

DOMESTIC IMPLICATIONS OF CONCLUDING OBSERVATIONS OF THE COMMITTEE ON THE RIGHTS OF THE CHILD: THE CASE OF ETHIOPIA

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Abstract

Ethiopia is party to the Convention on the Rights of the Child and its two substantive Protocols. Ethiopia's reporting history to the Committee on the Rights of the Child is better in terms of complying with periodicity and participation than its reporting histories to other treaty bodies. Ethiopia submitted four reports to the Committee and received recommendations. This article aims to examine the implications of these recommendations on domestic child rights framework. Ethiopian delegates to the constructive dialogues made a number of promises and submitted reports of compliance with regard to the Committee's recommendations. Concluding observations of the Committee, which are checklist of compliance with conventional obligations, can be considered as soft obligations on the government of Ethiopia. Though concluding observations cannot sufficiently reach domestic law-making process and the law making organs, propelling role of the observations in the adoption of domestic laws, policies and plans of action is observed. With regard to the interpretative relevance of concluding observations, this article shows that there is no analytical mode of treaty application and prescribed principles of treaty reference, which would have paved the way for utilizing the concluding observations of the Committee in interpreting child rights treaties.

Keywords: concluding observations, constructive dialogue, Convention on the Rights of the Child, recommendations, reporting, rights of the child

I. INTRODUCTION

All core human rights treaties under the auspices of the United Nations have 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; and 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 final documents of this procedure are known as concluding observations.

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Concluding observations, besides reflecting the status of implementation of a treaty in a particular State Party, constitute recommendations that the experts believe are necessary for the improvement of human rights implementation and situations. Yet we can hardly find literature on the relevance of these instruments – concluding observation - to the process of making and interpretation of human rights laws. Broader perspective on the status of these instruments can, however, be acquired through analysis of their relevance to and implications for the domestic human rights systems.

Hence, this article tries to mitigate the dearth of literature on the role of concluding observations in interpreting, initiating and determining laws in Ethiopia. This article will examine the implications of concluding observations with a particular focus on concluding observations of the Committee on the Rights of the Child (hereinafter, the Committee) which is entrusted with the supervision of the Convention on the Rights of the Child (hereinafter, the Convention) and two substantive Protocols. The practice of the Ethiopian government in relation to concluding observations as extracted from state reports, concluding observations, domestic legislation and policies will be evaluated *vis-à-vis* human rights treaties and reports of the Committee.

This article is organized into six sections. After this introductory part, the function and reporting procedures of the Committee will be discussed. Section three introduces concluding observations. Then, the next section evaluates Ethiopia's participation in the Committee's reporting procedure. The fifth section discusses implications of the concluding observations of the Committee in Ethiopia legal system. Finally, there will be concluding remarks.

II. THE COMMITTEE ON THE RIGHTS OF THE CHILD AND ITS REPORTING PROCEDURE

The Committee on the Right of the Child is the organ entrusted with monitoring states' compliance with the Convention.¹ The central aim of the Committee is “examining the progress made by States Parties in achieving the realization of obligations undertaken in the Convention.”² The States Parties to the Convention undertake to respect and ensure the rights set forth in the Convention by taking all legislative, administrative and all other appropriate measures.³ The Committee monitors the progress of State Parties through investigating complaints, adopting general comments, reviewing state reports and organizing meetings for thematic discussion on child rights issues.

The Committee takes the reporting procedure as the primary tool of supervising the implementation of the rights. The reporting mechanism extends to the substantive Optional

¹ United Nations Convention on the Rights of the Child, adopted on 20 November 1989 and entered into force on 2 September 1990, General Assembly resolution 44/25, (here in after *the Convention*), Art. 43(1); Office of the United Nations High Commissioner for Human Rights, Legislative History of The Convention on the Rights of The Child 820 (2007); See also Jaap E. Doek, *The United Nations Convention on the Rights of the Child, A Guide to the Preparatore Trauvaxe* 535-539 (2006).

² *The Convention, Id.*

³ *Id.* Art. 2(1) and Art. 4.

Protocols.⁴ The initial report shall be submitted two years after the Convention enters into force for the particular state concerned⁵ and periodic reports shall be made every five years.⁶ The same periodicity applies for the two substantive Optional Protocols of the Convention.⁷ An initial report on an Optional Protocol is due within two years after it enters in to force for the State Party, thereafter the periodic report is to be submitted with reports on the Convention. Being concerned with high rate of failure of submitting the reports and overlapping of reports, the Committee has adopted a rule which exceptionally allowed a State Party under dialogue to combine its next two periodic reports.⁸ State reports are also required to meet structural and substantive specifications provided by the Committee. Apart from guidelines common for all treaty bodies,⁹ the Committee adopted guidelines for initial and periodic state reports.¹⁰

The reporting procedure begins when a state submits a periodic report. Then, a pre-sessional working group of the reporting procedure prepares lists of issues.¹¹ 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.¹² Though the Convention does not provide for the procedure of considering a report in the presence of delegate of a state, the Committee adopted a practice of conducting formal meeting with a State Party. A series of exchange of thoughts between members of the Committee and a State Party is known as constructive dialogue.¹³ There are some features that make the dialogue a constructive one.¹⁴ First, openness of the arguments;

⁴ *Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts*, adopted on 25 May 2000, General Assembly Resolution 54/263, A/RES/54/263 (hereinafter, *OPAC*); Art.8(1) and *Optional Protocol to the Convention on the Rights of the Child on the sale of Children* (hereinafter, *OPSC*), child prostitution and child pornography, adopted on 16 March 2001, General Assembly Resolution 54/263, A/RES/54/263, Art.12.

⁵ *The Convention*, Art. 44(1)(A).

⁶ *Id.* Art. 44(1)(B).

⁷ See *OPAC*, Art. 8(1) and Art. 8(2) and *OPSC*, Art. 12(1) and Art. 12(2).

⁸ See Committee on the Rights of the Child, *Recommendation adopted by the Committee on the Rights of the Child*, CRC, CRC/C/124, Thirty-second session, 1 (2003).

⁹ 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 document*, HRI/MC/2006/3 (10 May 2006).

¹⁰ 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 in to eight clusters for 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.

¹¹ 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.

¹² *Id.*

¹³ *Id.* at 11.

¹⁴ See BEATA FARACIK, CONSTRUCTIVE DIALOGUE AS A CORNERSTONE OF THE HUMAN RIGHTS TREATY BODIES SUPERVISION, 3 (2006), available at: http://papers.ssrn.com/sol3/Delivery.cfm/SSRN_ID2557068_code2000726.pdf?abstractid=2557068&mirid=3 (accessed on 28th October 2016).

