



Ultra Vires Acts by the Committee on the Rights of the Child and the New Optional Protocol to UNCRC

Executive Summary

This Report examines the issues around the Optional Protocol to the Convention on the Rights of the Child on a communications procedure (UN document A/RES/66/138), such as:

- procedural flaws in its development;
- its undermining of domestic legislation and judicial systems;
- its erosion of the exhaustion of domestic remedies rule;
- its potential belittlement of the value of the family.

Due to the protocol granting the Committee new powers to consider complaints for UNCRC violations (including complaints by children), particular attention is given to past *ultra vires* (beyond its authority) acts by the Committee. The Report notes with concern that many CRC acts can be viewed as being:

- contrary to the principle of the sovereign equality of the UN member States (Article 2 of the UN Charter);
- beyond the mandate of the Committee;
- contrary to or not based on intergovernmental consensus.

In particular, its acts included:

- pressuring states to change their abortion laws irrespective of intergovernmental consensus and with no foundation in international human rights instruments;
- indirectly promoting controversial concepts with no established intergovernmental consensus behind them (legalizing same-sex sexual relationships, legal recognition of same-sex marriages and partnerships, decriminalization of prostitution);
- demanding that states should give children sexuality education regardless of and access to reproductive health services regardless of and without parental consent and knowledge, with no basis in UNCRC or other international human rights instruments whatsoever and contrary to the Cairo Programme of Action and the Beijing Platform for Action (both possessing a degree of intergovernmental recognition at UN level);
- using an *ultra vires* (beyond its authority) interpretation of UNCRC to unlawfully introduce a new 'obligation' for states parties (to outlaw any parental corporal punishment for children) not following

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from UNCRC itself, and then demanding compliance, up to the point of changing their national legislation;

- demanding of states (contrary to the principle of the sovereign equality of states and with no basis in UNCRC) ratification of international agreements hitherto not signed by them.

All these acts (documented in the Appendix), regardless of their ethical assessment, are shown to be *ultra vires* and must be recognized as violating the principle of sovereign equality and exceeding the treaty monitoring body mandate. The Committee's *ultra vires* acts, though not directly legally binding, seriously affect the legal regime in states parties to UNCRC. They affect national law enforcement practice, changes to national legislation, and influence legally binding decisions by other international bodies.

Ultra vires acts by the Committee can seriously threaten the sustainability of international human rights framework, the sovereignty of states parties, cultural identity of their peoples, and the standing of the family, which is 'the natural and fundamental group unit of society and is entitled to protection by society and the State' (Article 16 (3) of the Universal Declaration of Human Rights), and, therefore, by the international community.

For states parties to recognize the new CRC power by signing and ratifying the Optional Protocol would, in these circumstances, seem impractical and dangerous.

The Report points out that to remedy the situation created by the *ultra vires* acts by the Committee, legitimately concerned states parties can employ a number of means, such as:

- refusing to ratify the Optional Protocol to the Convention on the Rights of the Child on a communications procedure until a relevant reform of the Committee is taken place;
- exercising their right to issue interpretative declarations on UNCRC;
- exercising their right to point out the limits of the Committee's mandate replying to its requests for additional information related to periodic reports;
- warning the Committee of the possibility of their denunciation of UNCRC in case a relevant reform of its activities does not take place;
- actively participating in reforming UN treaty bodies to bring their activities into strict conformity with their mandates, to give it greater transparency, and to bring it under more effective states parties control.

These means can, after due assessment of the consequences of their implementation, be employed at the discretion of states to protect the rights of their sovereign peoples, the family, and their cultural, religious, and moral identity.

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