leads to discrimination and that the possibility to revoke adoption may leave children without care.¹⁰⁴ It has remarked on the insufficiency of measures taken for the

¹⁰⁰ CEDAW 2004, § 260.

¹⁰¹ CRC 1997, § 9; CRC 2001, § 14; CRC 2006, § 8.

¹⁰² CRC 1997, § 10; CRC 1997, §§ 24-25; CRC 2006, §§ 20-21.

¹⁰³ CRC 2001, §§ 44-45.

¹⁰⁴ CRC 2006, §§ 39-44.

recovery and social reintegration of children victims of war¹⁰⁵ and has urged that children's concerns be taken into account in all postwar efforts.¹⁰⁶ In 2006, the Committee was still "concerned at the lack of physical and psychological recovery for all children affected by armed conflict, in particular those who were displaced and separated from their parents and those affected by land mines."¹⁰⁷ Moreover, it expressed a fear that the recruitment of child soldiers might be possible despite legal arrangements to the contrary, on account of "possible gaps within the recruitment process due to a lack of adequate birth registration."¹⁰⁸ It also emphasised the needs of refugee and internally displaced children and their families.¹⁰⁹ In the context of population displacement caused by natural disasters and armed conflict, the Committee has stressed the importance of family reunification.¹¹⁰ In the area of juvenile justice, the Committee is concerned that contrary to international standards, children are not separated from adults in detention,¹¹¹ at least during pre-trial detention.¹¹² It fears "that deprivation of liberty is not used as a measure of last resort", as it should be with respect to children, and it "regrets the absence of a child-friendly juvenile justice system in most of the country and the lack of legal aid representatives for child victims of offences as well as accused children."¹¹³ Moreover, it is "concerned over the large number of young children, including infants, in prison with their mothers."¹¹⁴ The Committee has also made detailed recommendations to improve state response to child abuse.¹¹⁵ In 2006, the Committee included for the first time an entry on the rights of children belonging to a minority or indigenous group. It noted the absence of information on this topic in the state's report and expressed concern "over the situation of children belonging to minorities, in

¹⁰⁵ CRC 1997, § 21.

¹⁰⁶ CRC 2001, § 69.

¹⁰⁷ CRC 2006, § 67.

¹⁰⁸ *Ibid.*

¹⁰⁹ CRC 2001, §§ 70-71; CRC 2006, §§ 65-66.

¹¹⁰ CRC 2001, §§ 42-43.

¹¹¹ CRC 2001, § 76.

¹¹² CRC 2006, § 77.

¹¹³ CRC 2006, § 77.

¹¹⁴ CRC 2006, §§ 49-50.

¹¹⁵ CRC 2006, §§ 45-48.

particular Oromo and Anuak, as they suffer stigmatization and persecution by the armed forces, including torture, rape and killings, due to the presence of opposition groups within their territories."¹¹⁶

With respect to *participation rights*, the Committee noted in 1997 that children's right to adequate recourse (in particular against abuse or neglect within the family) is hampered by the requirement that a complaint can be lodged only through their parents or legal guardians¹¹⁷ and that systems of adoption were not in conformity with the best interests principle and the principle of respect for the child's views.¹¹⁸ In 2001, the Committee expressed concern that children's right to be heard is insufficiently respected, as well as their right to express their opinions freely – including through peaceful demonstrations; in this respect the CRC Committee also recommends that the State Party make additional efforts to guarantee general respect for the human rights of adults.¹¹⁹ In 2006, the Committee appreciated efforts that had been undertaken such as a 'child forum', but remained concerned "that traditional societal attitudes appear to limit children in freely expressing their views in the community, the schools, the courts, or within the family."¹²⁰

In the area of *provision rights*, the Committee expressed concern about the shortage of teachers and about school curricula that are divorced from cultural and social realities¹²¹ and about discrimination against girls and children with disabilities *inter alia* with respect to access to education,¹²² as well as about insufficient education and training for children in institutional care¹²³ and the allocation of insufficient resources for schools. In this respect, the Committee recommends that the state assist children with insufficient means with the costs of education, including school uniforms and school fees.¹²⁴

¹¹⁶ CRC 2006, § 79.

¹¹⁷ CRC 1997, § 16.

¹¹⁸ CRC 1997, § 18.

¹¹⁹ CRC 2001, §§ 36-37.

¹²⁰ CRC 2006, § 29.

¹²¹ CRC 1997, § 17.

¹²² CRC 2001, § 30; CRC 2006, § 51.

¹²³ CRC 2001, §§ 50-51.

¹²⁴ CRC 2001, §§ 66-67.