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 of a non-judgmental atmosphere than a blame and shame nature. Based on their observations of the report and the dialogue, country rapporteurs prepare a summary that may include recommendations. On the other hand, the State Party under examination may also make comments on the recommendations adopted by the Committee.¹⁵ If the Committee understands that the State Party is in need of technical advice or assistance, it sends the state report with relevant recommendations to the United Nations specialized agencies and other bodies.¹⁶

III. INTRODUCTION TO CONCLUDING OBSERVATIONS

Following the dialogue with the reporting state, the Committee 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".¹⁷ 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".¹⁸ Indeed, concluding observations are not only conclusion about compliance but also serve as a tool for improvement of compliance. Concluding observations of treaty bodies have two functions: direct public attention to shortfalls and identify specific activities to improve implementation.¹⁹ 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".²⁰

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

¹⁵ See Committee on the Rights of the Child, *Rules of procedure*, CRC/C/4/Rev.4 (18 March 2015), Rule 75/2

¹⁶ *The Convention*, Art.45(B); The Committee 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.

¹⁷ Michael O'Flaherty, *The Concluding Observations of United Nations Human Rights Treaty Bodies*, 6 HRLR6 27, 29 (2006).

¹⁸ ANNE F. BAYEFSKY, REPORT ON THE UN HUMAN RIGHTS TREATY SYSTEM: UNIVERSALITY AT THE CROSSROADS, 66 (April 2001) available at <http://www.bayefsky.com/report/finalreport.pdf> (accessed on 28th October 2016); See also KERSTIN MECHLEM, TREATY BODIES AND THE INTERPRETATION OF HUMAN RIGHTS, 923 (2009) available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1507877 (accessed on 28th October 2016).

¹⁹ ANNE F. BAYEFSKY, *Id.* at 67.

²⁰ Michael O'Flaherty, *supra* note 17, at 27.

States Parties in general”.²¹ 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”.²² Therefore, concluding observations are instruments, adopted by treaty bodies after a reporting procedure that interpret a treaty, express understanding of the body as to human rights situation in a State Party and suggest measures that the State Party should take to improve the situation.

All treaty bodies adopt concluding observations (concluding comments, in the 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 Committee to make suggestions and general recommendations.²³ There is an issue on which contemporary recommendatory documents of the Committee shall the cited provision fall. 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 phrase in the provision that “the recommendations shall be transmitted to any State Party concerned” indicates 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’ that emanate from the authority bestowed up on the Committee by the virtue of Art. 45(D) of the Convention.²⁴ This enabling provision stipulates that the suggestions and recommendations of the Committee are to be issued on the basis of information received by the Committee in accordance with Articles 44 and 45 of the Convention. Therefore, the Committee 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 Committee forward a set of recommendations.²⁵ With expressions of the phrase like *deeply concerned* and *concerned*, the Committee tacitly established groups of *concerns*, thereby relative difference on the priority of recommendations.

The Committee adopted its first concluding observations on February 1993 on Bolivia.²⁶ This concluding observation focused on limited issues. The views and recommendations of the Committee were too general. Besides, we can hardly find suggestions on follow-up on

²¹ Marta S. Pais, *The Convention on the Rights of the Child*, in MANUAL ON HUMAN RIGHTS REPORTING 393, 501 (United Nations, 1997).

²² KERSTIN MECHLEM, *supra* note 18, at 19.

²³ See *The Convention*, Art.44 and 45(D).

²⁴ Office of the United Nations High Commissioner for Human rights, *supra* note 1, at par.665; N. ANDO, GENERAL COMMENTS/RECOMMENDATIONS, 8 (2010) available at Max Planck Encyclopedia of Public International Law Max Planck Institute for Comparative Public Law and International Law, Heidelberg and Oxford University Press, www.mpepil.com (last visited on 28th October 2016).

²⁵ M. Kjørum, *State Reports*, in INTERNATIONAL HUMAN RIGHTS MONITORING MECHANISMS, 22 (2nd rev. ed., Martinus Nijhoff Publishers, 2009)

²⁶ Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties under Article 44 of the Convention, *Concluding observations: Bolivia*, CRC/ C/15/Add.1, Third Session, (18 February 1993)

observations.²⁷ Concluding observations of late 1990s dedicated a paragraph for the dissemination of the reporting documents.²⁸ A turning point for structural and substantive improvement in the concluding observations of the Committee can be drawn at the beginning of the new millennium.²⁹ The primary source of the change was adoption of a system of clustering.³⁰

IV. ETHIOPIA'S REPORTING TO THE COMMITTEE ON THE RIGHTS OF THE CHILD

Ethiopia is party to the Convention on the Rights of the Child since 1992 and to the African Charter on the Rights and Welfare of the Child since 2002. However, it is not party to the third Optional Protocol on Complaints Procedures. One of the recommendations of the Committee, 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 and the African Committee of Experts on the Rights and Welfare of the Child remain the only human rights monitoring institutions which can examine complaints alleged against Ethiopia.³¹ The implication is that the reporting procedure remains the primary mechanism available for the Committee to oversee compliance of Ethiopia with the Convention and the two optional protocols.

Different sectoral offices assume reporting responsibilities pertaining to the implementation of ratified human rights documents. The Ministry of Foreign Affairs (hereinafter, MoFA) is empowered to enforce rights and obligations that arise from treaties that Ethiopia ratified unless specific power is delegated to other organs.³² The Ministry of Women and Child Affairs (hereinafter, MoWCA) is the duty holder to follow up implementation of treaties relating to women and children and submit reports to concerned bodies.³³ The Federal Attorney General is also bestowed with the power to enforce human rights treaties including preparation of national report on the implementation of treaties in collaboration with relevant bodies as per the Federal

²⁷ 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)

²⁸ 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)

²⁹ It is sufficient to compare the Concluding observations of the Committee 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).

³⁰ The guidelines of the Committee require State Parties to submit comprehensive information through classifying provisions of the Convention in to eight categories. See *Reporting Guidelines for Initial Reports on the Convention on the Rights of the Child*, *supra* note 10 and *Treaty Specific Reporting Guidelines*, *supra* note 10.

³¹ See *African Charter on Human and Peoples' Rights*, adopted on 27 June 1981 at Nairobi, Kenya and entered into force on 21 October 1986, OAU Doc. CAB/LEG/67/3 Rev. 5, 21 ILM 58 (1982), Art. 47 and Art. 55; *African Charter on the Rights and Welfare of the Child*, adopted on 11 July 1990 at Addis Ababa, Ethiopia and entered into force Nov. 29, 1999, OAU Doc. CAB/LEG/24.9/49, Art. 44(1).

³² *A Proclamation to Provide for the Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia*, Proclamation No. 916/2015, FED. NEGARIT GAZETTE, Year 22 No.12, Addis Ababa, 9 December 2015, Art. 15(4).

³³ *Id.* at Art. 36 (1) (j).

Attorney General Establishment Proclamation 943/2016.³⁴ It is also important to remind that the Ethiopian Human Rights Commission (hereinafter, EHRC) has also the power to forward its opinion on human rights reports to be submitted to international organs.³⁵

So far, Ethiopia submitted four reports to the Committee. The Ministry of Labour and Social Affairs prepared the initial and second periodic reports. Whilst the Ministry of Women led the third periodic report, the Ministry of Women, Youth and Children Affairs (hereinafter, MoWYCA) managed the recent combined fourth and fifth report. 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.

