7 The Committee on the Rights of the Child

7.1 Introduction

The adoption of the Convention on the Rights of the Child in 1989 inaugurated a new era in UN treaty monitoring. The adoption of the CRC moved children from their former role as subsidiaries of their parents to legally recognized individuals (Hammarberg 1990: 99). Initially scheduled for adoption during the 1979 International Year of the Child as an expanded version of the non-binding Declaration of the Rights of the Child (1959),¹ the draft descended into the conventional gridlock of human rights treaty drafting, only to emerge in its present form decades later. The resulting instrument broke completely with the paternalistic approach of the declaration, for reasons that are not entirely clear, although the composition of the draft working group and the contributions of several NGOs probably played a decisive role (Cohen 1990: 142).

The Committee on the Rights of the Child is created and structured in articles 42–45 of the CRC, with 18 independent experts scheduled to meet for three weeks every year and to receive periodic reports from states parties every fifth year after their initial report. The committee is competent to make suggestions and general recommendations. Unique among the treaty bodies, the committee is mandated to ask for additional information if required, and to engage in extensive dialogue with United Nations agencies on their topics of specialization.²

¹ GA Resolution 1386(XIV), 1959.
² These unique features are listed in article 45, which reads in full: “In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention: “(a) The specialized agencies, the United Nations Children’s Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children’s Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children’s Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities; (b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children’s Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee’s observations and suggestions, if any, on these requests or indications; (c) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the rights of the child; (d) The Committee may make suggestions and general recom-
The committee was also the first to adopt the practice of issuing concluding ob-
servations following every reporting cycle from the beginning of its work, and
the first to be expressly allowed to consider information from other sources
than governments.³

Although the CRC is a single-issue convention dedicated to a specific catego-
y of rights holders, the articles contained in the instrument bear closer resem-
blance to the structure of the International Bill of Rights (IBR)⁴ than to the
other thematically oriented treaties on racial discrimination and discrimina-
tion of women, featuring numerous provisions on religion. In the preamble⁵ and
article 2,⁶ the CRC reiterates the catalogue of prohibited grounds for discrimina-
tion in the IBR, and then expands the list to also include ethnicity and disability. In
article 29,⁷ the convention regulates the purpose of education, covering the
equality of the sexes, ethnicity and friendship among religious groups and peo-
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ple of indigenous origins. Article 30⁸ duplicates article 27 of the ICCPR on the

3 See previous note.
4 The International Bill of Rights is conventionally used by the UN secretariat as shorthand de-
noting the rights contained in the UDHR, ICCPR and ICESCR put together.
5 “Recognizing that the United Nations has, in the Universal Declaration of Human Rights and
in the International Covenants on Human Rights, proclaimed and agreed that everyone is enti-
tled to all the rights and freedoms set forth therein, without distinction of any kind, such as race,
colour, sex, language, religion, political or other opinion, national or social origin, property,
birth or other status.”
6 Article 2 reads in full: “1. States Parties shall respect and ensure the rights set forth in the
present Convention to each child within their jurisdiction without discrimination of any kind,
irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language,
religion, political or other opinion, national, ethnic or social origin, property, disability, birth or
other status. 2. States Parties shall take all appropriate measures to ensure that the child is pro-
tected against all forms of discrimination or punishment on the basis of the status, activities,
expressed opinions, or beliefs of the child’s parents, legal guardians, or family members.”
7 The full list on the direction of education in article 29 (d): “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, ethnic, national and religious groups and persons
of indigenous origin.”
8 The only substantial difference is that article 30 adds “children who are indigenous” to the
list. The article reads in full: “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
rights of minorities to exercise their religion to the child-centered context of the CRC with only minor changes.

In article 14,⁹ the novelty of the CRC approach to child rights stands out in particular: Whereas former treaties subsumed a child’s religion under the rights of their parents, the CRC creates individual religious rights for children. Using the ICCPR article 18 as a point of departure, article 14(1) of the CRC obliges states parties to respect the right of the child to freedom of thought, conscience and religion. The principle of parental rights and responsibilities to provide guidance and direction in the exercise of rights in a manner consistent with the evolving capacities of the child, included in the treaty as a stand-alone provision in article 5, is also included in article 14(2), emphasizing the importance of the evolving capacities approach to the freedom of religion or belief. Along with the principle of the best interest of the child, launched in article 3(1)¹⁰ and then repeatedly mentioned, the evolving capacities concept was one of the most significant innovations of the CRC. Although a clarification of the permissible range of manifestations of this right are absent, acceptable limitations listed in 14(3) are identical to the ICCPR article 18(3).

or her own culture, to profess and practice his or her own religion, or to use his or her own language.”

⁹ Article 14 reads in full: “1. States Parties shall respect the right of the child to freedom of thought, conscience and religion. 2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child. 3. Freedom to manifest one’s religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.”

¹⁰ Article 3 reads in full: “1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration. 2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures. 3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision. “

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7.2 General Comments

Starting in 2001, the committee monitoring the CRC has issued 21 general comments, and is alone among the treaty bodies in publishing only theme-based comments. Religion has four different modalities in the GCs issued by the CRC: First, the importance of religion as a prohibited ground of discrimination in article 2 of the convention is repeatedly mentioned, with respect to HIV/AIDS and the rights of the child, the rights of children with disabilities, the rights of children in juvenile justice, and the rights of the child to rest, leisure, play, recreational activities, cultural life and the arts. According to the general comment issued by the committee on article 29, education is one of the primary means to fight discrimination, as it should “overcome the boundaries of religion, nation and culture built across many parts of the world”. The transgression of such boundaries should be made possible by employing a “balanced approach” to education based on dialogue and respect for difference, despite the potential tension between subparagraph 1(c) on the respect for the cultural identity of the child, and subparagraph 1(d), on the promotion of friendship and tolerance among all peoples.

Second, the role of religious leaders in assisting the implementation of the convention is repeatedly emphasized, safeguarding the school environment and engaging in the fight against HIV/AIDS. Third, in the comment on the right of the child to freedom from all forms of violence, prohibiting corporal punishment of children on religious grounds is firmly placed within the acceptable limitations of the right to freedom of religion or belief in ICCPR article 18, confirming the general prohibition against exercising one fundamental right to the detriment of another.

Fourth, in the extensive comment on the key concept of the best interest of the child as a primary consideration, the committee observes that the best interest principle is both a substantive right, an interpretative legal principle and a

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14 CRC/C/GC/17, 2013.
19 CRC/C/GC/13, 2011.
20 CRC/C/GC/14, 2013.
rule of procedure, to secure the child’s “holistic physical, psychological, moral and spiritual integrity (...) and to promote his or her human dignity”. As a vital component of the child’s identity, its “ethnic, religious, cultural and linguistic background” should always be taken into account in the consideration of a foster home or placement, adoption or separation from the family. However, such a background may only be preserved if it does not conflict with any of the provisions of the CRC.

7.3 Individual Complaints

The CRC was furnished with an Optional Protocol on an individual communications procedure in 2011 through resolution 66/138 of the UN General Assembly. The Protocol entered into force in 2014, and the committee has presently (2016) only reviewed one submission, which it found inadmissible.²¹

7.4 Reporting Guidelines

The CRC reporting guidelines²² provide for the same general requirements as the other committees, but additionally request that states refer to how earlier recommendations from the committee have been met. Rather than article-specific guidelines, the committee requests different kinds of information from the various rights clusters covered by the convention.²³ The guidelines request information on the participation of religious groups in drafting state reports, and ask states to include relevant statistical data and information disaggregated on religion.²⁴ For participation in the CRC process, Child Rights Connect²⁵ has published a guide to the reporting mechanism (CRC 2014) that is more concerned with

²³ The clusters, as defined by the committee, are: measures of implementation, definition of the child, general principles, civil rights and freedoms, family environment and alternative care, disability, basic health and welfare, education, leisure and cultural activities and special protection measures.
²⁵ Formerly the NGO Group for the CRC, Child Rights Connect was set up in 1983 to influence the drafting of the CRC. Today, the organization is considered among the strongest international expertise on children’s rights, and continues to influence the international monitoring of children’s rights http://www.childrightsconnect.org/about-us/ (31.08.2016). For a consideration of the NGO participation in the drafting of the CRC, see Türkelli and Vandenhole 2012.
the style and format of NGO reporting than substantial issues, providing no rights-specific guidelines for the submission of reports.

7.5 The Religion of the CRC

To the committee monitoring the CRC, religion does not necessarily originate in “the citadel of the mind” of the ICCPR, but is an inherently multidimensional concept that influences the implementation of the CRC in numerous ways. Like the HRC, the committee is obliged to recognize religion as a protected form of belief, as spelled out in article 14 of the CRC; however, the only general comment on the issue is more concerned with the potential for violence against children emanating from manifestations of religion or belief, rather than the protection of such beliefs (see above). As such, the committee has nowhere near the same kind of commitment to article 14 of the CRC as the HRC has to article 18 of the ICCPR.

Hence, the identity dimension of religion, which has also been emphasized by CERD, seems considerably more important than the freedom of belief, as the committee has warned frequently against discrimination on religious grounds, particularly concerning children from vulnerable groups. In addition to the belief and identity dimensions to religion, however, the committee has also paid particular attention to the potential social influence of religion, particularly as it is wielded by religious leaders, whose engagement has been a key concern to the committee from the very beginning.