Among the concerns enumerated in 2006 were school fees in primary education, overcrowding of schools, low transition rate to secondary school, insufficient number of trained teachers and available school facilities, absence of budget allocations for pre-primary schools and the poor quality of education.¹²⁵ In addition to this range of concerns relating to education, the Committee has also noted the absence of social welfare services.¹²⁶

4. CONCLUDING COMMENTS

Backlog

Ethiopia's serious backlog in reporting under the United Nations human rights conventions illustrates a generally recognised problem with the reporting system. According to UN figures, on 16 February 2006, 70% of all reports that were due had in fact been submitted. The remaining 30% represented a total of 1442 reports that were overdue at that date.¹²⁷ 585 Reports were 5 years overdue and 225 reports were 10 years overdue.¹²⁸ In fact, only 8 of the 194 states that are party to one or more of these mechanisms were up to date with all their reports.¹²⁹ States have to submit extensive reports to a large (and increasing¹³⁰) number of committees at different intervals. A state that has ratified all nine treaties and protocols imposing reporting obligations must produce a report to a treaty body, on average, once every five and a half months.¹³¹ Moreover, different committees have adopted different working methods and overlaps between the fields, covered by the conventions, are not taken into account. Nor is there any coordination among the committees with respect to the scheduling of state reports. "A State party may be asked to present several reports

¹²⁵ CRC 2006, §§ 63-64.

¹²⁶ CRC 2001, §§ 54-55.

¹²⁷ Concept paper on the High Commissioner's proposal for a unified standing treaty body, UN Documents HRI/MC/2006/2, 19.

¹²⁸ *Id.*, 26.

¹²⁹ *Id.*, 7.

¹³⁰ When the new Convention on the Rights of Persons with Disabilities enters into force, a UN Committee on the Rights of Persons with Disabilities will be created. Likewise, when the new Convention on Enforced Disappearance enters into force, it will be monitored by a UN Committee on Enforced Disappearance.

¹³¹ Concept paper on the High Commissioner's proposal for a unified standing treaty body, UN Documents HRI/MC/2006/2, 19.

to several Committees in the period of a month or sometimes a week and many States parties appear before several Committees in the same year... A State party may be asked the same question by several of the treaty bodies, and find that less time is devoted to treaty-specific issues."¹³² For states that are confronted with resource constraints, both in terms of human capacity, time and finances, this proves to be a difficult challenge. Moreover, the average time from submission to consideration of State Party reports by the treaty bodies (measured in 2005) varies between 12 months (Human Rights Committee) and more than 23 months (CEDAW Committee).¹³³ This delay reduces some of the positive effects to be expected from the reporting mechanisms. In particular the momentum built when civil society actors contribute information to a committee, may be lost again by the time the Committee issues its comments on the report. Moreover, changes in the political environment may result in some of the information in the report being outdated, or in a situation in which a report drafted by one political majority has to be defended by another political majority.

The United Nations High Commissioner on Human Rights has expressed the ambition to reform the United Nations human rights machinery and replace the existing committees by one unified standing treaty body. If this is realised, states would have to submit only one integrated report on which they can focus their resources. To the extent that resource constraints explain the current backlog, the situation might improve substantially.

Ethiopia's practice under the CRC and CEDAW shows that it has the capacity to submit timely reports. However, to the extent that the backlog is to be explained by political concerns rather than resource constraints, there is a risk that this procedural innovation would halt Ethiopia's current good reporting practices under the CRC and CEDAW. If the lack of reporting under the ICESCR, ICCPR and CAT reflects a deliberate government refusal to report on general human rights issues, the same government may also refuse to submit the integrated report in order to avoid questioning about these issues.

¹³² Id., 8.

¹³³ Id., 27.

Effects of State Reporting

The main functions of state reporting procedures are: initial review, monitoring, policy formulation, public scrutiny, evaluation, acknowledging problems and information exchange.¹³⁴

The analysis of Ethiopia's experiences under the treaty monitoring bodies offers clear indications that the 'monitoring function' and 'policy formulation function' are working. In order to write a report, a state has to set in place mechanisms to monitor its domestic human rights situation. Moreover, the reporting exercise may act as a catalyst for the proposal of legislative changes and the formulation of long-term policies. Through the committees' concluding observation, it is clear that policies have been formulated and monitoring bodies and mechanisms have been created. It is however problematic that after formulation, policies are not necessarily implemented and that monitoring bodies once created are not necessarily effective.

The 'public scrutiny function' refers to reporting as an opportunity for broad consultation with relevant sectors of society and hence as an instrument of government accountability toward its citizens. In the case of Ethiopia, this function appears to be hampered, as the government apparently does not use the reporting procedure as an occasion for dialogue with civil society.

Finally the 'evaluation function' offers a mixed picture. Regular state reporting allows monitoring progress, and is supposed to keep pressure on governments to realise progress. Yet both the CEDAW Committee and the CRC Committee have expressed concern over the lack of sufficient progress.

¹³⁴ Philip Alston, "The purposes of reporting", in *Manual on human rights reporting*, Geneva, United Nations, 1997, 19-24.