The reporting history of Ethiopia to the Committee remains a commendable experience compared to reports delegated to MoFA. One may take note of the facts that initial reports to the Human Rights Committee and Committee on Economic, Social and Cultural Rights were made after 17 years of delay and an initial report to the Committee on the Convention against Torture took 14 years.³⁶ 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.³⁷ It can be agreed that the government is more open to be challenged by experts of the Committee and to subject its policies and laws to their scrutiny. This outstanding reporting history may also be partly attributable to availability of high technical and financial support from the UNICEF and domestic and international NGOs.³⁸

Though the compliance with deadlines of submission of reports to the Committee is going well compared to other treaties, there is still a room for improvement. It is necessary to note that the initial report and the third periodic report were each two years overdue and the consolidated fourth and the fifth periodic reports were one year overdue. Another concern that shadowed the reporting procedure is the time gap between submission of state reports and adoption of concluding observations. Typically, we can see that the Committee adopted concluding observations on the initial report of Ethiopia two years after the submission of the report. Concluding observations on the second report and combined fourth and fifth periodic reports were made three years after 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

³⁴ A Proclamation to Provide for the Establishment of the Attorney General of the Federal Democratic Republic of Ethiopia, Proclamation No. 943/2016, FED. NEGARIT GAZETTE, Year 22 No. 62, Addis Ababa, 2 May 2016, Art. 6(8)(e).

³⁵ *Ethiopian Human Rights Commission Establishment Proclamation*, Proclamation No. 210/2000, FED. NEGARIT GAZETTE, 6th Year No. 40, Addis Ababa 4th July 2000, Art. 6(7).

³⁶ *Id.*; There are also three periodic reports which are currently overdue, one each on ICCPR, CERD, CEDAW and CAT. See <http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/LateReporting.aspx> last accessed on April 30, 2017.

³⁷ Eva Brems, *Ethiopia Before the United Nations Treaty Monitoring Bodies*, 20 AFRIKA FOCUS 49, 53 (2007).

³⁸ For instance, the Government acknowledged that UNICEF provided the financial and technical resources required for preparation of combined fourth and fifth report. 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.

time gap between the submission of state report and adoption of the concluding observations may result in a concluding observations which fail 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 that are required to consider the recommendations in decisions that affect children.³⁹ Concluding observations of the Committee shall be widely available if they are supposed to make a 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'.⁴⁰ The EHRC and the MoWCA take the responsibility to disseminate concluding observations and prepare post-reporting conferences. States adopt various strategies to make recommendations of treaty bodies widely accessible to the lay people. For instance, Finland publishes 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.⁴¹ The EHRC, which has a duty to translate and disperse international human rights instruments adopted by Ethiopia,⁴² and the MoWCA, which is particularly responsible on child rights reporting, are expected to design an organized system of disseminating the human rights audit reports beyond institutional settings.

V. IMPLICATIONS OF CONCLUDING OBSERVATIONS OF THE COMMITTEE ON THE RIGHTS OF THE CHILD

A. Ethiopia's Reporting and Reactions to the Concluding Observations

A critical appraisal of the participation of Ethiopia in the reporting process and its reactions to the concluding observations and particularly to the recommendations is highly relevant to establish the attention offered to concluding observations of the Committee. In fact, the government of Ethiopia is not legally bound to give effect to a recommendation of any external entity.⁴³ However, the Government is aware of, at the moment of the adoption of concluding observations, the fact that there are certain expectations it needs to satisfy.⁴⁴

³⁹ *The Convention*, Art. 44(6).

⁴⁰ THE AFRICAN CHILD POLICY FORUM, HARMONIZATION OF LAWS RELATING TO CHILDREN: ETHIOPIA 39, available at africanchildinfo.net/documents/Ethiopia%20final%20Sarah.doc (accessed on 28 October 2016).

⁴¹ See HELI M. NIEMI, NATIONAL IMPLEMENTATION OF FINDINGS BY UNITED NATIONS HUMAN RIGHTS TREATY BODIES: A COMPARATIVE STUDY, 26 (Abo Akademi University 2003).

⁴² See *Ethiopian Human Rights Commission Establishment Proclamation*, *supra* note 35, Art. 6(8).

⁴³ The issue of bindingness determines the level of accountability of a State Party at the international human rights system. R. VAN ALEBEEK AND ANDRE NOLLKAEMPER, THE LEGAL STATUS OF DECISIONS BY HUMAN RIGHTS TREATY BODIES IN NATIONAL LAW, available at <http://hdl.handle.net/11245/2.109408> (accessed on 28 October 2016). 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 FDRE CONSTITUTION, Proclamation No. 1/1995, FED. NEGARIT GAZETTE, 1st Year No.1, 1995 (here after FDRE CONSTITUTION), Art. 86(1).

⁴⁴ 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 Committee may put their influence on the international norm creation and interpretation process. *The*

The Committee regularly praised the commitment of the Ethiopian government for meeting the reporting procedure. One may use compliance with deadline of submission, sufficiency of replies to list of issues, quality of delegation to the constructive dialogue and pledges from the state as parameter to evaluate commitment of the state towards the reporting procedure. Ethiopian has better record in observance of periodicity of reporting to the Committee than reporting to other treaty bodies.⁴⁵ Besides, the Committee regularly appreciated, may be as a matter of routine, the composition of delegation by the Ethiopian government as a high-level representatives⁴⁶ and cross-sectional delegation.⁴⁷

Though the Committee 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. For instance, when one examines the reactions to concluding observations on the initial report, the delegation of Ethiopia pledged that the suggestions and recommendations made during the dialogue would be duly taken into account by the Ethiopian authorities.⁴⁸ Ethiopian delegations regularly used the words ‘*Ethiopia welcomes*’, ‘*Ethiopia accepts*’ and ‘*The Government will duly take into account*’ in their closing statements. These final statements of the delegations were mainly framed in a way to give the Committee 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 the primary means to evaluate whether the state has complied with its promises and the Committee’s recommendations. Except for a request to submit an interim report on concluding observation of the initial report, the Committee continued to require Ethiopia to incorporate follow-up information into its subsequent reports.⁴⁹ It also requires that measures taken shall be carefully associated with recommendations rendered by the Committee. However, Ethiopia’s reports did not make the expected comprehensive nexus between the reported measures and previous recommendations. Not all measures claimed to be taken by the government were declared to be made in accordance with previous recommendations. The combined fourth and fifth report, however, mentioned the high level of attention it has given to

Federal Democratic Republic of Ethiopia Foreign Affairs and National Security Policy and Strategy, November 2002, sec.7.1

⁴⁵ Eva Brems, *supra* note 37, at 53. “Ethiopia has an outstanding experience in reporting to the Committee on the Rights of the Child”.

⁴⁶ Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties under Article 44 of The Convention, *Concluding observation on Second Periodic Report: Ethiopia*, CRC/C/15/Add.144, 21 February 2001, par.2.

⁴⁷ 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, 1 November 2006, 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. In fact, the diversity in the delegation to the dialogue was highly reduced under the combined fourth and fifth State report.

