

## INTRODUCTION

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*Jurisprudence on the Rights of the Child* represents a major breakthrough in human rights research tools. It provides the researcher with the means to instantly discover the developing standards in international child rights law as framed by the Convention on the Rights of the Child, and interpreted by its monitoring body—the Committee on the Rights of the Child. It makes it possible to know and analyze exactly how the Convention is being applied to the particular day-to-day events and situations arising within the borders of a nation that is a State Party to the Convention.

Although it is extensive and detailed, *Jurisprudence on the Rights of the Child* does not even begin to cover the rapidly growing fields of national and international law protecting children's human rights. What it offers is a window through which to view these developments. The Convention on the Rights of the Child is central to any effort to understand child rights law, primarily because it was the first comprehensive child rights treaty in the world, and secondarily because it is the standard by which all other child rights laws are measured.<sup>1</sup> Therefore, *Jurisprudence on the Rights of the Child* is exclusively devoted to compiling and cataloging the jurisprudence contained in the *Concluding Observations* of the Committee on the Rights of the Child.<sup>2</sup>

*Jurisprudence on the Rights of the Child* has been designed to allow for fine-tuned research. This might entail comparative research on an individual article (or articles) and/or on the Committee's evaluation of a particular State Party's (or group of States Parties') success in meeting the standards of the Convention.

*Jurisprudence on the Rights of the Child* has adhered to the Committee's format of grouping articles into eight distinct clusters,<sup>3</sup> which the Committee devised as a tool to simplify and assist States Parties in the reporting process. All States Parties' reports are

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<sup>1</sup> Child rights law and rules are being defined and developed on many levels—international, regional, national, provincial, and municipal—by governmental bodies and by international bodies, such as UNICEF, the International Labor Organization, the World Health Organization, the U.N. High Commissioner for Refugees, the Organization of American States, and the Hague Conference on Private International Law.

<sup>2</sup> See Articles 43-44 of the Convention on the Rights of the Child, which sets up a monitoring mechanism that requires States Parties to submit reports to a body of experts (the Committee on the Rights of the Child) for its evaluation.

<sup>3</sup> To simplify the reporting process, the Committee devised a set of *Guidelines on Reporting* (see *supra* notes 15 to 18 and accompanying text) that groups the articles into eight separate clusters: I. *General Measures of Implementation*; II. *Definition of the Child*; III. *General Principles*; IV. *Civil Rights and Freedoms*; V. *Family Environment and Alternative Care*; VI. *Basic Health and Welfare*; VII. *Education, Leisure and Cultural Activities*; and VIII. *Special Protection Measures*.

expected to follow this format, as are the reports of nongovernmental organizations, other bodies, and, ultimately, the Committee's *Concluding Observations*. Therefore, when analyzing a particular article, researcher must first refer to *Summary of General Guidelines for Submission on Initial Reports* found on page xxi, which explains the structure that the Committee laid out in its *General Guidelines Regarding the Form and Content of Initial Reports to be Submitted by States Parties under Article 44, Paragraph I (a) of the Convention (Guidelines)*<sup>4</sup> in clustering the Convention's articles, and then locate the particular cluster and paragraph into which the Committee has placed that article. The *Concluding Observations* within each cluster and paragraph are arranged alphabetically, by country (State Party), with the U.N. document number and date that the particular *Concluding Observation* was issued. In cases where a State Party has submitted more than one report to the Committee (an initial report followed by a periodic report), and the Committee has commented a second time on the State Party's compliance with that article,<sup>5</sup> the *Concluding Observations* will be listed in chronological order, with the oldest *Concluding Observation* appearing first.

The material is presented in three columns. The first column on the left provides the name of the State Party, the U.N. document number and the date of the *Concluding Observation*. The middle column is reserved for the Committee's positive observations and the far right column contains the Committee's recommendations for improvements.

*Jurisprudence on the Rights of the Child* covers all of the Committee's *Concluding Observations*, from its Third Session in January 1993 (which was its first session in examining State Party reports to the 33rd Session in 2003. The plan is to update *Jurisprudence on the Rights of the Child*.