7.6 Approaches to Religion in the Monitoring Practice of the CRC, 1993 – 2013

7.6.1 Minorities

The legal framework on discrimination and the rights of minorities in the CRC closely resembles that of the International Covenant on Civil and Political Rights (ICCPR): article 2 prohibits discrimination in the enjoyment of the rights set out in the convention,²⁶ and article 30 protects the rights of children who belong to

²⁶ Article 2 reads in full: “1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s or his or her parent’s or legal guardian’s race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or
ethnic, linguistic, religious or indigenous minorities to enjoy his or her culture, to profess and practice his or her religion, or to use his or her language.\textsuperscript{27} While the CRC lacks a parallel to article 26 of the ICCPR on equality before the law, both articles 2 and 30 are broader in scope than their ICCPR parallels,\textsuperscript{28} offering additional criteria for protection, including the rights of indigenous children.\textsuperscript{29}

The Committee on the Rights of the Child issued a general comment on its interpretation of the rights of indigenous children in 2009, where it linked article 30 directly to the protection offered in article 27 of the ICCPR, but expanded the scope of this article with its particular emphasis on the recognition of the collective traditions and values in indigenous cultures.\textsuperscript{30} It also established the principle of self-identification as indigenous as a fundamental criterion for their identification regardless of their recognition in law, and referred to the general principle of non-discrimination in the enjoyment of the other rights in the convention as a moderator on the implementation of article 30.\textsuperscript{31}

In its monitoring practice, the committee has consistently been more concerned with the rights of children who belong to religious minorities than with the general prohibition against discrimination and the rights of indigenous children. The committee first commented on the rights of religious minority children during its reviews of The Federal Republic of Yugoslavia (FRY)\textsuperscript{32} and Croatia in 1996. The review of the FRY was conducted without the presence of a state del-
egation, and the committee issued a set of concluding observations following the review where it expressed its concern with the treatment of the Muslim minority in Sandjak, where numerous human rights violations had occurred “with impunity”. The committee also expressed its concern with the incitement to hatred against ethnic and religious groups broadcast by certain mass media.\(^{33}\)

Reviewing China, the committee addressed the controversy surrounding the recognition of the spiritual leader Panchen Lama (see also chapter 4.6.1) and its compatibility with article 14.\(^{34}\) The Chinese delegation explained that the State council had made a decision concerning the funeral and reincarnation of the tenth Panchen Lama, following the passage of the ninth Panchen Lama in 1989, stressing that his government respected the religious beliefs and sentiments of the broad mass of believers in Tibet. This procedure was part of the Chinese rule in Tibet, which stretched back to the 13th century and had been reinstated in 1959 in order to abolish the system of serfdom operated by the Dalai Lama, a system that was “even more cruel than that existing during the Middle Ages in Europe and the slavery system in the United States”.\(^{35}\) Several members of the committee questioned the delegation on the whereabouts and situation of the Panchen Lama,\(^{36}\) and the delegation replied that he was under government protection with his parents since separatists were seeking to kidnap him.\(^{37}\)

In its concluding observations, the committee refrained from explicit reference to the Panchen Lama and his rights under article 14, focusing instead on the right to freedom of religion for children belonging to minorities under article 30, expressing its deep concern with violations of the human rights of the Tibetan minority. According to the committee, “[s]tate intervention in religious principles and procedures seems to be most unfortunate for the whole generation of boys and girls among the Tibetan population”.\(^{38}\) Following the review of the consecutive report by China in 2005, these concerns were expanded to cover the Uighur and Hui minorities, but framed as violations under article 2 on non-discrimination and article 14 on the freedom of religion or belief,\(^{39}\) and further expanded in the concluding observations following the 2013 review of China.


\(^{34}\) CRC/C.12/ WP.5, 1996 [the document is neither paginated, nor numbered].

\(^{35}\) CRC/C/SR.299: 8–9, 1996.


\(^{39}\) CRC/C/CHN/CO/2: 30/44, 2005.
where the committee expressed its concerns with the self-immolations among youth from religious minorities in Tibet, and the torture and ill-treatment of children from certain religious and ethnic groups.\(^{40}\)

Reviewing Myanmar, the committee questioned the state party on the preventive measures taken to protect children belonging to ethnic and religious minorities from discrimination.\(^ {41}\) During the meeting the state delegation explained the interrelationship of religion and the responsibility for the development of children in Myanmar:

In the culture of Myanmar, parents bore primary responsibility for the development of children. Monks and teachers were considered as moral and ethical models, and there was no discrimination between sons and daughters, both being referred to frequently as “precious jewels”. The people of Myanmar were deeply religious, and religion placed on parents a duty to restrain children from vice, exhort them to virtue, train them for a profession, provide for a suitable marriage and hand over an inheritance at the appropriate time.\(^ {42}\)

Stressing that there was no religious discrimination in Myanmar, the delegation asserted that the freedom of worship was completely unrestricted.\(^ {43}\) Following the review, the committee issued concluding observations that were critical of the protection of religious minorities in Myanmar, which was marked by lacking legislation and implementation of the principle of non-discrimination of religious minorities, including the practice of noting religious affiliation on identity cards.\(^ {44}\) These concerns were reiterated and expanded to cover the situation of indigenous minorities in Rakhine state following the 2004 review of Myanmar,\(^ {45}\) and expanded further still to cover the predominance of Buddhism in the education and recruitment of children from religious minorities to participate in armed conflict following the 2012 review of the state party.\(^ {46}\)

Taken together, the approach of the CRC committee to religious discrimination and the rights of religious minorities expressed in the reviews of the FRY, Croatia, China and Myanmar in the middle of the 1990s reflects the main directions in the practice adopted by the committee up to the present, split between observations that relate to \emph{de jure} discrimination hardwired into the legal framework and \emph{de facto} discrimination experienced by religious minorities or indige-

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\(^{40}\) CRC/C/CHN/CO/3–4: 35, 43, 2013.
\(^{41}\) CRC/C/Q/Mya.1: 10, 1996.
nous groups. Unlike the HRC, the CRC committee has only rarely been faced with states claiming to have no minorities or to favor some minorities over others, for historical or other reasons (see chapter 5.6.2).

Among these issues, by far the most prevalent are the observations issued on *de facto* religious discrimination, whereby members of minority religious communities experience different forms of treatment that violate provisions of the CRC. Observations of this kind have been issued on numerous countries from 2000 to 2013, and span from the concern expressed by the committee with discriminatory attitudes and xenophobia experienced by children who belong to religious minorities in Luxembourg, to the widespread poverty, lack of birth registration and the effects of armed conflicts on religious minority children in The Philippines. Rights violations suffered by religious minority children include failure to provide access to and adequate content of education, inheritance and property, social services, food, health care and survival.

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49 CRC/C/15/Add.259: 20, 33, 76, 92, 2005.


52 Bahrain (CRC/C/15/Add.175: 28–29, 2002).

as well as “societal”\textsuperscript{54} and social and political discrimination.\textsuperscript{55} Additionally, the committee has expressed its concern with discrimination against religious minority children more generally.\textsuperscript{56}

In these observations, the committee has generally referred states to article 2 of the CRC, securing that children belonging to religious minorities are covered by the erstwhile provisions of the convention. Only on rare occasions has the committee encountered and commented on the rights of minority children to profess and practice their own religion in line with article 30, or discrimination in the enjoyment of article 14 on the freedom of religion or belief: In observations issued to South Africa in 2000,\textsuperscript{57} Indonesia in 2004\textsuperscript{58} and Bhutan in 2008,\textsuperscript{59} the committee called upon the state parties to ensure the religious rights of minority groups, but without invoking article 30. Following the review of Uzbekistan in 2013, the committee observed that, despite the constitutional protection of the freedom of religion or belief, unregistered religious activities, “which are frequently those of minorities” were subject to criminal and/or administrative sanctions, suggesting that the state party must ensure the rights of all children to the freedom of religion or belief.\textsuperscript{60}

Observations where the committee has identified \textit{de jure} discrimination caused by legislative scope differ from observations on \textit{de facto} discrimination because they address legislation approved and enforced by the states under review. Hence, whereas issues of “actual” discrimination generally indicate incomplete implementation of the convention, legal discrimination signals the active dismissal of the convention by the state party, including legal provisions which are either lacking, are discriminatory in scope, or have discriminatory effects. Reviewing Iran in 2000, the committee included several questions in its list of issues concerning the legal protection offered children from religious minorities in the state party, addressing both their rights to non-discrimination under article 2 of the CRC and their integration into society under article 30.\textsuperscript{61}

\textsuperscript{55} Sudan (CRC/C/15/Add.190: 26–28, 2002).
\textsuperscript{57} CRC/C/15/Add.122: 41, 2000.
\textsuperscript{58} CRC/C/15/Add.223: 90, 2004.
\textsuperscript{59} CRC/C/BTN/CO/2: 72–73, 2008.
\textsuperscript{60} CRC/C/UZB/CO/3–4: 32–33, 2013.
\textsuperscript{61} CRC/C/Q/IRA/1: 10, 32, 1999.
During the meeting with the state party, the Iranian delegation explained that numerous ethnic and religious minorities had always lived in harmony in Iran, and members of the four constitutionally recognized religions were overrepresented in Parliament, whereas the government was taking steps to strengthen the rights of all minorities, including those without constitutional protection. Following a question on the status of children from religious minorities, the state delegation stressed that the situation of non-recognized religions and beliefs, such as the Baha’i, had improved with the adoption of new legislation.

Despite this assurance, the committee expressed its concerns with the restrictions on the freedom of religion or belief and the related discriminatory treatment of the Baha’i minority in its concluding observations, where it also referred to the 1981 declaration, general comment no. 22 of the HRC and recent reviews of the state party conducted by the Committee on Economic, Social and Cultural Rights (CESCR) and the Special Rapporteur on the question of religious intolerance. Revisiting Iran in 2005, several members of the committee repeated their concern with the treatment of children belonging to the Baha’i minority, concerns that were promptly dismissed by the state delegation, but reiterated in the concluding observations issued by the committee following the review. Similar concerns with de jure restrictions on the freedom of religion of children from religious minorities were expressed in the concluding observations issued by the committee following the review of Algeria in 2012.