⁴⁸ Committee on the Rights of the Child, Consideration of Reports Submitted by States Parties under Article 44 of The Convention, *Concluding observation on Initial Report: Ethiopia*, CRC/C/15/Add.67, 24 January 1997, par. 2.

⁴⁹ *Id.* at par. 37.

previous recommendations. The combined report expressly indicated the fact that previous recommendations have guided the preparation of the report.⁵⁰ Pre-report dialogue with stakeholders was conducted to evaluate whether the previous comments were duly implemented.⁵¹ In fact, shadow reports of NGOs perform better in rigorously substantiating facts with previous recommendations. The shadow reports also tried to create an impression of duty to report on the implementation of recommendations by accusing the Ethiopian government of not specifically responding on what was done in accordance with previous recommendations.⁵²

The Committee commonly expressed its concern on recommendations that were not duly implemented by the state.⁵³ Recommendations pertaining to resource allocation, traditional practices, birth registration, child labor, refugee children and juvenile justice are concerns which the Committee explicitly and identically listed in the last two consecutive observations, as areas on which the government of Ethiopia was graded poorly in implementing recommendations.⁵⁴ Some of these areas are those the Ethiopian government reported that it had taken appropriate actions according to previous recommendations. This anomaly is also true particularly for juvenile justice and child labor as reported under the combined fourth and fifth state report.⁵⁵

B. Implication of Concluding Observations on Domestic Child Rights Legal Framework

1. Implication of Concluding Observations on Domestic Laws and Policies

One of the purposes of the reporting procedure is to identify policy and legislative gaps.⁵⁶ Concluding observations are a vehicle to transform the reporting process into the policy-making process.⁵⁷ Beside the observance of the structure set by the Convention, the development of child-related policies and laws by a State Party should incorporate recommendations provided in the concluding observations of periodic reports.⁵⁸

The domestic implication of concluding observations can be evaluated from the angle of the interplay between the observations and domestic legislative and policy frameworks. It is futile to claim that enactment of all child relevant laws and policies are exclusively attributable to the impact of recommendations of the Committee. However, suggestions of the Committee, directly

⁵⁰ *Combined Fourth and Fifth Report: Ethiopia*, *supra* note 38, Foreword, at par. 3.

⁵¹ *Id.*, at par. 9.

⁵² For instance, see 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. 39. It is alleged that the Ethiopian Government has not responded to the Committee's recommendation to take all necessary measures to raise awareness about children with disabilities.

⁵³ *Concluding observation on Second Periodic Report: Ethiopia*, *supra* note 46, at par. 12; *Concluding observations on Third Periodic Report: Ethiopia*, *supra* note 54, at par. 6 and *Combined Fourth and Fifth Report: Ethiopia*, *supra* note 38, at par. 6.

⁵⁴ *Id.*

⁵⁵ *Combined Fourth and Fifth Report: Ethiopia*, *supra* note 38, at paras. 285 and 300.

⁵⁶ Philip Alston, *The Purposes of Reporting*, in *MANUAL ON HUMAN RIGHTS REPORTING UNDER SIX MAJOR INTERNATIONAL HUMAN RIGHTS INSTRUMENTS* 1, 22 (United Nations 1997).

⁵⁷ HELI M. NIEMI, *supra* note 41, at 22.

⁵⁸ FASIL MULATU GESSESSE AND RAKEB MESSELE ABERRA, *IMPACT ASSESSMENT REPORT ON THE DRAFT NATIONAL CHILD POLICY OF ETHIOPIA*, 13 (Center for Human Rights, Addis Ababa University 2014).

or indirectly, have 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 a dialogue with human rights bodies) as pushing factor for the rules framed by the government. For instance, the preamble of the Revised Family Code recognizes that one of the purposes of the code was to conform laws on the wellbeing of children in accordance with international instruments.⁵⁹ However, the initiation and guidance given by the Committee towards the harmonization of child laws were not discussed. In fact, it is also practically incoherent to expect this sort of reference under such general laws.

Hence, alternative methodology for establishing the influence of the recommendations in triggering subsequent legislative and policy measures would be looking into subsequent 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 Committee generally suggest harmonization of laws with provisions of the Convention.⁶⁰ The delegation to the third periodic report reported that the Committee's previous concluding observations had been taken into account in the legal reforms and other measures taken to promote the rights of children.⁶¹ Particularly, the initial report urged the government to prohibit corporal punishment.⁶² In its second periodic report, reminding the previous recommendation, the government informed the Committee that it had issued an interim directive to prohibit corporal punishment in a school setting.⁶³ Recommendations of the Committee up on the initial and second periodic reports have also triggered consideration of ratification of treaties relevant to children. For instance, the second periodic report informed that the government was considering ratifying International Labor Organization (ILO) Convention No. 138 as suggested by The Committee.⁶⁴ The Committee first recommended the ratification of the two substantive Protocols of the Convention⁶⁵ though it was indicated that the Universal Periodic Review (UPR) recommendation led to the initiation of a process to ratify the Protocols.⁶⁶

Recommendations regarding legislative measures under concluding observations on the recent two reports more specifically recommended a systematic review of laws and adoption of

⁵⁹ *The Revised Family Code*, Proclamation No. 213/2000, FED. NEGARIT GAZETTE, Extra Ordinary Issue, No. 1/2000, Preamble, par. 3.

⁶⁰ *Concluding observation on Second Periodic Report: Ethiopia*, *supra* note 46, at par. 15.

⁶¹ Committee on the Rights of the Child, *Summary Record of the 1162nd Meeting*, CRC/C/SR.1162, Forty-third session, 21 September 2006, par. 24.

⁶² See *Concluding observations on Initial Report: Ethiopia*, *supra* note 55, at pars.13, 15 and 20.

⁶³ 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. 9.

⁶⁴ *Id.* at par.86.

⁶⁵ *Concluding observation on Second Periodic Report: Ethiopia*, *supra* note 46, at par. 78.

⁶⁶ CENTER FOR HUMAN RIGHTS STUDIES, *BASELINE STUDY FOR A COMPREHENSIVE CHILD LAW IN ETHIOPIA*, 8 (Addis Ababa University 2013).

comprehensive child law.⁶⁷ Though the Committee has never recommended Ethiopia to adopt a comprehensive child policy, it has so far made a number of recommendations for adoption of appropriate policies on specific child rights problems.⁶⁸ Recommendations of the Committee might also be part of the inspirations in the formulation of the draft child policy though there is no indication as to what inputs were integrated into the preparation of the policy.⁶⁹ However, there were other policy measures which were related to previous recommendations of the Committee. For instance, back to the initial concluding observation, the Committee had suggested Ethiopia to give particular attention to children affected by or infected with HIV-AIDS and other vulnerable children.⁷⁰ The second periodic report provided that the Committee's recommendation was addressed by a national policy developed by the government of Ethiopia to alleviate the impact of HIV-AIDS on children.⁷¹

2. *The Law-Making Process and Concluding Observations*

From the above discussion, we may conclude that though there are some legislative measures taken because of the suggestions of the Committee, it is difficult to, boldly, tell that the recommendations of the Committee are vigorously influencing lawmakers to enact laws crucial to improving the situations of children in Ethiopia. The concluding observations' influence on the law making process may be strengthened through creating mechanisms which enable the concluding observations reach the law-making organs.