## A. BACKGROUND/HISTORY OF THE CHILD RIGHTS JURISPRUDENCE PROJECT

The idea for this compilation of the jurisprudence of the Committee was born in 1990, just after it became obvious that the Convention on the Rights of the Child would go into force in a matter of months and that, because of the virtual avalanche of ratifications, the Committee on the Rights of the Child might soon be overwhelmed by the number of States Parties' reports. It was obvious that if the Convention on the Rights of the Child was to be a reliable guide for supporting children's rights, there needed to be some way of tracking the work of the Committee in interpreting and applying the Convention to actual events taking place in every ratifying nation.

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<sup>4</sup> U.N. Doc. CRC/C/5 (Oct. 1991). The Committee also drafted a set of Reporting Guidelines for Periodic Reports, which follows the same structure. (U.N. Doc. CRC/C/58 (1996)).

<sup>5</sup> States Parties are required to submit initial reports two years after the Convention has gone into force and periodic reports every five years thereafter. (Art. 44 § 1 (a), (b).) Each report is examined by the Committee on the Rights of the Child, which issues a *Concluding Observation* regarding that report. The text of each *Concluding Observations* is included in the Committee's report to the U.N. General Assembly.

The idea of using computers to track human rights violations was at that time a dream of the future. In 1990 the only people at the U.N. Center for Human Rights (the predecessor of the Office of the High Commissioner for Human Rights), who used computers in their work were employees who purchased their own PCs for personal use in their offices. However, anticipating the inevitable problem, UNICEF began looking for ways to support the work of the Committee as it struggled to evaluate the growing number of States Parties' reports.

At that time, a group of people who were working together as the Association for Child Rights Information Management (ACRIM), and who believed that computerization held the key to resolving this problem, gave a presentation before a small UNICEF meeting, showing how their work with a computer *Information Management Model* could be used for evaluating reports. The goal of the *Information Management Model* was to make it possible to compare the *Concluding Observations* of the Committee on a State-by-State, article-by-article basis and would therefore expose any inconsistencies in the Committee's evolving jurisprudence. The original model allowed researchers simply to click a mouse in order for the computer to move back and forth between *Concluding Observations* for easy comparisons.

While the idea was a good one, as the number of States Parties ballooned, it became obvious that this would be an enormous project and that it would require a tremendous amount of funding. At that time, computerization was in its infancy and U.N. documents were not on diskettes or CDs and the U.N. Web site did not exist, which meant that the content of each of the Committee's *Concluding Observations* would have to be put into the *Information Model* by hand before the technical work of sorting out the comments could begin. At that time, there were the still unresolved problems of computer compatibility and other similar matters that needed to be taken into consideration. Because things were technically in such a state of flux, ACRIM found it virtually impossible to locate a donor willing to take *Child Rights Information Management* under its wing and help it develop. Members of ACRIM, Cynthia Price Cohen, Stuart N. Hart, and Susan M. Kosloske published several articles<sup>6</sup> about their ideas and continued the search for funds for several years—until there were 191 States Parties to the Convention and only the United States and Somalia had not yet ratified. U.S. failure to ratify a treaty whose text it had so heavily influenced<sup>7</sup> was not only disappointing, but made it even more difficult to obtain the necessary financial support from foundations. Although the members of ACRIM

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<sup>6</sup> Monitoring the United Nations Convention on the Rights of the Child: The Challenge of Information Management, with Susan Kosloske and Stuart N. Hart, 18 HUM. RTS. Q. 439 (1996). United Nations Convention on the Rights of the Child: Developing an "Information Model" to Computerize the Monitoring of Treaty Compliance, with Susan M. Kosloske and Stuart N. Hart, 14 HUM. RTS. Q. 216 (1992). The Need for Worldwide Information-Sharing to Support Children's Rights. in Cynthia Price Cohen, Guest Editor, Symposium Issue Monitoring the Convention on the Rights of the Child, 6 TRANSNATIONAL LAW AND CONTEMPORARY PROBLEMS (Fall 1996).

<sup>7</sup> See Cynthia Price Cohen, *Role of the United States in Drafting the Convention on the Rights of the Child: Creating a New World for Children*, 4 LOY. POVERTY L.J. 9 (1998).

reluctantly abandoned the search for grants, the dream of tracking the Committee's jurisprudence never died.