Reviewing France in 2004, a member of the committee expressed his surprise that the best interests of the child had not been part of the recent debate on the ban on the wearing of religious symbols in schools. Another member questioned whether the communities affected by such a ban had been consulted, and whether the state party had considered its potential for inspiring extremism, while a third member questioned the role of such a ban in estranging youth from disadvantaged backgrounds and its compatibility with article 14 of the CRC on the rights of children to freedom of religion or belief.

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70 CRC/C/SR.967: 35 Khattab, 2004 (translation from the French original).
71 CRC/C/SR.967: 42 Liwski, 2004 (translation from the French original).
Responding to these questions, a member of the state delegation explained that the recently adopted legislation was intended to provide a uniform application of the principle of laïcité, based on the principle of respect for the freedom of conscience, and the affirmation of shared values underlying national unity beyond specific religious affiliations. Committee members, not satisfied with this explanation, followed suit with additional questions, linking the ban on religious symbols to the provisions of article 29 of the CRC on the access to education, questioning government engagement with Muslim girls who dropped out of public schools because their parents did not allow them to remove their headscarves. In its concluding observations, the committee reiterated its concerns with the discriminatory effects of the legislation:

The Committee notes that the Constitution provides for freedom of religion and that the law of 1905 on the separation of church and State prohibits discrimination on the basis of faith. The Committee equally recognizes the importance the State party accords to secular public schools. However, in the light of articles 14 and 29 of the Convention, the Committee is concerned by the alleged rise in discrimination, including that based on religion. The Committee is also concerned that the new legislation (Law No. 2004–228 of 15 March 2004) on wearing religious symbols and clothing in public schools may be counterproductive, by neglecting the principle of the best interests of the child and the right of the child to access to education, and not achieve the expected results. The Committee welcomes that the provisions of the legislation will be subject to an evaluation one year after its entry into force.

In its recommendations, the committee particularly stressed the implementation and ramifications of the legislation on the rights of children, urging the state party to use the enjoyment of children’s rights as enshrined in the convention as a “crucial criteria” in the evaluation of the law.

Prior to the 2009 review of France, the committee questioned the state party on the number of children expelled and reinstated in school for ostensibly signaling their religious affiliation in a “conspicuous” manner, to which the state party provided comprehensive statistics of cases raised under the act, dropping dramatically from the year of its implementation to the following school year, demonstrating that the principles of the act had been “broadly accepted by pupils and their families”. The issue was not addressed in full during the

72 CRC/C/SR.967: 52, 2004 (translation from the French original).
77 CRC/C/FRA/Q/4: 6(b), 2009.
meeting with the state party, but in its concluding observations, the committee expressed concern with the compatibility of the ban on religious symbols in schools with article 14 of the CRC and endorsed the recent criticism expressed to French authorities on this issue during its reviews before the CEDAW committee and the HRC (see above). Simiar dismissals of proposed bans on religious apparel have been issued in concluding observations to Tunisia, Germany, and Azerbaijan, albeit drawing on different provisions of the convention: whereas the committee reviewed the issue in Tunisia solely from the perspective of article 14, the assessments of Germany and Azerbaijan were additionally considered to violate articles 29 on the content of education, and article 28 on the access to education, respectively.

Taken together, the practice of the CRC committee on religious discrimination and religious minorities affirms its overall view of religion as primarily a matter of identity, as the majority of its concluding observations have been issued to states where children experience a range of different forms of de facto discrimination due to their membership in a religious group or minority. In these observations, which have mostly been issued to Asian and African states, children are more or less subsumed into their group affiliations, as the committee has paid little or no attention to the specific needs of children themselves. This approach is markedly different from the more child-centered views of the committee on religious organizations in education, where the concrete, practical effects on children have been consistently emphasized by the committee (see below).

In these observations, the freedom of religion or belief is only intermittently raised by the committee. However, when faced by de jure discrimination like bans on religious headgear, the committee has more readily framed differential treatment of children on the basis of their religion as a potential violation of article 14, albeit mostly in conjunction with a concern with the access to education under article 28. Despite its general comment on the topic, the committee has been reluctant to interpret discrimination as relevant to article 30 on the rights of minority children, relying instead on articles 2, 28 and 29, and to a lesser extent on article 14. Taken together, these omissions suggest that the committee has yet to develop a practice on the specific rights of minority children who are subject to religious discrimination.

80 CRC/C/15/Add.181: 29–30, 2002. These concerns were reiterated in 2010 (CRC/C/TUN/CO/3: 36–37, 2010).
7.6.2 Organizations

Approaching the role of religious organizations, the CRC committee has drawn on its general approach to the legal concept of religion as primarily an issue concerning the identity of the child, and as a powerful social force that shapes the conditions for the implementation of human rights. The overarching emphasis of the committee in its observations on religious organizations is on harmony and reconciliation between different religious identities and groups in society, primarily in the provision and content of education. While the committee has largely ignored the topic of recognition and registration of religious institutions and organizations in its practice from 1993 to 2013,83 it has issued numerous concluding observations on the role of religious organizations in education.

The approach of the committee to the role of religious organizations in education can be subdivided into two broad categories, corresponding to the difference between article 28, on the access to education, and article 29, on the content of education: First, the committee has extensively engaged states on the role of religious institutions as providers of education, either in concert with public school systems, or in parallel education systems. Second, the committee has repeatedly expressed its concerns with the content of education, in particular the necessity of including “friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin” as a primary purpose of education.

Although education has always been important to the committee (Langlaude 2007: 138), and was the subject of its very first general comment in 2001 (see chapter 7.2), the committee only rarely commented on the relation between religion and education during the 1990s. In these early observations, the committee did not develop any specific focus, shifting between considerations: Commenting on the potential for discrimination in compulsory religious education in Norway, the committee evaded the relation between such education and the relation

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83 There are five exceptions to this general rule: Indonesia (CRC/C/15/Add.7: 15, 1993 & CRC/C/15/Add.25: 13, 1994) and Iran (CRC/C/15/Add.254: 41–42, 2005) have received criticism from the committee for their continued legal distinction between recognized and non-recognized religions. Additionally, Uzbekistan (CRC/C/15/Add.167: 35–36, 2001) and Turkmenistan (CRC/C/TKM/CO/1: 34–35, 2006) have been criticized for their compulsory registration regimes for religious organizations, and Ukraine for its prohibition of the establishment of children’s associations along political and religious lines (CRC/C/UKR/CO/3–4: 39–40, 2011).
between the state church and minority religious communities, although explicitly raised by a member of the state delegation during the meeting.\textsuperscript{86}

Reviewing Senegal in 1995, members of the committee raised the issue of living conditions for children attending Koranic schools and were forced to beg in the streets, an issue that the state did not address sufficiently because such schools were allegedly exempt for religious reasons from the general ban on child begging, requesting more information on the status of such schools in Senegal.\textsuperscript{85} In its concluding observations, the committee expressed its serious worries with the living conditions of some students in Koranic schools, urging Senegalese authorities to pay special attention to their plight and to ensure an effective system to monitor their situation.\textsuperscript{86} Similar sentiments were expressed in the concluding observations issued after the review of Chad in 1999.\textsuperscript{87} In the review of the Holy See in 1995, the committee for the first time related the issue of religious education directly to article 29, urging the state party to include the spirit and philosophy of the convention in the curricula of Catholic schools worldwide.\textsuperscript{88} Likewise, during the reviews of Serbia and Lebanon in 1996, both were advised to incorporate article 29(1) (d) on the friendship between all peoples and religious groups as a primary purpose of education.\textsuperscript{89}

Reviewing Myanmar in 1997, the committee requested more information on the practice whereby poor children were sent to Buddhist monasteries to receive education, questioning whether children from other religious backgrounds received religious education in monasteries.\textsuperscript{90} The state delegation explained that the primary purpose of a monastic education was to impart the teachings of Buddha to children,\textsuperscript{91} a reply that provoked the “particular concern” of the committee in its concluding observations, recommending that the state party should provide an alternative education choice for poor, non-Buddhist chil-

\textsuperscript{84} CRC/C/SR.150: 6, 1994. In its concluding observations, the committee noted the opt-out possibility for parents, but expressed its concerns with the potential violation of the right to privacy of parents who would have to expose their faith in order to be granted an exemption (CRC/C/15/Add.23: 9, 1994).

\textsuperscript{85} CRC/C/SR.249: 18 Karp, 39 Santos Pais, 1995 (translation from the French original)

\textsuperscript{86} CRC/C/15/Add.44: 15, 29, 1999. Similar concerns were raised following the consecutive review of Senegal, in 2006 (CRC/C/SEN/CO/2: 60, 2006).

\textsuperscript{87} CRC/C/15/Add.107: 25, 1999. These concerns were reiterated following the 2009 review of Chad (CRC/C/TCD/CO/2: 41–42, 2009).

\textsuperscript{88} CRC/C/15/Add.46: 11–12, 1996.

\textsuperscript{89} CRC/C/50: 109, 1996 & CRC/C/15/Add.54: 33, 1996.

\textsuperscript{90} CRC/C/SR.359: 15, 26 Santos Pais, 1997.