From the outset, the principle of good faith dictates states not to defeat the purposes of a treaty with domestic acts.⁷² Good faith and the obligation to harmonize require states not only to amend domestic laws but also to make compatibility assessment of prospective laws.⁷³ Hence, law-makers are expected to have comprehensive knowledge of relevant human rights systems. Outputs of treaty bodies are vital tools in the process of assessing the 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. It has been reported that "This parliamentary Committee has significantly drawn attention to the outputs of treaty bodies,

⁶⁷ *Concluding observation on Third Periodic Report: Ethiopia*, *supra* note 47, at par. 9 and *Committee on the Rights of the Child, Concluding observation on the Combined Fourth and Fifth Report: Ethiopia, CRC/C/ETH/CO/4-5*, 3 June 2015, par. 9. However, the task of enacting a comprehensive child rights law has not been given significant attention. See CENTER FOR HUMAN RIGHTS STUDIES, *Id.*, at 135.

⁶⁸ On education, see *Concluding observation on Combined Fourth and Fifth Report: Ethiopia, Id.*, at par. 62; on child abuse; See *Concluding observation on Third Periodic Report: Ethiopia*, *supra* note 47, at par. 45.

⁶⁹ 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, *supra* note 58, at the Executive Summary.

⁷⁰ *Concluding observation on Initial Report; Ethiopia*, *supra* note 48, at par. 28.

⁷¹ *Second Periodic Report: Ethiopia*, *supra* note 63, at par. 55.

⁷² Takele Soboka Bulto, *The Monist-Dualist Divide and the Supremacy Clause: Revisiting the Status of Human Rights Treaties in Ethiopia*, 23 JOURNAL OF ETHIOPIAN LAW 142 (2009).

⁷³ *Id.*

both as part of its function of scrutinizing human rights compliance, as well as in other contexts”.⁷⁴

Since international treaties are important tools for interpreting human rights provision of the Federal Democratic Republic of Ethiopia Constitution, drafters of laws are required to ensure consistency of legislative proposals with international agreements ratified by Ethiopia and particularly with human rights treaties.⁷⁵ However, let alone a possibility of thorough compatibility analysis of international treaties and their supporting documents, the drafters are not actually making human rights impact assessment.⁷⁶

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 are integrated into the discussion of bills before the legislature”.⁷⁷ In the absence of a formal mechanism to consider the concluding observations, individual members of the legislature may also raise the observations during reflections on bills. Besides, parliamentary committees may also refer to treaty body materials including concluding observations in the discussion of bills.⁷⁸

Recommendations of human rights monitoring bodies may also be subject to parliamentary debate independently from a proposed bill. In tandem with General Comment No 5 and the Committee’s recommendation pursuant to Article 44 (6) of the Convention, concluding observations should be subject to detailed debate in parliaments.⁷⁹ 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.⁸⁰ Hence, the Ethiopian parliament is under obligation to consider the recommendations of the Committee in formal and especially dedicated parliamentary meetings.

In fact, consideration of concluding observations either as part of the discussion on proposed bills or with an 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

⁷⁴ 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. 160.

⁷⁵ 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, 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, (2015) available at <http://www.abysinnialaw.com/blog-posts/item/1468> (accessed on 28 October 2016).

⁷⁶ *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.

⁷⁷ HUMAN RIGHTS IMPLEMENTATION CENTRE, IMPLEMENTATION OF UN TREATY BODY CONCLUDING OBSERVATIONS: THE ROLE OF NATIONAL AND REGIONAL MECHANISMS IN EUROPE: SUMMARY AND RECOMMENDATIONS FROM THE HIGH LEVEL SEMINA, University of Bristol, UK, 4 (19-20 September 201)

⁷⁸ INTERNATIONAL LAW ASSOCIATION, *supra* note 74.

⁷⁹ 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.

⁸⁰ UNICEF, IMPLEMENTATION HANDBOOK FOR THE CONVENTION ON THE RIGHTS OF THE CHILD, 654 (Fully Revised Third Edition 2007).

about the concluding observations. The inclusion of members of the parliament in the human rights report preparation and dialogue process is highly important to create a consciousness of the law-makers about legal gaps on the country's child rights framework. A practice from South Africa is exemplary in this regard. All South Africa reports prepared for human rights monitoring bodies are debated in the parliament so as to evaluate whether they reflect the true picture of the human rights situations of the country.⁸¹ Members of parliament are also regularly included in national delegations to the treaty bodies to ensure that they appreciate recommendations provided by treaty bodies.⁸² The reporting procedure in the Ethiopian legal system lacks such all-stages of coordination between the reporting bodies and the law-makers. Hence, dissemination of the recommendations to the law making organs by the MoWCA is indispensable to fill the information gap.

Finally, concluding observations are also relevant for those lobbying for a change in laws.⁸³ Accordingly, the reference to concluding observations may take the form of submission of opinions by NGOs and other interest groups in the preparation and discussion of a bill. In Finland, NGOs have experience in using the Committee's observations to influence adoption of a bill. At one instance, "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".⁸⁴ Among other factors, the Charities and Societies Proclamation of Ethiopia is primarily blamed for inhibiting NGOs from engaging in such sort of activism.⁸⁵

3. *Concluding Observations and Programs and Plans of Action Relevant to Children*

The creation of national action plans and programs could also take into account content of concluding observations.⁸⁶ Recommendations of the Committee are shown to be important factor and input for devising general development programs and human rights action plans as well as preparation of comprehensive and problem specific child focused plans of action.

Recommendations for improvement of policy framework and adoption of appropriate programs are mainly related to the socio-economic rights of the child on which State Parties have relatively wider margin of actions and the Committee may only cautiously call for specific measures. For instance, in its concluding observations on the initial report, the Committee expressed its concern on the impact of poverty on the well-being of children. Illustrating the problem with high infant mortality, malnutrition, low level of education coverage and other

⁸¹ 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, 14 (2013).

⁸² *Id.*

⁸³ 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 27 (2002).

⁸⁴ INTERNATIONAL LAW ASSOCIATION, *supra* note 74 at par.160, footnote 354.

⁸⁵ *Concluding observation on Combined Fourth and Fifth Report: Ethiopia, supra* note 67, at par. 19.