In 1998, the University of Michigan *Journal of International Law* agreed to publish an article entitled "*Jurisprudence of the Committee on the Rights of the Child: A Guide to Research and Analysis*."<sup>8</sup> With the assistance of Susan Kilbourne, a law student who received a Georgetown Law School summer student research grant, ChildRights International Research Institute took on the task of developing a set of charts that would enable the researcher to quickly locate the applicable paragraph of the *Concluding Observation* about a particular State Party's report, without having to read through the entire document. The charts covered all of the Committee's deliberations, from its first examination of State Party reports at its Third Session in January 1993 to its 16th Session in 1997. This publication was given a warm reception and was quite helpful in simplifying child rights jurisprudence research. However, in comparison to the original ACRIM *Information Model*, it fell far short of its goals.

Encouraged by response to the Michigan article, ChildRights put together a grant proposal called the *Child Rights Jurisprudence Project*, which included a corresponding analysis of States Parties' reports—but even with the support of American University's Washington College of Law, it was not possible to obtain funding for the project.

In the interim, ChildRights was approached by Andrea Kahn of the Child Rights Information Network (CRIN), who was so impressed by the Michigan article that she began to press ChildRights to bring the charts up to date for possible publication by CRIN on its Web site. This was never actualized for a variety of reasons.

At this point ChildRights decided that what would be truly helpful to the researcher would be for the analysis to go beyond the original Michigan reference charts and to print the complete text of the Committee's relevant *Concluding Observation*, so that the researcher would be spared the laborious task of locating the appropriate *Concluding Observation* and looking up the particular paragraph. Instead, the Committee's comments on each article of the Convention would be gathered together in a single place and list the name of the State Party whose report was being examined.

ChildRights brought its proposal to Heike Fenton at Transnational Publishers, who immediately understood the importance of the project. Of course, there was still the necessity of inputting the text that was cited in the original charts (1993-1997) and then updating the project to include all of the jurisprudence that had developed since that time. However, this was made much easier than it would have been originally, due to the fact

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<sup>8</sup> Cynthia Price Cohen & Susan Kilbourne, *Jurisprudence of the Committee on the Rights of the Child: A Guide to Research and Analysis*, 19 MICH. J. INT'L L. 633 (1998).

that the United Nations was now publishing all of the Committee's *Concluding Observations* on its Internet Web site.<sup>9</sup>

The final compilation has been a massive undertaking. It could never have been completed without the assistance and encouragement of New York Law School, which undertook to financially support the research of several law students who formulated the final charts. The result is a resource that is without equal. Although various efforts have been and are being made to synthesize the jurisprudence of the Convention on the Rights of the Child, these are all influenced by the viewpoint of the author/editor and therefore cannot be said to be objective<sup>10</sup>. Only *Jurisprudence on the Rights of the Child* provides readers with the exact text of the *Concluding Observations*, thereby enabling researchers to interpret the Committee's language for themselves.

## B. COMMITTEE STRUCTURE AND PROCEDURES

Implementation procedures of the Convention on the Rights of the Child are enumerated in Articles 43-45. They call for the establishment of a Committee on the Rights of the Child—a group of experts—to examine the reports submitted by States Parties. Article 43(2) describes the criteria for membership in the Committee,<sup>11</sup> which was originally limited to ten members.<sup>12</sup>

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<sup>9</sup> The address for the Web site of the Office of the High Commissioner for Human Rights is: [www.ohchr.org](http://www.ohchr.org). By looking under Committee on the Rights of the child in the Treaty Bodies section, researchers can find a wealth of information, including the full text of every State Party report, the Committee's *Concluding Observations* and the *Summary Records* for the Committee's oral examination of the report.

<sup>10</sup> One such project was the IMPLEMENTATION HANDBOOK FOR THE CONVENTION ON THE RIGHTS OF THE CHILD, published by UNICEF in 1998 for the purpose of assisting States Parties in preparing their reports for the Committee.

<sup>11</sup> Full text of Article 43:

1. For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided.
2. The Committee shall consist of ten experts of high moral standing and recognized competence in the field covered by this Convention. The members of the Committee shall be elected by States Parties from among their nationals and shall serve in their personal capacity, consideration being given to equitable geographical distribution, as well as to the principal legal systems.
3. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals.
4. The initial election to the Committee shall be held no later than six months after the date of the entry into force of the present Convention and thereafter every second year. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to States Parties inviting them to submit their nominations within two months.