\textsuperscript{91} CRC/C/SR.359: 42, 1997.
While the issue was ignored in the 2004 review of Myanmar, the committee expanded its concerns with the monastic educational institutions following the 2012 review, as the concluding observations advised the state party to establish mechanisms for receiving complaints, investigations and prosecutions for reports of physical abuse in institutions run by private and religious organizations.\footnote{CRC/C/MMR/CO/3–4: 55–56, 2012.}

Taken together, these early observations indicate watchful skepticism towards the role of religious organizations in the provision of education, suggesting revisions of the curricula in Catholic schools, increased monitoring of the living conditions in Koranic schools, and the provision of non-Buddhist alternatives to monastic education. Throughout the 2000s, this skepticism towards the influence of religious institutions and organizations was reiterated repeatedly, in particular as it pertained to living conditions and abuse in Koranic schools: Reviewing Mali,\footnote{CRC/C/15/Add.113: 33, 1999. Similar concerns were expressed by the committee following the consecutive review of Mali in 2007 (CRC/C/MLI/CO/2: 62–63, 2007).} the Comoros,\footnote{CRC/C/15/Add.141: 31–32, 2000.} Mauritania,\footnote{CRC/C/15/Add.159: 49–50, 2001. Similar concerns were expressed by the committee following the 2009 review of Mauritania (CRC/C/MRT/CO/2: 74–74, 2009).} Gambia,\footnote{CRC/C/15/Add.165: 60–61, 2001.} Niger,\footnote{CRC/C/15/Add.179: 66–67, 2002. Similar concerns were expressed by the committee following the 2009 review of Niger (CRC/C/NER/CO/2: 37–38, 2009).} Pakistan,\footnote{CRC/C/15/Add.217: 61–62/62, 2003. Similar concerns were expressed by the committee following the 2009 review of Pakistan (CRC/C/PAK/CO/3–4: 80–81, 2009).} Burkina Faso\footnote{CRC/C/BFA/CO/3–4: 70–71, 2010.} and Algeria,\footnote{CRC/C/DZA/CO/3–4: 75–76, 2012.} the committee repeatedly expressed its concerns with the lacking monitoring of and intervention in the education and living conditions provided by Koranic schools. These concerns included the prevalence of corporal punishment, child labor, begging, sexual abuse, violence, military training and recruitment to armed conflicts, chaining, illegal detention and trafficking, violating numerous articles of the CRC. In order to handle these egregious human rights violations, the committee has generally suggested that state parties prosecute those responsible for the worst offences, and initiate administrative reforms that secure the control and follow-up of religious schools, including calls for the integration of such schools into the public education system. The committee has generally refrained from approaching Koranic schools from the perspective of non-discrimination and the rights of the child to freedom.

\begin{itemize}
\item \footnote{CRC/C/15/Add.69: 16, 37, 1997.}
\item \footnote{CRC/C/MMR/CO/3–4: 55–56, 2012.}
\item \footnote{CRC/C/15/Add.113: 33, 1999. Similar concerns were expressed by the committee following the consecutive review of Mali in 2007 (CRC/C/MLI/CO/2: 62–63, 2007).}
\item \footnote{CRC/C/15/Add.141: 31–32, 2000.}
\item \footnote{CRC/C/15/Add.159: 49–50, 2001. Similar concerns were expressed by the committee following the 2009 review of Mauritania (CRC/C/MRT/CO/2: 74–74, 2009).}
\item \footnote{CRC/C/15/Add.165: 60–61, 2001.}
\item \footnote{CRC/C/15/Add.179: 66–67, 2002. Similar concerns were expressed by the committee following the 2009 review of Niger (CRC/C/NER/CO/2: 37–38, 2009).}
\item \footnote{CRC/C/15/Add.217: 61–62/62, 2003. Similar concerns were expressed by the committee following the 2009 review of Pakistan (CRC/C/PAK/CO/3–4: 80–81, 2009).}
\end{itemize}
of religion or belief, concentrating on their compatibility with article 28 on the
access to education, and the nature of disciplinary measures in such schools.

Commenting on the influence of organizations from other religious tradi-
tions, the committee has approached the issue somewhat differently: First, re-
viewing Belize in 2005, members of the committee expressed their skepticism
with an educational system in which the Catholic Church played an active
role, empowered not only to decide the curriculum, but also to hire and fire
teaching staff. In particular, one member expressed her concern with the
role of the church in the expulsion and dismissal of pregnant students and
teachers. Although the delegation from the state party expressed its commit-
ment to develop “what was essentially a Church-based education system”, it
also stressed the importance of maintaining good relations with the Church.

In its concluding observations, the committee expressed its concern with the im-
plementation of national policies and principles in education, including church-
related schools. Additionally, it expressed its “grave concern” with the tendency
to exclude pregnant students. In order to improve the situation, the committee
advised the state party to improve its care for pregnant teenagers and young
mothers and to “improve the quality of education”.

Second, reviewing Ireland in 2006, the committee observed that 93 percent
of Irish schools were Catholic denominational schools and questioned the delega-
tion on what alternatives were available for religious minorities and non-rel-
gious families. The state delegation explained that the state would willingly
support denominational schools founded by other religious communities, and
that most new schools were multidenominational. In its concluding observa-
tions, the committee expressed its concern with the fact that non- or multidenom-
inal schools in Ireland constituted less than 1 percent of primary educa-
tion facilities, recommending the state party to promote the establishment of
non- or multidenominational schools.

Third, during its 2008 review of Bhutan, the committee questioned the delega-
tion on the role of monasteries in caring for poor children; how many chil-
dren lived in monasteries, whether it was voluntary, and who regulated the ac-

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102 CRC/C/SR.1010: 9, 68 Aluoch, 60 Smith, 2005.
105 CRC/C/15/Add.252: 61, 2005.
Activities in the monasteries. The state delegation explained that the monastic school system catered to many children, but acknowledged that monasteries had not incorporated “modern thinking” on the rights of the child, and were too rigid, although some schools for Hindu children existed in the south of the country, offering education for children from that religious minority. In its concluding observations, the committee expressed its concern that corporal punishment was still widespread throughout the country, including monasteries, and that monasteries were the only providers of alternative care in the country.

Finally, in concluding observations following the review of The Republic of Korea in 2012, the committee commended the state party for the discontinuation of compulsory religious education, but expressed its concern with restrictions on the freedom of religion of students enrolled in religious private schools that did not adequately facilitate “an atmosphere conducive to religious diversity”, in particular regarding different dietary requirements. Consequently, whereas Koranic schools seem to be accepted in principle by the committee as a necessary, albeit flawed, institution, the reviews of Belize, Ireland, Bhutan and the Republic of Korea indicates that education offered by other religious organizations raise concerns over the potential discrimination of children from religious minorities in education.

Parallel to its concerns with the living conditions in religious schools under article 28, the committee also stepped up its observations on article 29 in the wake of its general comment no. 1 on the purposes of education published in 2001 (see above). While Côte d’Ivoire, Bangladesh, Benin and Mauritania have received observations on the curricula in Koranic schools, most observations on this topic have been directed at the curricula maintained by states as the primary providers of public education. Starting with the review of India in 2000, the committee has issued concluding observations requesting states to include the purposes of education spelled out in article 29(1) (d) in their national curricula to Saudi Arabia, Oman, Bahrain, Belgium, Israel, Iceland, 

109 CRC/C/SR.1353: 60 Herczog, 81 Ortiz, 2008.
Libya, Syria, and Brunei. Whereas all these observations were issued between 2001 and 2003, the committee has only recommended this inclusion twice between 2003 and 2013, to Malaysia and Macedonia, signaling a diminishing interest in the issue.

In addition to these general calls for the inclusion of article 29(1) (d) as a primary purpose of education, the committee has issued critical observations to states where the tenets of a majority religion have influenced the contents or framework of education, affecting children’s rights to the freedom of religion or belief, in particular children belonging to religious minorities. Reviewing Poland in 2003, the committee observed that the Catholic Church had a great deal of influence, and asked whether Catholic children at state schools were given the opportunity of religious instructions while those of other religions were not. The committee expressed its worry that, while alternatives to religion classes in public schools were available in the state party, the authorities should do more to ensure the free choice of children between religious instruction and ethics.

Similarly, during the review of Armenia in 2005, a committee member expressed his concerns with the agreement between the Armenian Apostolic Church and the state on the nature and content of religious education, an agreement he believed might be in violation of article 14. Receiving no answer, the committee issued concluding observations expressing their concern with the compulsory study of the history of the Apostolic Church, a concern that was reiterated in the concluding observations following the 2013 review of Armenia. Related concerns were raised in the concluding observations following the review of Italy in 2003 and 2011, as the committee commented the dominant role of Catholicism and the lacking educational alternatives for children from

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130 CRC/C/15/Add.194: 32–33, 2002.
other religious traditions, advising the state party to ensure that religious instruction was “truly optional”.\textsuperscript{134} Similarly, Costa Rica received criticism from the committee following its 2005 review for the dominant role of Catholicism in the curriculum in public schools.\textsuperscript{135}

Reviewing Cyprus in 2012, the committee considered the relationship between the dominance of the teachings of one religious group in education and the hostility between religious groups in society: Several members of the committee questioned the role of Greek Orthodoxy in religious education, requesting more information on the availability of religious education for children belonging to religious minorities.\textsuperscript{136} In its concluding observations, the committee observed that

\begin{quote}
(c) Religious education may be a factor of division and conflict among children in school and does not sufficiently contribute to a spirit of understanding, tolerance and friendship among all ethnic and religious groups as stipulated in article 29, paragraph 1 (d) of the Convention. (...) The Committee urges the State party to take measures to: (...) (c) Ensure that religious education is optional, taking into consideration the best interests of the child, and is conducted in a manner that contributes to a spirit of understanding, tolerance and friendship among all ethnic and religious groups as stipulated in article 29, paragraph 1 (d), of the Convention.\textsuperscript{137}
\end{quote}

Hence, according to the committee, the preference for one religious tradition in the curriculum issued by the Cypriot authorities could be divisive and create conflicts among schoolchildren, conflicts that could be alleviated by the verbatim introduction of article 29(1) (d) as a primary purpose of education.