⁸⁶ HUMAN RIGHTS IMPLEMENTATION CENTRE, *supra* note 77, at 4.

indexes,⁸⁷ the Committee suggested Ethiopia to allocate maximum available resources and give priority to realize the socio-economic rights.⁸⁸ The second periodic report reminded this concern of the Committee in a section which reported the adoption of five years development program. Ethiopia reported major macro-economic measures which were directly or indirectly pertinent to the rights and welfare of children.⁸⁹

The Committee suggested in its concluding observations that plans of action adopted by State Parties shall be guided by the goals and strategies set by the Summit of the World Fit for Children.⁹⁰ 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 a plan of action on children prior to the first report, the recommendations of the Committee 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, after the second plan of action was adopted by Ethiopia, the Committee recommended the state to take into account the document of the summit in implementing the plan of action.⁹¹ In fact, the country also reported that the plan of action revolved around the central theme of the World Fit for Children.⁹²

The Committee's recommendations were also important in the preparation of plans of action that targeted a specific group of children or specific area of child right. For instance, the Committee had recommended in its concluding observation on the third periodic report that Ethiopia shall adopt a plan of action to prevent and combat child labor as per relevant ILO Conventions.⁹³ The government reported under its subsequent report that it has adopted a nationwide plan of action to eliminate the worst form of child labor.⁹⁴

Unlike legislative measures which might have been adopted with direct or indirect influence of the Committee's comments, express recognition of the recommendations of treaty bodies as one driving factor in the preparation of plans of actions is noticeable. As discussed above, the Committee urged Ethiopia, at a different time, to adopt appropriate plans of action to tackle particular problems affecting children. Besides, the Universal Periodic Review (UPR) called upon Ethiopia to prepare a National Human Rights Action Plan.⁹⁵ Ethiopia's First National Human Rights Action Plan recognized that reports submitted to human rights bodies and the

⁸⁷ *Initial Report: Ethiopia*, *supra* note 36, at par. 12.

⁸⁸ *Id.* at par. 28.

⁸⁹ *Second Periodic Report: Ethiopia*, *supra* note 63, at par. 5.

⁹⁰ See 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.

⁹¹ *Concluding observations on Third Periodic Report: Ethiopia*, *supra* note 54, at par. 13.

⁹² 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, par. 34.

⁹³ *Concluding observation on Third Periodic Report: Ethiopia*, *supra* note 47, at par. 72.

⁹⁴ *Concluding observation on Combined Fourth and Fifth Report: Ethiopia*, *supra* note 67, at par. 30.

⁹⁵ UPRINFO, RESPONSES TO RECOMMENDATIONS: ETHIOPIA, (2010) available at <https://www.upr-info.org/en/review/Ethiopia/Session-06---November-2009/UPR-Info%27s-2RP-%28responses-to-recommendations%29#top> (accessed on 28 October 2016).

corresponding recommendations were sources in the preparation of the Action Plan.⁹⁶ Hence, one can conclude that the recommendations of the Committee were also important in guiding the formulation of the action plan, at least the part of human rights of children.

Finally, it is also important to note that recommendations of the Committee may guide activities of an organ entrusted to coordinate implementation of the Convention. Concluding observations of the Committee should be integrated into the child rights system from the point of affecting the plans of action of the reporting organ, the MoWCA. The MoWYCA's annual action plan for the 2015/16 budget year revealed that concluding observation of the Committee on the combined fourth and fifth report would play a crucial guiding role.

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

1. Factors Relevant to Citation of Concluding Observations in Litigations

Literature and international law reports testify that treaty body outputs generally have become a relevant interpretative source for many national courts. 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.⁹⁷ Findings of treaty bodies may also be utilized in the interpretation of Constitutional and statutory human rights laws.⁹⁸ In monist States, the findings are instrumental to inform the content of relevant human rights treaties.⁹⁹ 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.¹⁰⁰ 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.¹⁰¹ 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.¹⁰² Common law countries are liberal to cite findings of treaty bodies.¹⁰³ Save for common law countries, African, Arab and Latin American States have no identifiable judicial practice in this regard.¹⁰⁴ Courts in most civil law countries make little use of international law in interpreting Constitutional provisions.¹⁰⁵ More specifically, the interaction of domestic courts with treaty bodies' findings is directly related to direct applicability of human rights treaties or the presence of

⁹⁶ The Federal Democratic Republic of Ethiopia, *National Human Rights Action Plan 2013-2015* (2013), p. 8.

⁹⁷ See MACHIKO 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*, (2014) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2393332 (accessed on 28 October 2016); INTERNATIONAL LAW ASSOCIATION, *supra* note 74, at par. 175.

⁹⁸ See for more MACHIKO KANETAKE, *Id.*

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ INTERNATIONAL LAW ASSOCIATION, *supra* note 74, at par.29, footnote 28.

¹⁰⁵ Magnus Killander and Horace Adjolohoun, *International law and domestic Human Rights litigation in Africa: An introduction*, in MAGNUS KILLANDER (ED.), *INTERNATIONAL LAW AND DOMESTIC HUMAN RIGHTS LITIGATION IN AFRICA* 1, 4 (Pretoria University Law Press 2010).

substantively comparable domestic human rights provisions.¹⁰⁶ Hence, the fact that domestic laws do not incorporate human rights treaties will influence the role treaty body outputs play in national court proceedings.¹⁰⁷ Public and judicial awareness of the findings is also an indispensable factor.¹⁰⁸ Besides, the entrenchment of separation of power is also equally a determinant factor. 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.¹⁰⁹

2. *The Law on Application of Treaties*

A reference to international laws into domestic courts may take the form of direct application or indirect application.¹¹⁰ Treaties may be directly referred and interpreted or they may be used as instruments essential for interpretation of domestic laws. Both direct and indirect applications of treaties are possible under the Ethiopian legal system. Concerning direct application, the Constitution of the Federal Democratic Republic of Ethiopia has incorporated international treaties ratified by the parliament as laws of the land.¹¹¹ The Federal Courts Proclamation also recognizes direct application of treaties.¹¹² On the other hand, indirect application of treaties is enabled through the principle of treaty-consistent interpretation.¹¹³ 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.¹¹⁴ 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 of the principle of consistent interpretation. The judiciary,¹¹⁵ House of Federation¹¹⁶ and other organs¹¹⁷

¹⁰⁶ INTERNATIONAL LAW ASSOCIATION, *supra* note 74, at par. 182.

¹⁰⁷ R. VAN ALEBEEK AND ANDRE NOLLKAEMPER, *supra* note 43, at 68.

¹⁰⁸ See MACHIKO KANETAKE, *supra* note 97, at 25; For those judges who are familiar with the findings of treaty bodies, the latter can be sources of inspiration. See Martin Scheinin, *Domestic Implementation of International Human Rights Treaties: Nordic and Baltic Experience*, in P. ALSTON AND J. CRAWFORD (EDS.), *THE FUTURE OF UN HUMAN RIGHTS TREATY MONITORING*, 240 (2000).

¹⁰⁹ See MACHIKO KANETAKE, *supra* note 97, at 27; See also Machiko Kanetake and Andre Nollkaemper, *The Application of Informal International Instruments Before Domestic Courts*, 46 *THE GEORGE WASHINGTON INTERNATIONAL LAW REVIEW* 765, 803 (2014).

¹¹⁰ David Sloss, *Domestic Application of Treaties*, in DUNCAN HOLLIS (ED.), *THE OXFORD GUIDE TO TREATIES* 1, 4 (Oxford University Press 2011).

¹¹¹ FDRE CONSTITUTION, Art. 9(4).