In 2002, an amendment to the Convention increased the number of Committee members to 18 in the hope that with a larger number of members, it might be possible for the Committee to eliminate its growing backlog of unexamined State Party reports.<sup>13</sup>

At the time that the Convention went into force, in 1990, it was assumed that the Committee would meet for only two weeks, once each year. However, due to the virtual avalanche of ratifications, it soon became obvious that this was not practicable. The number and length of the sessions of the Committee began to be extended almost immediately. The Committee now meets for three four-week sessions each year. The first three weeks are given over to examination of State Party reports. The fourth week is confined to “pre-sessional” meetings that are used as preparations for the next set of State Party report examinations. The Committee’s sessions are held in January, May-June and September-October.

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The Secretary-General shall subsequently prepare a list in alphabetical order of all persons thus nominated, indicating States Parties which have nominated them, and shall submit it to the States Parties to the present Convention.

5. The elections shall be held at meetings of States Parties convened by the Secretary-General at United Nations Headquarters. At those meetings, for which two thirds of States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.
6. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. The term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these five members shall be chosen by lot by the Chairman of the meeting.
7. If a member of the Committee dies or resigns or declares that for any other cause he or she can no longer perform the duties of the Committee, the State Party which nominated the member shall appoint another expert from among its nationals to serve for the remainder of the term, subject to the approval of the Committee.
8. The Committee shall establish its own rules of procedure.
9. The Committee shall elect its officers for a period of two years.

<sup>12</sup> Following the Article 43 requirement for geographic diversity, the original Committee members were Marta Santos Pais (Portugal), Thomas Hammarberg (Sweden) , Swithun Mombeshora (Zimbabwe) Akila Belembaogo (Burkina Faso), Youri Kolosov (Russian Federation), Ms. Maria de Fatima Borges de Omena (Brazil), Sandra Prunella Mason (Barbados), Hoda Bodron (Egypt), Flora Corpuz Eufemio (Philippines), Luis A. Bambaren Gastelumendi (Peru).

<sup>13</sup> The amendment was proposed by Costa Rica and was adopted according to the Convention’s Article 50 requirements. The new members were added at the next election held by States Parties in 2002.

Once a country has submitted its report to the U.N. Secretary-General under Article 44 of the Convention, the report is translated into the Committee's three official languages (English, French, and Spanish), given a document number, and assigned a date for oral examination. During the pre-sessional meetings just preceding the formal public examination of the report, the Committee reviews the report and sends a list of questions (List of Issues) to the State Party that should be answered during the oral examination. The State Party usually replies to the Committee's List of Issues in writing, as well. During the pre-sessional week, the Committee often meets with nongovernmental organizations (NGOs) from the country whose report is to be examined to check on the completeness and accuracy of the report.<sup>14</sup>

The formal examination takes place in Geneva at the Palais Wilson—the building that houses the Office of the High Commissioner for Human Rights. The examination takes at least two half-day sessions<sup>15</sup> and the State Party usually sends a delegation that consists of several government experts in various fields. The Committee questions the government representatives orally, and there is the equivalent of a "hearing" on the State Party's report. At the end of the formal examination, the Committee writes its *Concluding Observations* in which it outlines the areas that need improvement. States Parties are required to report to the Committee on a regular basis. The first report is due three years after the Convention has gone "into force" for that nation,<sup>16</sup> with "periodic" reports being due every five years thereafter.<sup>17</sup>

Paragraph 8 of Article 43 gives the Committee the power to set up its own *Rules of Procedure*.<sup>18</sup> In doing this, it has covered everything from elections of officers to

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<sup>14</sup> The Committee's ability to obtain information from outside sources is unique among U.N. human rights treaty processes. Article 45 gives the Committee several different avenues for information gathering and resources to aid States Parties in fulfilling their treaty obligations; among them is the ability to obtain information from a variety of U.N. bodies, as well as "other competent bodies," which the Convention's drafters especially intended to include non-governmental organizations.