Finally, following the examination of Kuwait in 2013, the committee expressed its concern with the requirement that no teachings of other religions were allowed during the time Sunni Islam was being taught, including in private Shiite schools. Additionally, the committee was particularly concerned with the derogatory language in textbooks, labeling students from other religions as “infidels”. The committee recommended Kuwait to ensure the full respect of children’s right to the freedom of religion or belief, in particular by allowing children in private religious schools to receive teaching in their religion if they wish.\textsuperscript{138}

Taken together, the practice of the CRC committee on the interrelationship between religious organizations and education corresponds closely with the

\textsuperscript{134} CRC/C/ITA/CO/3–4: 30–31, 2011.
\textsuperscript{135} CRC/C/15/Add.266: 25–26, 2005.
\textsuperscript{136} CRC/C/SR.1700: 22 Madi, 30 Varmah, 70 Herczog, 2012.
dominant concept of religion at the committee, conceptualizing religion primarily as a key part of children’s identity that should be considered in all decisions concerning the child, and secondarily as a powerful social force that decisively influences the rights of children. This is also encapsulated in the inherent tension identified by the committee in its general comment on article 29, between the consideration of the cultural identity of the child and the importance of promoting harmony between religious groups in subparagraphs c and d of article 29 (1), respectively. The freedom of religion or belief has only occasionally been raised by the committee on this topic, even when states have actively allowed the dominance of schools promoting one majority religion.

The overarching concern in the practice of the committee on this topic has been the access to education for all children, a consideration that clearly trumps the related concern with the potential for discrimination inherent to the involvement of religious organizations in the content or conduct of education. Whereas the committee has been highly critical towards some of the living conditions, curricula and manners of discipline in religious educational institutions, it has consistently refrained from suggestions to disband or shut down religious educational establishments that cater to poor and disadvantaged children in order to protect their freedom of religion or belief.

Encountering dissatisfactory curricula, unequal opt-out opportunities or undue influence from religious organizations on the conduct of education in public schools, however, the committee has readily drawn upon its provisions on non-discrimination and the freedom of religion or belief, recommending the reform of curricula, religious education tailored for minorities, and the discontinuation of special treatment of majority religious organizations in education. Taken together, these observations seem to suggest that the committee views the role of religious organizations in education as a necessary ally in situations where states are unable to offer universal education and a potential enemy in situations where the organizations of majority religions influence education in public schools.

7.6.3 Religious Law

Much in the same vein as CEDAW, the CRC does not explicitly prohibit the recognition or application of religiously derived legal rules. Nevertheless, the committee has repeatedly been forced to consider the role of religious law in the implementation of the provisions of the convention. Initially, the comments published by the committee on this topic were directed at concrete legal measures that were found to be incompatible with the convention: Reviewing Jordan
in 1994, the issue of religious law surfaced already in the list of issues sent by the committee to the state party, questioning the regulation of breastfeeding in the Personal Status Act,\(^{139}\) to which the state party replied that the code was primarily moral and didactic in nature, and was therefore characterized by “a sense of spiritual and physical harmony between the persons covered by its provisions and their Lord”.\(^{140}\) The issue was raised again in the review by committee members who inquired about the borderlines between Islamic law and other laws, particularly in cases that involved plaintiffs from different religions, and the risks of overlapping jurisdictions,\(^{141}\) but receiving no answer from the state delegation. In its concluding observations, the committee observed that different personal status regulations according to the child’s religion resulted in uncertainty and possibly discrimination, recommending the adoption of a new, common personal status act.\(^{142}\)

Similar sentiments were expressed during the review of Sri Lanka in 1995, when the committee expressed its concern with the disparities in marriage regulations between the personal status laws of different religious communities.\(^{143}\) The issue of multiple marriage regimes for different religions was raised during the review by two committee members,\(^{144}\) and expanded to the Muslim prohibition of adoption in Sri Lanka.\(^{145}\) In its concluding observations, the committee suggested that the problem with differing legal rules in different religious communities should be amended by “standardizing the age of marriage in all communities”.\(^{146}\)

Starting with the review of Bangladesh in 1997, the committee took a more active interest in the topic of religious law as such, requesting information on the efforts taken by the state party to “unify” religious and state laws, and the status of the convention in situations of conflict with national legislation in the list of issues.\(^{147}\) In a supplementary report, the state party confirmed that “Most children’s lives are governed by family custom and religious law rather than by State law”,\(^{148}\) acknowledging the request by the committee for law re-


\(^{140}\) Reply to List of Issues: Jordan: 13, 1994 (the document was published before the CRC started assigning document codes to replies).

\(^{141}\) CRC/C/SR.143: 52 Mason, 55 Santos Pais, 1994.

\(^{142}\) CRC/C/15/Add.21: 12, 1994.

\(^{143}\) CRC/C/15/Add.40: 11, 1995.

\(^{144}\) CRC/C/SR.228: 56 Karp, 60 Badran, 1995.


\(^{147}\) CRC/C/Q/Ban.1: 2, 1997.

form.\textsuperscript{149} During the review, the issue of religious law was raised as committee members and state representatives largely agreed on the nature of the problem and the need for legal reform.\textsuperscript{150} Among these issues, only the topic of the power of customary and religious law over the lives of children was noted by the committee in its concluding observations,\textsuperscript{151} as one of the factors preventing the full implementation of the convention, although not followed up by a specific recommendation.

Reviewing India in 2000, the committee identified numerous points of contention between religious laws and the convention, singling out marriage, custody, the guardianship of infants and inheritance as particularly worrisome areas where “religion-based personal laws” perpetuated gender inequality.\textsuperscript{152} In its recommendations on how to deal with this issue, the committee suggested that Indian authorities combine legal reform with the mobilization of political, religious and community leaders, indicating a new recognition of the importance of engaging religious communities in order to achieve law reform,\textsuperscript{153} although this recognition was not reiterated in the concluding observations issued following the review of the consecutive report of India in 2004.\textsuperscript{154}

Taken together, these early views of the committee seem to indicate a view of religious law as a potential obstacle that can primarily be overcome by legal reforms. While religious law in itself was not criticized as problematic, the borderlines between such legal orders and civil law, and the potential conflict between specific provisions of such laws and the convention, were frequently brought up by the committee. Parallel to the development of this view of religious law, however, the committee started engaging the role of customary law somewhat differently, pointing to the mere existence of the latter as problematic to the implementation of the convention. During the review of Zimbabwe in 1996, one committee member observed that customary law “applied only to traditional societies and thus represented a system based on race, which did not seem to be

\textsuperscript{149} CRC/C/3/Add.49: 41, 1997.
\textsuperscript{150} CRC/C/SR.380: 16 Karp, 32, 1997.
\textsuperscript{151} CRC/C/15/Add.74: 12, 1997.
\textsuperscript{152} CRC/C/15/Add.115: 32, 2000.
\textsuperscript{153} CRC/C/15/Add.115: 33, 2000.
\textsuperscript{154} While the committee repeated its call for reform of the religiously based personal laws of India, it suggested more unilateral state action: “(a) Scrutinize carefully existing legislative and other measures, including religious and personal laws, both at the federal and state levels, with a view to ensuring that the provisions and principles of the Convention are implemented throughout the State party; (b) Ensure the implementation of its legislation and its wide dissemination” (CRC/C/15/Add.228: 10, 2004).
ideal”. While the committee also pointed out concrete contradictions between
the age limit for marriages between customary and civil law, only the observation
that a dual system of common and customary law created “additional difficulties” in the implementation of the convention, and impeded the efficient monitoring of its provisions found its way into the concluding observations.

In the review of Nigeria later the same year, members of the committee inquired about the status of customary law within the hierarchy of the legal system, to which the state representative replied that different tribes had different customary laws, but that civil law would always prevail in cases of conflict. In the concluding observations, the state party was asked to take into account the compatibility of the system of customary law and regional and local laws with the articles of the Convention, suggesting a structural critique of legal pluralism as potentially damaging to the implementation of the convention in itself. Reviewing Ghana and Uganda in 1997, however, the committee gradually started becoming more concrete in its observations, pointing to specific problems inherent to customary legal provisions, notably the issue of marriage, indicating a less hostile view of parallel legal systems as a structural problem.

Reviewing the Comoros and Djibouti in 2000, the committee for the first time addressed the issue of triangular legal systems, where traditional, religious and state law existed side by side. In identical observations, both states were asked to

- take all appropriate measures to complete the process of law review and, where appropriate, adopt or amend legislation so as to ensure the harmonization of applicable provisions of the different jurisdictions (traditional, Islamic and civil law), ensuring their conformity with the provisions and principles of the Convention.

Hence, unlike earlier reviews, the committee did not see the coexistence of parallel legal systems to be problematic in and of itself. Similar sentiments were expressed in the reviews of Tanzania, Cameroon and Gambia. This concili-

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157 CRC/C/15/Add.55: 11, 1996.
160 CRC/C/15/Add.61: 27, 1996.
162 CRC/C/15/Add.80: 9, 1997.
atory view was further expanded during the review of Lesotho in 2001: while the state party was questioned about the compatibility of civil and customary law, the concluding observations recommended the authorities to ensure that ongoing customary law practices are “in conformity with the Convention”, indicating a recognition of the continued presence of customary law in the state party, granted that its provisions were brought in line with the convention. Notably, however, unlike the review of India, neither of the recommendations to reform the different combinations of religious, customary and civil legal systems suggested the inclusion of the communities involved.

In the reviews of Niger and Burkina Faso in 2002, the committee returned to a structural critique of customary law as problematic in and of itself, observing that “the coexistence of customary law and statutory law impedes the implementation of the Convention in the State party, where traditional practices are not conducive to children’s rights”, advising the state parties to “take all the necessary steps to harmonize existing legislation and customary law with the Convention”. To Eritrea and Zambia in 2003, the committee emphasized the nexus between customary laws and practices and the best interests of the child in both states parties, advising a mixture of legal reform and outreach to community leaders to amend the situation.

The practice of the committee on customary forms of law parallel to state law has gradually moved towards an emphasis on the relationship between such forms of law and the prevalence of traditional practices, and an awareness of the need to include religious and community leaders in order to harmonize legislation and prevent such practices. This general pattern has been repeated with minor variations in the concluding observations issued to Eritrea, Pakistan, Nepal, Nigeria and Madagascar. This practice suggests a view of

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172 CRC/C/15/Add.204: 19, 2003.
175 CRC/C/15/Add.257: 55, 2005. This recommendation was reiterated by the committee following the consecutive review of Nigeria in 2010 (CRC/C/NGA/CO/3–4: 66, 2010).
customary laws as thoroughly embedded in the social fabric, intimately related to harmful practices, and primarily amenable through the collaboration with traditional, religious and community leaders.