¹¹² *Federal Courts Proclamation*, Proclamation No. 25/1996, 1996, FED. NEGARIT GAZZETA, 2nd Year No.13, Addis Ababa, 15 February 1996, Art. 3(1) and Art. 6(1)(A).

¹¹³ FDRE CONSTITUTION, Art. 13(2).

¹¹⁴ 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*, 14EJIL 3, 3(2003).

¹¹⁵ 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 FDRE CONSTITUTION, Art.13(1).

¹¹⁶ 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*, Proclamation No. 251/200, 2001, FED. NEGARIT GAZZETA, 7th Year No.41, Addis Ababa, 6 July 2001, Art. 7(2). 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

are required to interpret human rights provision in consistent with treaties adopted by Ethiopia. The same principle is adopted word by word in the Proclamation which defines the powers of the House of Federation.¹¹⁸

3. *The Practice of and the Constraints to Citing Concluding Observations*

The reference to child rights treaties by the Ethiopian judiciary has taken a new momentum with the bold move by the Cassation Bench of the Federal Supreme Court.¹¹⁹ The Bench explicitly referred to the Convention in three cases and impliedly cited it in one other case.¹²⁰ 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 Article 3 of the Convention (on best interest of the child) besides the Constitutional provision on best interest of the child.¹²¹ 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.¹²² The court, citing the African Charter on the Rights and Welfare of the Child (here in after, *the ACRWC*) and the Convention, reaffirmed that treaties are part of the laws of Ethiopia. The verdict of the court has referred provisions of 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. We can also appreciate that, unlike the worldwide trend, the Court tended to make direct application of the Convention.

recent Proclamation. See *Council of Constitutional Inquiry Proclamation*, Proclamation No. 250/2001, FED. NEGARIT GAZZETA, 7th Year No.41, Addis Ababa, 6 July 2001, Art. 20(2) 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*, Proclamation No. 798/2013, FED. NEGARIT GAZZETA, 19th Year No.65, Addis Ababa, 30 August 2013.

¹¹⁷ 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 exercise of their power have at least implied power to interpret human rights provisions of the Constitution. See *Ethiopian Human Rights Commission Establishment Proclamation*, *supra* note 35, Art. 7.

¹¹⁸ *A Proclamation to Consolidate the House of the Federation of the Federal Democratic Republic of Ethiopia and to Define its Powers and Responsibilities*, *supra* note 116, Art. 7(2).

¹¹⁹ *Tsedale Demsie v. Kifle Demsie*, FED. SUPREME CT. CASS. BEN., File No. 23632 (Decision of 26 October 2000 E.C.), Federal Supreme Court Cassation Decisions (Miazia 2001), Vol. 5, at 188.

¹²⁰ 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. SUPREME CT. CASS. BEN., File No. 35710 (Decision of 16 December 2001 E.C.), Federal Supreme Court Cassation Decisions, Vol. 8 (Hidar 2003), at 243; *Francis Pastor v. Dukman Venno Etal.*, FED. SUPREME CT. CASS. BEN., File No. 44101 (Decision of 24 February 2002 E.C.), Federal Supreme Court Cassation Decisions, Vol. 10 (Hidar 2003), at 41. The Bench also impliedly referred to Convention by citing 'relevant international instruments adopted by Ethiopia'. See *Betezata Children Homes Association Etal* FED. SUPREME CT. CASS. BEN., File No. 52691 (Decision of 22 April 2002 E.C.), Federal Supreme Court Cassation Decisions, Vol. 10 (Hidar 2003), at 72.

¹²¹ See *Tsedale Demsie v. Kifle Demsie, Id.*

¹²² See *Etsegenet Eshetu v. Selamawit Nigusse, supra note 120.*

A 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.¹²³ The best interest of the child *vis a vis* other rights of the child was the primary issue in the cassation cases depicting the worldwide picture.¹²⁴

It is, in fact, too idealistic to search for a domestic case in which a concluding observation is cited. Poor domestic reference to treaties and shallow interpretation of the treaties highly encumbered a reference to concluding observation. Though the actual impact that the Supreme Court's initiative made on the permeability of courts to child rights treaties requires further research, it was alleged that the Court's move has increased court decisions that cite the Convention.¹²⁵ 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.¹²⁶ Hence, concluding observations could have assisted application of the treaties but for poor level of application of treaties during domestic litigations.

However, the main constraint to the consideration of concluding observations in court litigations 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 to concluding observations. The legal analysis of the judges is hardly robust and comprehensive. Besides, the judicial consciousness of the observations, at the outset, shall be subject to broader scrutiny. In four cases in which the Court made reference to the Convention, it cited provisions to support its already reached position or corroborate corresponding Constitutional provisions instead of analyzing the very meaning of the treaty provisions in reaching to a conclusion. In fact, this is an instance of the broader picture of a less liberal analysis of law by civil law judges. However, the authority of common law judges extends to making of laws, which is one of the favorable factors that facilitate judicial references to non-binding international documents.¹²⁷ It is suggested that a judicial directive to facilitate consistent practice in the application of treaties is necessary.¹²⁸ Welcoming the growing tendency to apply treaties, the guidance is mandatory to ensure more analytical, organized and comprehensive application of treaty provisions.

¹²³ See CHILD RIGHTS INTERNATIONAL NETWORK, *CRC IN COURT: THE CASE LAW OF THE CONVENTION ON THE RIGHTS OF THE CHILD*, 4 (2012).

¹²⁴ See CHILD RIGHTS INTERNATIONAL NETWORK, *Id.* at 14.

¹²⁵ GIRMACHEW ALEMU AND YONAS BIRMETTA, *HANDBOOK ON THE RIGHTS OF THE CHILD IN ETHIOPIA*, 26 (Addis Ababa University).

¹²⁶ 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 Magnus Killander and Horace Adjolohoun, *supra* note 105, at 4. However, availability of domestic mechanism to make treaties applicable before courts of law is a practical necessity, beyond a question of law.

¹²⁷ Magnus Killander and Horace Adjolohoun, *Id.* at 27.

¹²⁸ CENTER FOR HUMAN RIGHTS STUDIES, *supra* note 31, at 132.

In jurisdictions that have well-entrenched experience of the application of treaties, international law itself provides the principles for interpretation of the treaties. Concluding observations are relevant in establishing a particular form of subsequent practice in interpreting provisions of a treaty.¹²⁹ Though Ethiopia is not a party to the Vienna Convention on the Law of Treaties, principles of treaty interpretation that are developed as customary international law would be applicable if domestic courts reached to a capacity where they would analyze supplementary documents to construe the meaning of a particular treaty provision.¹³⁰

The generality of the principle of consistent interpretation is another concern related to the method of application of treaties. The Constitutional provision on human rights interpretation and the Proclamation to consolidate power of House of Federation do not tell us sources eligible to be considered in the interpretation of human rights provisions.¹³¹ The House of Federation and the Council of Constitutional Inquiry were empowered to develop and implement specific principles of Constitutional interpretation.¹³² However, neither the House of Federation nor the Council of Constitutional Inquiry has prescribed rules of interpretation, which *inter alia* guides instruments eligible to be considered in the process of interpreting human rights issues brought, before the organs, as a 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.¹³³ 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 human rights provisions of the Constitution”.¹³⁴ Therefore, findings of treaty bodies can be used to inform the interpretation and application of domestic human rights laws.¹³⁵ 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.¹³⁶ This requires well entrenched

¹²⁹ Wayne Sandholtz, *How Domestic Courts Use International Law*, 38 FORDHAM INTERNATIONAL LAW JOURNAL 595, 614-615 (2015).