<sup>15</sup> When examining the first reports, the Committee devoted three half-day sessions to the process. As the number of States Parties has increased, the Committee has been under pressure to shorten the time spent on report examinations. In many cases—especially the periodic reports—the time has been shortened to two half-day sessions (one day).

<sup>16</sup> Under Article 49, the Convention enters into force "on the thirtieth day following the date of deposit with the Secretary General of the United Nations" of the nation's "instrument of ratification or accession."

<sup>17</sup> Among other obligations, Article 44(1) requires States Parties to undertake the following:

1. States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights:

- (a) Within two years of the entry into force of the Convention for the State Party concerned;
  - (b) Thereafter every five years.

<sup>18</sup> *Provisional Rules of Procedure*, U.N. Doc. CRC/C/4 (Nov. 1991).

establishing a special *Day of General Discussion*<sup>19</sup> that highlights issues of interest to the majority of States Parties. It was within this capacity that the Committee drafted its *General Guidelines Regarding the Form and Content of Initial Reports to be Submitted by States Parties under Article 44, Paragraph I (a) of the Convention (Reporting Guidelines)*<sup>20</sup>. The purpose of the *Reporting Guidelines* was to simplify the reporting process.

The Convention is very long and comprehensive. In order to make it easier for States Parties to fulfill the reporting requirements, the Committee clustered the articles into related groups. The *Reporting Guidelines* are divided into eight clusters: I. *General Measures of Implementation* (Articles 4, 42, 44 § 6); II. *Definition of the Child* (Article 1); III. *General Principles* (Articles 2, 3, 6, 12); IV. *Civil Rights and Freedoms* (Articles 7, 8, 13-17, 37 § a); V. *Family Environment and Alternative Care* (Articles 5, 9-11, 18 § 1-§ 2, 19, 20, 21, 22 § a, 25, 39); VI. *Basic Health and Welfare* (Articles 6 § 2, 18 § 3, 23, 24, 26, 27 § 1-§ 3); VII. *Education, Leisure and Cultural Activities* (Articles 28, 29, 31) ; and VIII. *Special Protection Measures* which include: (a) *Children in Situations of Emergency* (Articles 22, 38, 39); (b) *Children in Conflict with the Law* (Articles 37 §§ a-d, 39, 40); (c). *Children in Situations of Exploitation, Including Physical and Psychological Recovery and Social Reintegration* (Articles 32-36, 39); and (d) *Children Belonging to a Minority or Indigenous Group* (Article 30).

All State Party reports are to follow the format of the *Reporting Guidelines*. In fact, when NGOs and other competent bodies<sup>21</sup> submit information to the Committee, they too should follow the *Reporting Guidelines* format and the Committee has begun to formulate its *Concluding Observations* using this same format. As a result, in publishing *Jurisprudence on the Rights of the Child*, it was deemed appropriate to follow the charts and paragraphing of the *Reporting Guidelines*

## C. CONCLUDING OBSERVATIONS

The style of the Committee's *Concluding Observations* has evolved considerably since it first began examining State Party reports. At that time, its *Concluding Observations*

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<sup>19</sup> The Committee on the Rights of the Child holds a *Day of General Discussion* each year. The discussion day is a public meeting, which takes place at the Office of the United Nations High Commissioner for Human Rights, Palais Wilson, Geneva. Government representatives, individual experts, United Nations bodies and specialized agencies, as well as members of civil society, are welcome. *Days of General Discussion* have been held on the following topics: Children in armed conflict (1992); Economic exploitation (1993); Role of the family (1994); The girl child (1995); Juvenile justice (1995); The child and the media (1996); Children with disabilities (1997); HIV/AIDS (1998); 10th Anniversary: General measures of implementation (1999); State violence against children (2000); Violence against children within the family and in school (2001); The private sector as a service provider (2002); The rights of indigenous children (2003).

<sup>20</sup> U.N. Doc. CRC/C/5 (Oct. 1991) (General Guidelines regarding the Form and Content of Initial Reports to be Submitted by States Parties under Article 44, Paragraph I (a) of the Convention ) (*Reporting Guidelines*).