Encountering more clearly “religious” laws, the committee has suggested a different way to handle potential violations of the provisions of the CRC: Reviewing Iran, Lebanon, The United Arab Emirates, Israel, Syria, India and Malaysia, the committee consistently found religious systems of law to be at odds with provisions of the convention, primarily in the field of marriage. In its recommendations, the committee has suggested that reforms of religious law should be conducted in cooperation with the communities in question;¹⁷⁷ advised states to establish criteria to assess whether actions were in accordance with Islamic texts;¹⁷⁸ to “[u]ndertake all possible measures to reconcile the interpretation of Islamic texts with fundamental human rights”;¹⁷⁹ to reconcile the interpretation of religious laws with fundamental human rights,¹⁸⁰ and, in the case of Malaysia,

The Committee recommends that the State party conduct an international comparative study on the implications of the dual legal system of civil law and Syariah law and, based on the results of this assessment, take necessary measures to reform this dual system with a view to removing inconsistencies between the two legal systems in order to create a more harmonious legal framework that could provide consistent solutions, for example, to family-law disputes between Muslims and non-Muslims.¹⁸¹

In addition to these specific recommendations concerning conflicts between concrete provisions of religious laws and the convention, the committee issued numerous observations early in the 2000s on the more general influence of particular interpretations of religion on the legal framework. In the reviews of Iran,¹⁸²

¹⁷⁶ CRC/C/15/Add.218: 22, 2003. Similar concerns were reiterated following the 2012 review of Madagascar, but with an emphasis on community and traditional leaders, not religious leaders (CRC/C/MDG/CO/3 – 4: 26, 28, 54, 2012).
¹⁷⁷ Lebanon, CRC/C/15/Add.169: 10, 2002. This recommendation was reiterated following the 2006 review of Lebanon (CRC/C/LBN/CO/3: 26, 2006).
¹⁷⁸ Iran (CRC/C/15/Add.123: 34, 2000). This recommendation was also reiterated following the 2005 review of Iran (CRC/C/15/Add.254: 40, 2005).
¹⁸⁰ Israel, CRC/C/15/Add.195: 11, 2002. A near identical passage was included in the observations issued by the committee following the 2003 review of Syria (CRC/C/15/Add.212: 10, 2003).
¹⁸¹ CRC/C/MYS/CO/1: 15, 2007. This passage is almost entirely similar with a paragraph from the observations issued to Malaysia by the CEDAW the year before (CEDAW/C/MYS/CO/2: 14, 2006).
Jordan,\textsuperscript{183} Djibouti,\textsuperscript{184} Egypt,\textsuperscript{185} Saudi Arabia,\textsuperscript{186} Qatar,\textsuperscript{187} Bahrain\textsuperscript{188} and The United Arab Emirates,\textsuperscript{189} the committee included the following, identical observation:

Noting the universal values of equality and tolerance inherent in Islam, the Committee observes that narrow interpretations of Islamic texts by authorities, particularly in areas relating to family law, are impeding the enjoyment of some human rights protected under the Convention.\textsuperscript{190}

This paragraph summarizes the general view of religious laws held by the committee as a body of norms that essentially safeguard equality and tolerance, but have been distorted by the narrow interpretations offered by state authorities, in much the same way as the “core of values” identified by the committee monitoring CEDAW (see chapter 6.6.4). This view is markedly different from the observations of the committee on customary laws, which have been considered to be little more than slightly formalized rules for cultural, traditional and customary practices.

In its more recent practice, the committee has confirmed the gap between its attitude towards religious and customary laws, as it has returned to its former tendency to criticize customary legal systems structurally, pointing to the obstacle constituted by the continued application of customary law, advising Eritrea to promote awareness of legislation among involved communities;\textsuperscript{191} observing the practical challenges of the plural legal system in Mauritania,\textsuperscript{192} and the negative effects of the application of three different sources of law in Niger.\textsuperscript{193}

Finally, in the reviews of Pakistan in 2009 and Sri Lanka in 2010, the committee issued its first observations on the nexus between religious laws and the freedom of religion or belief, observing that, in Pakistan, “freedom of religion is limited in practice” and that “citizens who are normally governed by secular law might sometimes be subject to sharia law”, suggesting that parents should be

\textsuperscript{183} CRC/C/15/Add.125: 9, 2000.
\textsuperscript{184} CRC/C/15/Add.131: 8, 2000.
\textsuperscript{185} CRC/C/15/Add.145: 6, 2001.
\textsuperscript{186} CRC/C/15/Add.148: 6, 2001.
\textsuperscript{187} CRC/C/15/Add.163: 9, 2001.
\textsuperscript{188} CRC/C/15/Add.175: 4, 2002.
\textsuperscript{189} CRC/C/15/Add.183: 4, 2002.
\textsuperscript{190} CRC/C/15/Add.125: 9, 2000, Jordan.
\textsuperscript{191} CRC/C/ERI/CO/3: 8–9, 2008.
\textsuperscript{192} CRC/C/MRT/CO/2: 7–8, 2009.
\textsuperscript{193} CRC/C/NER/CO/2: 7, 2009.
given the full duties and responsibilities to give guidance to their children in the
exercise of religious freedom in a manner consistent with the evolving capa-
"  bilities of the child. In this way, the committee for the first time established a re-
lationship between religious and secular laws and the implementation of article
14 on the freedom of religion or belief of children.

Reviewing Sri Lanka in 2010, the committee asked the state party to provide
information on efforts taken to prevent early and forced marriages among Mus-
lims and other communities. The state party replied that the personal laws of
Sri Lanka were the offshoots of “history, culture and the sacred beliefs of the
people who are governed by such laws”. Accordingly, any reform effort would
have to emanate from these communities themselves, in order to ensure compli-
ance with “ICCPR norms”, to enable them to enjoy such rights in accordance
with their religion and culture. During the interactive session, several mem-
bers of the committee raised the issue of underage marriages in the Muslim com-
munity and the efforts by the state party to reform its personal laws impor-
ting the state delegation to “impose its will” on the religious communities, rather
than wait for customs to change gradually.

Members of the state delegation responded that personal laws “could not be
changed” because they had existed side by side with general laws for a long
time, and although gradual changes had been achieved, general laws
passed by the state “could not detract from special laws such as those derived
from Muslim legislation”. In its concluding observations, the committee
urged the state party to prohibit underage marriages and to conduct sensitization
and education programs targeting religious leaders. Additionally, however, the
committee reminded the state party of general comment no. 20 by the Human
Rights Committee on gender equality, and reminded the state party that “fre-
edom of religion may not be invoked to justify discrimination against girls and
practices such as forced and early marriages”.

In much the same way as the CEDAW committee, the committee monitoring the CRC has engaged the impact of religion continuously since its inception in 1991. The CRC has multiple provisions regulating religion (see chapter 7.1), ranging from the right of the child to freedom of religion or belief (article 14) and the rights of children that belong to religious minorities (article 30), to the rights of children not to be discriminated against on religious grounds (article 2) and the necessity of considering children’s religious backgrounds in adoption and other forms of alternative care (article 20).²⁰⁴ However, these provisions have only rarely been addressed by the committee in its concluding observations.

Despite its limited recommendations on provisions relating directly to religion, the committee has issued a considerable number of concluding observations that engage the role of religion as a social force, in line with its general view of religion as a vital component of children’s identity and a decisive social and institutional force that intersects with the convention as a whole. In particular, the committee has repeatedly recommended that states engage religious leaders and institutions in the dissemination and training of personnel working with children on the principles and provisions of the convention.

Advising states on the proper handling of rights abuses originating in religious practices and doctrines, the committee has followed the main divisions in the approach developed by the CEDAW committee, mixing advice on legal reform and policy measures with community outreach and awareness campaigns. The CRC committee, however, has more consistently acknowledged the decisive impact of religious practices to the protection of children’s rights, inviting the participation of religious leaders in the prevention of rights abuses and the dissemination of the convention from the early 1990s and onwards. Additionally, the committee has increasingly engaged the role of religious institutions and their treatment of children, as examined in some detail above.

The committee engaged the influence of religious doctrines and practices at its very first review session, held in January 1993. Examining the initial report of

²⁰⁴ See above for the full text of articles 2, 14 and 30. Article 20 reads in full: “1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State. 2. States Parties shall in accordance with their national laws ensure alternative care for such a child. 3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child’s upbringing and to the child’s ethnic, religious, cultural and linguistic background.”
Sudan, committee members questioned the delegation on the issue of female circumcision,\textsuperscript{205} to which the state delegation responded that it had been prohibited by law since 1948, but was still widely practiced in rural areas, although it “had nothing to do with religion”.\textsuperscript{206} The members of the committee responded to this claim with curiosity, questioning the delegation on the role of religious leaders in the fight against the practice, and asking “whether the Koran mentioned female circumcision”,\textsuperscript{207} to which the state delegation promptly responded that it did not.\textsuperscript{208} Additionally, the committee questioned the delegation on the influence of religion on the access of NGOs to the country,\textsuperscript{209} teaching in local languages,\textsuperscript{210} legislation\textsuperscript{211} and shop opening hours.\textsuperscript{212} Of all these topics, only concerns with the issue of female genital mutilation and the recommendation to include religious and community leaders in eliminating this practice were raised in the concluding observations.\textsuperscript{213}

Following this early, broad engagement with religious and traditional doctrines and practices and the proper means of their discontinuation, the committee consistently favored a community-oriented approach throughout the 1990s, recommending the gradually increased inclusion of religious and community leaders in issues like the elimination of harmful practices, the dissemination of the principles of the convention, and the establishment of national machineries for its implementation to Pakistan,\textsuperscript{214} Burkina Faso,\textsuperscript{215} Madagascar\textsuperscript{216} and Senegal.\textsuperscript{217}

Reviewing the Holy See\textsuperscript{218} in 1995, the committee returned to a broad-based assessment of the impact of religious doctrines and practices on the implemen-

\textsuperscript{205} CRC/C/SR.89: 11 Santos Pais, 1994. The various practices characterized as female circumcision have increasingly been labelled Female Genital Mutilation/Cutting (FGM/C), but both the terminology applied and the assessment of the practices that fall under this heading are hotly disputed (see Wade 2011 for an overview).