¹³⁰ Article 34 of the VCLT reads as ‘nothing in Articles 30 to 33 precludes a rule set forth in a treaty from becoming binding up on a third State as a customary rule of international law.’

¹³¹ Getahun Kassa, *Mechanisms of Constitutional Control: A Preliminary Observation of the Ethiopian System*, 20 AFRIKA FOCUS, 87 (2007); Interview with Mr. Mulye Welelaw, a Constitutional Interpretation Expert.

¹³² *A Proclamation to Consolidate the House of the Federation of the Federal Democratic Republic of Ethiopia and to Define its Powers and Responsibilities*, *supra* note 116, Art. 7(1) and *The Council of Constitutional Inquiry Proclamation*, *supra* note 116, Art. 20(1). The fact that both organs are authorized to identify and implement principles of interpretation was criticized as it might cause overlap. See Getahun Kassa, *Id.*; However, the power of the Council of Constitutional Inquiry to adopt principles of interpretation was omitted from new Proclamation No. 798/2013.

¹³³ Melissa A. Waters, *Creeping Monism: The Judicial Trend toward Interpretive Incorporation of Human Rights Treaties*, 628 COLUM. L. REV. (2007), cited in Wayne Sandholtz, *supra* note 129, at 615.

¹³⁴ Magnus Killander and Horace Adjohoun, *supra* note 105, at 16.

¹³⁵ THE HUMAN RIGHTS LAW CENTRE & THE INTERNATIONAL SERVICE FOR HUMAN RIGHTS, *supra* note 81, at 14.

¹³⁶ See RAJAT 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, 45 (2009) available at <http://ssrn.com/abstract=1424044> (accessed on 29 October 2016).

knowledge of the judges about the scope and pertinence of international norms on an issue at hand. For instance, the South African Constitution provides that courts ‘must consider’ international law (binding and non-binding) in interpreting the Bill of Rights.¹³⁷ 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.¹³⁸ This means, as one of the Committee’s outputs in the interpretation of the Convention, South African courts are required to consider concluding observations of the Committee.¹³⁹

The value to be attached to each instrument will vary.¹⁴⁰ 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. 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.¹⁴¹ 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.¹⁴² 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”.¹⁴³

Additionally, citation of concluding observations may take the form of Constitutional interpretation and Constitutional review of byelaws on the basis of the principle of consistent interpretation. For instance, in a Constitutional challenge to a provision of Criminal Code of Canada, Judge Arbour, citing the Committee’s concluding observations on Canada in which the Committee recommended Canada to remove a provision which allows chastisement by parents, expressed his dissent against a Constitutional interpretation of the Ontario Supreme Court.¹⁴⁴ 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.¹⁴⁵ 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 Committee had not

¹³⁷ *Constitution of the Republic of South Africa*, 1996, Sec. 39(1)(B).

¹³⁸ See Solange Rosa and Mira 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*, 16 (University of Cape Town 2006).

¹³⁹ *Id.*

¹⁴⁰ See MACHIKO KANETAKE, *supra* note 97, at 14.

¹⁴¹ See RAJAT RANA, *supra* note 136, at 39.

¹⁴² *Id.*

¹⁴³ *Id.*

¹⁴⁴ *Canadian Foundation for Children, Youth and the Law vs. Canada*, Supreme Ct. of Ontario, 2004, cited in INTERNATIONAL LAW ASSOCIATION, *supra* note 74, at par.24.

¹⁴⁵ INTERNATIONAL LAW ASSOCIATION, *supra* note 74, at par.107;

condemned the Netherlands over the law, which allows the retention, in its concluding observations on the Netherlands.¹⁴⁶

Under Ethiopian Constitutional law, Adem argues that, “declarations, resolutions, and other *soft laws*, which by their nature may not be ratified, are also relevant in shaping the meaning of the Constitutional rights provisions”.¹⁴⁷ The fact that Article 13(2) of the Constitution uses the term *instruments adopted* instead of *treaties ratified* means a reference should be made not only to treaties but also to declarations, resolutions and other treaty bodies’ outputs adopted within the framework of international organizations to which Ethiopia is a member. Abdi submitted that meaning, scope and categories of rights under human rights provisions of the Constitution must not contradict with *soft instruments* as well.¹⁴⁸ It is in the opinion of the author of this article that, concluding observations of the Committee that suggest certain line of interpretation of child rights are important in the determination of the meaning of child rights provisions of the Constitution. I agree that “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”.¹⁴⁹ Hence, a regulated and creative application of the principle of consistent interpretation will lead organs of the government to consider concluding observations.

VI. CONCLUSION

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 laws and undertaking international obligations. However, deeper investigation into the interaction between the Ethiopian government and the expert Committee indicates 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 Committee is apparent from the following trends. First, the government is forwarding its comments, most of the time acceptance, on the suggestions of the Committee in or at the end of the dialogue. Second, the government is reporting on what has been done to comply with the recommendations. This creates a cause and effect relationship between the recommendation of the Committee and the measures reportedly taken by the government. Third, the Committee is calling for the comprehensive recommendation-measure nexus between current state report and previous concluding observations. Finally, external bodies, particularly NGOs’ accusations of the government through alternative reports, alleging that the latter is not acting in accordance with the Committee’s recommendations and it is not reporting on what measures are taken to address the suggestions of the Committee shows that the government is required at least to consider the recommendations of the Committee.

¹⁴⁶ R. VAN ALEBEEK AND ANRE NOLLKAEMPER, *supra* note 43, at 64.

¹⁴⁷ Adem Kassie Abebe, *The Potential Role of Constitutional in the Realization of Human Rights in Ethiopia* 162 (2012) (Doctoral Thesis, University of Pretoria). (Emphasis added).

¹⁴⁸ Abdi Jibril Ali, *Distinguishing Limitation on Constitutional Rights from Their Suspension: A Comment on the CUD Case*, 1:2 HARAMAYA LAW REVIEW 16 (2013).

¹⁴⁹ CENTER FOR HUMAN RIGHTS STUDIES, *supra* note 31, at 1.

On the other hand, though concluding observations are not laws in the domestic legal system, they are legally relevant to propel enactment of laws and adoption of policies. 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 a real impression on laws which affect children.

Though familiarity of child rights treaties before Ethiopian courts has taken a 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 that 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 leads to the construction of the meaning of binding treaties through non-binding instruments like concluding observations. In Ethiopia's case, the Constitutional interpretation rules are not elaborated rules, and they fail short of guiding what specific human rights documents should be consulted by the House of Federation, courts or other organs for consistent interpretation of human rights provisions of the Constitution.

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