<sup>21</sup> See Convention on the Rights of the Child at Article 45 for the Committee's ability to receive information from outside sources.

followed the following framework: A. *Introduction* (overview of the country situation); followed by B. *Positive aspects*; C. *Factors and difficulties impeding implementation*; D. *Principle subjects of concern*; and E. *Suggestions and recommendations*. Unfortunately, this framework had several weaknesses. First, when there were no major “difficulties impeding implementation” to report, section C was simply deleted, with sections D and E then being renamed C and D. Obviously, this made for an inconsistency and confusion (compare the *Concluding Observations* for Sweden<sup>22</sup> and Sudan<sup>23</sup>).

Second, primarily for the purpose of expediency, the Committee tended to repeat more or less the same *recommendations* to every country, rather than tailoring them to directly address the needs of the particular State Party. Third, by separating the *areas of concern* from its *recommendations*, the Committee sometimes pinpointed a problem in section C, but then failed to recommend a remedy in section D. Fourth, the language used by the Committee was often repetitive, with the same words being employed to describe a *concern* and a *recommendation* for several different countries. The early *Concluding Observations* were typically only about three or four pages in length (i.e., 13-20 short paragraphs) that were lacking in depth.

These weaknesses have now been remedied. Although the Committee has retained the original *Concluding Observations* structure regarding sections A-C, sections D and E are combined into a single section D on, *Principle areas of concern and recommendations*. There are two improvements that combine to give teeth to the *Concluding Observations* and make them into strong tools for child rights advocacy. First, the Committee’s section D, *areas of concern and recommendations*, has been organized so as to follow the structure of the *Guidelines*—with comments being listed according to the *Guidelines’* subsections. Second, the Committee’s *concerns* and its *recommendations* are now closely connected to one another in the same section. The *concern* is first described in a paragraph (or two), printed in regular type style. The *recommendations* are in the paragraph(s) immediately following it, but in **bold type**.<sup>24</sup> These changes make it easy to see the Committee’s analysis.

As might be expected, the *Concluding Observations* are now considerably more substantial. Instead of being three or four pages in length, they are now typically 17 pages (made up of about 75 paragraphs). The current framework accomplishes the Committee’s goal of making it clear to the State Party exactly what changes the Committee thought should be made. By being specific, the *Concluding Observations* provide the necessary tools of constructive action both for governments and for child rights advocates. (See *Concluding Observations* for Brazil<sup>25</sup>)

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<sup>22</sup> U.N. Doc. CRC/C/15/Add.2 (Feb. 18, 1993).

<sup>23</sup> U.N. Doc. CRC/C/15/Add.6 (Feb. 18, 1993).

<sup>24</sup> Because of its format, it was deemed unnecessary to replicate this bolding in *Jurisprudence on the Rights of the Child*.

<sup>25</sup> *Concluding Observations* on Report from Brazil: U.N. Doc. C/CRC/15/Add.241 (Oct. 1, 2004).

## D. MODEL CHILD RIGHTS JURISPRUDENCE RESEARCH

To indigenous people all over the world, the Convention on the Rights of the Child is a beacon of light in a stormy sea. Its 1989 adoption by the General Assembly marked the first time that indigenous children were singled out for protection by a human rights treaty.<sup>26</sup> The word “indigenous” appears in three separate articles of the Convention: Article 17 (access to mass media), which states that States Parties should “Encourage the mass media to have particular regard to the needs of a child who belongs to a minority group or *who is indigenous*. (Sd);” Article 29 (purpose of education), which calls on States Parties to make the purpose of their education programs the “preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, national and religious groups and *persons of indigenous origin*; (art. 29, (Sd)”; and Article 30 (minority and indigenous children):

### *Article 30*

In those States in which ethnic, religious or linguistic minorities or persons of *indigenous* origin exist, a child belonging to such a minority or who is *indigenous* shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.<sup>27</sup>

However, despite their recognition by the Convention on the Rights of the Child, steps toward full recognition of the rights of indigenous children have been somewhat slow in coming. Any researcher who wants to track this process should begin by examining the extent to which the Committee on the Rights of the Child has been involved in this process. To do this, the researcher needs to begin by consulting the *Summary of General Guidelines for Submission of Initial Reports* found on page xxi, where it will be discovered that Article 30 has been placed in section VII of the *Special Protection Measures* clusters and assigned paragraph d, *Children Belonging to a Minority or Indigenous Group*.