\textsuperscript{206} CRC/C/SR.89: 18, 1994.

\textsuperscript{207} CRC/C/SR.89: 22 Belembaogo, 1994.

\textsuperscript{208} CRC/C/SR.89: 25, 1994.

\textsuperscript{209} CRC/C/SR.70: 23 Santos Pais, 1993.

\textsuperscript{210} CRC/C/SR.71: 13 Mason, 1993.


\textsuperscript{212} CRC/C/SR.90: 12 Hammarberg, 1993.

\textsuperscript{213} CRC/C/15/Add.10: 22, 1993.

\textsuperscript{214} CRC/C/15/Add.18: 27, 1994.

\textsuperscript{215} CRC/C/15/Add.19: 27, 1994.

\textsuperscript{216} CRC/C/15/Add.26: 17, 19 1994.

\textsuperscript{217} CRC/C/15/Add.44: 18, 29, 1995.

\textsuperscript{218} The Holy See is the executive branch of the Vatican city state, and is legally distinct from the latter, but conjoined by the supreme status of the Pope in both entities. The distinction be-
tation of the convention. Recognizing the unique characteristics of the state party, the committee questioned the delegation extensively on its reservations, the jurisdiction of the Holy See over children attending Catholic institutions outside the state party, and its emphasis on the parental freedom of religion or belief at the expense of the rights of children. Responding to the questions, the delegation acknowledged that although there were no children under the formal jurisdiction of the Holy See, the state party had decided to ratify the convention due to its “moral jurisdiction” over the religious education of children arising from its role as principal educator of Catholic teachers. Elaborating on the specifics of this jurisdiction, members of the delegation explained that, while individual states managed institutions, they depended on the Holy See for doctrinal and moral principles.

In the ensuing discussion, committee members openly disagreed on the nature of the obligations resting on the Holy See, as one member observed that the state party had an illegitimate power over other states parties, and wondered if the state party should rather have observer status, while another member suggested that the committee should take the unique opportunity to address the worldwide Catholic Church, which had contributed greatly to the protection of the rights of children. Overall, most members supported the latter position, encouraging the state delegation to utilize its moral jurisdiction to disseminate the principles of the convention. While several critical questions were raised concerning the dismissal of contraception by the state party, only the suggestion to wield its moral influence was carried over to the concluding observations:

In view of the moral influence wielded by the Holy See and the national Catholic churches, the Committee recommends that efforts for the promotion and protection of the rights provided for in the Convention be pursued and strengthened. In that regard, the Committee wishes to underline the importance of wide dissemination of the principles of the Convention between the Vatican and the Holy See dates back to the Lateran Treaties between Italy and the Vatican in 1929, which created the Holy See as the international legal personality of the Vatican (Chong and Troy 2011).

221 CRC/C/SR.255: 15, Karp, 1995 (translation from the French original).
tion and its translation into languages spoken throughout the world, and recommends to the State party to continue to play an active role to that end.\textsuperscript{228}

 Entirely evading the numerous violations of the convention based on religious doctrines and practices identified in the state party during the review, the committee focused on the potentially positive effects of the unique status of the Holy See as the head of the worldwide Catholic Church for the dissemination of the convention.\textsuperscript{229} Throughout the practice of the committee, it has continued issuing similarly sweeping and general recommendations to state parties to include religious leaders in the dissemination of the principles of the convention.\textsuperscript{230} In

\textsuperscript{228} CRC/C/15/Add.46: 11, 1995.

\textsuperscript{229} This moderate recommendation is a far cry from the most recent concluding observations issued by the committee following its consideration of the second periodic report of the Holy See in 2014. In these observations, the committee reaffirmed the unique obligations of the Holy See as the head of the worldwide Catholic Church, but pointed out numerous conflicts between the provisions of the Canon law that is the foundation of the Church, the policies and actions of the Church and its members, and the provisions of the convention. These conflicts included the insufficient legal protection of children against sexual abuse; the lacking monitoring of abuse of children in institutions run by the Church worldwide; the perpetuation of gender stereotypes in statements and learning materials published by the Church; the tendency to preserve the reputation of the Church over the best interests of the child in cases of sexual abuse; the violations against the rights of children of Catholic priests to know their parents; the inhuman, cruel and degrading treatment and physical and sexual abuse of children in the Magdalene laundries of Ireland run by four congregations of Catholic Sisters; corporal punishment and ritual beatings of children in Catholic schools; the neglect of the Church in following up cases of sexual abuse of thousands of children worldwide perpetrated by members of the Church, and its dismissal of contraception and sexual and reproductive health and information (CRC/C/VAT/CO/2: 13–14, 19–20, 25–28, 29–30, 33–34, 37–38, 39–40, 43–44, 56–57).

addition to mobilization and awareness-raising among religious leaders, as preferred by the CEDAW committee, however, the CRC committee also frequently suggests their “sensitization” and training on the provisions of the convention, indicating a more didactic approach to the role of religious leaders in the implementation of the convention.

Since the early 2000s, the committee has expanded its approach to rights violations linked to religious and traditional doctrines and practices, issuing numerous concluding observations on these issues. In these observations, a distinction between “religious” practices that should be eradicated with the assistance of religious and community leaders and more “traditional” practices that should be eliminated by other means has gradually emerged: Reviewing Iran and Jordan in 2000, the committee criticized discriminatory attitudes against girls and children born out of wedlock, suggesting a mixture of legal reforms and an examination of “the practices of other States that have been successful in reconciling fundamental rights with Islamic texts”, an effort that should also mobilize the support of religious leaders.²³¹ Similar recommendations on the same topic were issued to Saudi Arabia,²³² Oman,²³³ Egypt²³⁴ and Qatar²³⁵ in 2001 and Libya,²³⁶ Morocco²³⁷ and Syria in 2003,²³⁸ although the latter recommendations did not include references to the practices of other states.

Reviewing Turkey in 2001 and Jordan in 2006, the committee recommended that the practice of “honor killings” should be fought with the inclusion of religious and community leaders,²³⁹ while Grenada,²⁴⁰ Suriname,²⁴¹ Tanzania,²⁴² Gambia,²⁴³ Kenya,²⁴⁴ Malawi²⁴⁵ and Timor-Leste²⁴⁶ were advised by the commit-
tee to raise awareness among religious leaders on the importance of birth registration. In more general terms, the committee has asked India, Myanmar and Yemen to involve religious leaders in the prevention of religiously based discrimination. On the topic of early marriages, the committee has recommended that Madagascar, Liberia, Nigeria and Nepal involve religious and community leaders in sensitization programs.

Additionally, numerous countries have been asked to include religious leaders in the eradication of harmful traditional practices, in particular the widespread practice of female genital mutilation (FGM). Unlike the CEDAW committee, however, the CRC committee has not sought to embed the practice in an auxiliary “cultural” or “traditional” sphere that corrupts an inner core of shared values: Whereas the CEDAW committee has claimed that FGM has “no link to religion” urging states to address the “underlying cultural justifications” of the practice (see above), the CRC committee has not commented on the relation between religion and FGM, consistently asking states to engage religious leaders in its eradication, without addressing its potential underpinnings or origins from surrounding cultural practices.

Recommendations to include religious leaders in the fight against human rights violations have continued up to the present, as Afghanistan, Turkey

\[246\] CRC/C/TLS/CO/1: 36, 2008.
\[249\] CRC/C/15/Add.267: 33 2005.
\[253\] CRC/C/15/Add.266: 66, 2005.
and Liberia\textsuperscript{257} have been encouraged to raise awareness among religious leaders on the harmful effects of traditional practices, Bahrain,\textsuperscript{258} Algeria,\textsuperscript{259} Togo,\textsuperscript{260} Rwanda,\textsuperscript{261} Namibia,\textsuperscript{262} and Syria\textsuperscript{263} have been asked to involve religious leaders in the eradication of corporal punishment in schools, while Niue\textsuperscript{264} has been encouraged to include religious leaders in the fight against domestic violence. In all of these cases, the committee clearly considered the various practices involved; birth out of wedlock, honor killings, birth registrations, early marriages, female genital mutilations, corporal punishment and domestic violence, to fall within a “religious” sphere, as religious leaders were consistently sought engaged in their amendment and eradication.

Other doctrines and practices, however, have been considered by the committee to be beyond this sphere, as referrals to the potential engagement of religious leaders have been omitted. Reviewing India in 2000, the committee observed the sexual abuse and exploitation of children from lower castes and from poor and urban areas “in the contexts of religious and traditional culture”.\textsuperscript{265} However, the committee did not suggest eliminating these practices by mobilizing religious and community leaders (see above), but rather by criminalizing the sexual exploitation of children and ensuring that child victims were not penalized.\textsuperscript{266} Similarly, during the review of Mozambique in 2002, the state party was asked to prevent sexual abuse perpetrated by relatives in forced marriage, including rape as part of “magical-religious practices”, through training campaigns, by implementing legislative and administrative measures, not involving religious or community leaders.\textsuperscript{267} These concerns were reiterated following the 2009 review of Mozambique.\textsuperscript{268}

In a similar vein, concluding observations issued by the committee about the “traditional beliefs”, “misbeliefs” and “mistaken beliefs” responsible for the dis-
crimination of children with disabilities in the Democratic Republic of Congo, Sudan, the Philippines, Algeria, Uganda and Swaziland suggested a broad array of different legal, policy and campaign tools, but saw no reason to include religious leaders in these efforts. Reviewing Angola in 2004, the committee expressed its deep concern about the witchcraft accusations against children and “the very negative consequences of such accusations, including cruel, inhuman and degrading treatment, and even murder”. During the review, the state delegation recognized the extent of the problem, and pointed out that they were working with religious leaders in order to curb the practice. In order to put an end to this abhorrent state of affairs, however, the committee only suggested that the state party should prosecute the perpetrators and “involve local leaders in education campaigns”.

During the review of Uganda in 2005, the committee “note[d] with deep concern” that child sacrifices took place in certain districts of the country, a problem the committee recommended that the state should resolve by prohibiting the practice, prosecuting the perpetrators and conduct awareness-raising campaigns. Similar suggestions have been offered to other states parties where accusations of witchcraft have led to the abuse of children, including Malawi and Benin. In a similar vein, the committee requested that Pakistan...

should address “inhumane customs and rituals”, not by appeal to religious leaders, but by legally prohibiting such practices, and promoting a “culture of non-violence”, while Liberia was asked to put an end to the ritualistic killings of children by ensuring “the strict application of the Children’s Law”.

Reviewing The Democratic Republic of Congo in 2009, the committee commented extensively on the abuse of children accused of sorcery and witchcraft, pointing out the numerous rights violations constituted by such abuse, including the principle of non-discrimination, the best interests of the child, the right to life, survival and development and the right to participation. One committee member in particular elaborated on the various dimensions related to the problem:

As recognized in the State party report, the problem of children being accused of witchcraft had reached disturbing proportions, particularly in urban areas. A large percentage of street children had been separated from their parents following witchcraft accusations, which, disturbingly, were often made by the parents. The children were forced into church centres, where pastors subjected them to harsh and degrading treatment, including starvation, under the pretext of exorcizing them. Such acts could not continue if the State party was committed to protecting children’s rights and she asked what the Government was doing to put an end to the practice. While a belief in witchcraft was part of a traditional world view, it was not an acceptable explanation for objective phenomena, such as poverty, childhood illnesses and AIDS-related deaths. What was the Government doing to educate parents, church leaders and community leaders regarding the causes of the aforementioned problems and to emphasize that they had nothing to do with witchcraft? Did the Government have a strategy for dialogue with the religious leaders in question? Had the Government considered appointing a special adviser to investigate the problem, which seemed to be spreading?

Following this comment, the concluding observations of the committee recommended the inclusion of religious leaders in the measures to prevent children from being accused of witchcraft. However, it also urged the state party to address the “root causes, inter alia, poverty”.

Reviewing Nigeria in 2010, several committee members were critical of the practice of accusing children of witchcraft. One member explicitly linked this issue to the religious discrimination identified in the state party by the Special

Rapporteur on the freedom of religion or belief in 2006,²⁸⁷ while another member emphasized the role of the Church in such accusations.²⁸⁸ Although some members agreed with the claim of the state delegation that the practice originated in “poverty and ignorance”,²⁸⁹ the committee nevertheless explicitly asked the state party to “address the belief in child witchcraft, for the general public as well as for religious leaders”,²⁹⁰ potentially signaling a new willingness to see a relationship between religious leaders and accusations of child witchcraft. Another indication that the connection between religious leaders and harmful practices may gradually become more fluid is the concluding observations issued to Sudan in 2010, recommending the state party to conduct awareness-raising among religious leaders on the harmful effects of sexual abuse,²⁹¹ a practice the committee has formerly not linked to religious leaders.

Despite this new approach, the connection between witchcraft accusations and religion was dismissed again by the committee in its consecutive observations to Angola later in 2010: During the interactive session, both committee members and representatives from the state delegation agreed on the origin of accusations of witchcraft in “religious sects”.²⁹² Nevertheless, the advice offered to the state party in the concluding observations was only to include “civil society organizations and traditional or community leaders” in the fight against accusations of witchcraft.²⁹³ Likewise, following the review of Guinea-Bissau in 2013, the committee advised the state party to “monitor its efforts in this regard, and undertake a study on the extent and root causes” of the ritual murders of “albinos, children with disabilities, twins and other children who were accused of practicing witchcraft”.²⁹⁴

In its most recent practice, the committee has repeatedly asked states parties to involve religious leaders more generally, in their efforts to integrate the principle of the best interests of the child in their domestic legal frameworks, in concluding observations issued to Namibia,²⁹⁵ Armenia,²⁹⁶ Guinea-Bissau,²⁹⁷ Sao

\[288\] CRC/C/SR.1505: 56 Filali, 2011.
\[293\] CRC/C/AGO/CO/2/–4: 54, 2010.
\[296\] CRC/C/ARM/CO/3/–4: 21, 2013.
Tome and Principe,² Tuvalu,²⁹⁹ Israel,³⁰⁰ Niue³⁰¹ and Guyana,³⁰² in what appears to be a concerted effort to make states aware of the recently adopted general comment issued by the committee on the subject.³⁰³

The degree to which the engagement of religious leaders is a key concern to the committee is perhaps best illustrated by the concluding observations following the review of Guinea in 2013, which was asked to involve religious leaders in the development of a comprehensive policy on children for the realization of the principles and provisions of the convention;³⁰⁴ that they be adequately and systematically trained on children’s rights;³⁰⁵ that they be involved in sustainable public education, awareness-raising and social mobilization programs to eliminate corporal punishment, including the religious interpretations that “wrongly prescribe whipping as an integral part of the Koran”;³⁰⁶ that they be trained to “identify child victims and to effectively intervene in case of abuse and neglect against children”,³⁰⁷ and that they be made aware of the harmful impact of FGM and other traditional practices and its consequences for “the psychological and physical health and welfare of the girl child, as well as her future family”.³⁰⁸ ³⁰⁹

7.7 Summary

The practice of the committee monitoring the CRC from 1993 to 2013 displays the complexity of approaching religion from a child-centered rights perspective. Like the CEDAW, the CRC protects one specific category of rights holders, but does so in a very broad range of different rights areas. Unlike the other committees,

²⁹⁹ CRC/C/TUV/CO/1: 26, 2013.
³⁰³ General comment No. 14 on the right of the child to have his or her best interests taken as a primary consideration (CRC/C/GC/14, 2013).
³⁰⁴ CRC/C/GIN/CO/2: 14, 2013.
³⁰⁹ The committee has issued similar sounding observations to numerous states, but no other state has received a similarly comprehensive recommendation to include religious leaders in the implementation of the CRC. In the examination above, these observations have been split up in order to assess different topics together. As such, some observations appear several times throughout the text.
whose overarching interpretational commonality is that of non-discrimination and a limited set of rights guarantees, the committee monitoring the CRC is additionally obliged to examine the information in state reports from the perspective of the “best interests of the child”. Hence, whereas the other committees have examined how states deal with issues like education, the role of religious laws and the impact of religious leaders and organizations from a shared emphasis on non-discrimination in the access to a selection of specific rights, the CRC committee has sought to translate these issues to the child-centered context of the CRC.

The emphasis on the specific needs of children has led the CRC committee to somewhat different approaches to religion than those of the other committees. It is the only committee to have addressed the living conditions and curricula in Koranic schools, which it has criticized in the reviews of numerous African states. During these reviews, it has rarely commented on the dominance of one religious educational alternative over others and the potentially discriminating effects of this, focusing instead on how to improve the form and content of the existing educational alternatives on offer. This differs markedly from the approach of the other committees, which have stressed the potentially discriminatory effects inherent to denominational education.

The CRC committee is also the only committee to distinguish clearly between customary and religious laws, approaching the former as closely connected to harmful traditional practices and the latter as a system that can be changed given the right reforms and outreach to the communities in question. The committee has repeatedly engaged in a structural critique of customary law, while suggesting that religious law may be engaged and amended, much in the same way as general legislation. The CRC committee is also alone among the treaty bodies in bringing attention to sexual abuse in religious contexts and the abuse and even murder of children accused of witchcraft.

Despite these differences, there are also similarities—like the HRC and the committee monitoring CEDAW, the CRC committee has been concerned with the role of children belonging to religious minorities and the ways in which religious discrimination more generally influences children, as the primary rights holders protected under the CRC. It has consistently sought out the collaboration with, or urged the engagement of religious leaders, much like the CEDAW committee, although it has done so for a longer period of time.

Despite similarities in wording between the CRC article 14 and the ICCPR article 18, the CRC committee has only rarely addressed religion as a question about beliefs and their manifestations. Across the different themes raised by the committee in its concluding observations, religion has primarily been viewed as a dimension to identity and a social force that influences the implementation
of the provisions of the CRC. Unlike the CEDAW committee, the CRC committee has not discussed the secularity of states as a prerequisite for the implementation of its treaty provisions, despite its repeated concerns with sexual and other kinds of abuse within religious schools and communities. Nor has it displayed the same interest in the reinterpretation of the Koran or the correction of what Islam really says about rights as has members of the CEDAW committee.

Taken together, the modalities of religion at the CRC committee resemble the approaches to religion among actors at the second United Nations: Like the specialized programs and agencies of the UN, the committee has primarily approached religion as a surrounding feature influencing its main purpose, which is to secure the rights of children as they are laid out in the CRC. In this way, the committee has sought to engage religion from a pretended “outside”, untarnished by the partisanship and power plays of actors at the first or third UN, who tend to engage in religion-making from above or below. However, unlike most actors at the second UN, some observations issued by the committee hint at a less instrumentalist view of religion: In particular, the formulation of a standardized observation on the “universal values of equality and tolerance inherent in Islam” developed by the committee in the early 2000s (see above) indicates an approach to religion more in line with the “civil religion” approach favored by actors at the first UN (see chapter 3).