By looking at Section VII, *Special Protection Measures* paragraph d in *Jurisprudence on the Rights of the Child*, the researcher will find every comment made by the Committee on the Rights of the Child about each State Party’s compliance with Article 30. However, because this article also protects children who are ethnic minorities, when doing a general inquiry into the Committee’s *Concluding Observations* regarding indigenous children, it will be necessary to scan all of the Committee’s comments in that section and to separate the comments about indigenous children from comments about ethnic minorities. On the other hand, if the research is being confined to one particular State Party, then it will only be necessary to find the *Committee’s Observations* regarding that State Party’s compliance.

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<sup>26</sup> ILO Convention No. 169 (1989) on indigenous workers does refer to children, but only to the extent that tribal persons can control their children’s education, and, as a result, is not a true “human rights” treaty.

<sup>27</sup> Italics in the quotes from the Convention were supplied by the editor.

As an example, a recent study of the situation in eight States Parties known to have indigenous children<sup>28</sup> revealed that during the period from 1995 to 2000, most of the Committee's *Concluding Observations* on Article 30 had focused on discrimination in general; access to education in their own languages; access to health care; guarantees of fundamental rights (such as a standard of living); and the lack of adequate data on the situation of indigenous children. The one exception to these general research conclusions was the Committee's *Concluding Observations* on the Australian report, in which it paid special attention to the situation of indigenous youth in their juvenile justice system. It made comments about the high number of indigenous youth in detention and about the practice of preventive detention. It called for special training of all persons involved in the juvenile justice process.

As time goes on the Committee on the Rights of the Child will be giving greater attention to indigenous children for several reasons: (1) since the Working Group on Indigenous Populations devoted its 2000 session to the problems and needs of Indigenous Children and Youth, they have become a regular topic of discussion; (2) this has led to the establishment of an annual International Workshop on Indigenous Children and Youth<sup>29</sup>; (3) the U.N. Permanent Forum on Indigenous Issues has given special attention to indigenous children and youth; (4) the mandate of the Special Rapporteur on Indigenous Peoples Human Rights and Fundamental Freedoms places a high priority on the needs of the indigenous child; and (5) most importantly, the Committee's fall 2003 Day of General Discussion was devoted to the Indigenous Child.<sup>30</sup> The Committee is currently in the process of drafting a General Comment on Indigenous Children, and their recommendations from the Day of General Discussion are serving as a basis for one of the Committee's still infrequent *General Comments*.<sup>31</sup>

These are just a few of the resources that should be reviewed by anyone researching the rights of indigenous children. However, by using *Jurisprudence on the Rights of the Child*

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<sup>28</sup> The countries chosen were: Canada (1995); Nicaragua (1995); Guatemala (1996); Panama (1997); Paraguay (1997); New Zealand (1997); Australia (1997); and Burundi (2000).

<sup>29</sup> Held each year in Geneva on the Thursday and Friday before the Working Group on Indigenous Populations to ensure that Indigenous Groups are aware of what is happening in the international arena to benefit Indigenous Children and Youth.

<sup>30</sup> The text for all of the Committee's Recommendations for each *Day of General Discussion* can be found at the following Web address: <http://www.ohchr.org/english/bodies/crc/discussion.htm>.

<sup>31</sup> Each of the U.N., Human Rights Treaty Bodies has produced a number of "General Comments" which give guidance to States Parties as to the meaning of various articles in the related treaty. At the time that *Jurisprudence on the Rights of the Child* was being readied for publication, the Committee on the Rights of the Child had published only five General Comments: (1) The aims of education (2001); (2) The role of independent human rights institutions (2002); (3) HIV/AIDS and the rights of the child (2003); (4) Adolescent Health (2003); (5) General measures of implementation for the Convention on the Rights of the Child (2003).

The General Comments of all human rights treaty bodies are compiled in the document HRI/GEN/1/Rev.7.

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as the primary resource, the researcher is reaching into the heart of the child rights deliberative process. In addition, having the materials laid out in such a comprehensive and transparent manner will encourage the Committee on the Rights of the Child to make full use of the opportunity to provide child rights advocates with decisive tools.