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International Human-Rights Supervision Triggering Change in Child-Protection Systems?

The Effectiveness of the Recommendations
of the CRC Committee in Estonia^{*1}

Introduction

The international rights of children as enshrined in the Convention on the Rights of the Child (CRC)^{*2} require the states concerned to undertake ‘all appropriate legislative, administrative, and other measures’ to implement the rights guaranteed to children (per the CRC’s Article 4). When signing a human-rights treaty, states undertake an obligation to incorporate the treaty obligations into their national legal system and implement them therein^{*3}; in reality, states ratify international human-rights treaties in pursuit of various short-term and long-term goals and for a host of reasons.^{*4}

National implementation of United Nations (UN) human-rights treaties is supervised by designated treaty bodies.^{*5} The political process performed by the treaty bodies results in recommendations addressing ways to improve the national implementation of the treaty in question. The attention paid to these recommendations depends on the good will of the states, as there is no inherent enforcement mechanism.^{*6} Practitioners of international law often focus on the binding case-law of the

¹ This article was produced in conjunction with a project titled ‘Discretion and the Child’s Best Interests in Child Protection’ at Norway’s Centre for Research on Discretion and Paternalism (<https://www.discretion.uib.no/>), affiliated with the University of Bergen. This project has received funding from the European Research Council (ERC) under the European Union’s Horizon 2020 research and innovation programme (grant agreement 724460).

² Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3.

³ Simon Hoffman and Rebecca Thorburn Stern, ‘Incorporation of the UN Convention on the Rights of the Child in National Law’ (2020) 28 *The International Journal of Children’s Rights* 133. DOI: <https://doi.org/10.1163/15718182-02801001>.

⁴ Rebecca Thorburn Stern, ‘Much Ado about Nothing? The Road to the Incorporation of the UN Convention on the Rights of the Child in Sweden’ (2019) 27 *The International Journal of Children’s Rights* 266. DOI: <https://doi.org/10.1163/15718182-02702005>; Kasey McCall-Smith, ‘To Incorporate the CRC or Not – Is This Really the Question?’ (2019) 23 *The International Journal of Human Rights* 425. DOI: <https://doi.org/10.1080/13642987.2018.1558990>.

⁵ Michael O’Flaherty, ‘The United Nations Human Rights Treaty Bodies As Diplomatic Actors’ in Michael O’Flaherty and others (eds), *Human Rights Diplomacy: Contemporary Perspectives* (Brill 2011). DOI: <https://doi.org/10.1163/ej.9789004195165.i-301.55>.

⁶ Walter Kälin, ‘Examination of State Reports’ in Helen Keller and Geir Ulfstein (eds), *UN Human Rights Treaty Bodies* (Cambridge University Press 2012). DOI: <https://doi.org/10.1017/cbo9781139047593.003>.

international supervisory bodies or on the general recommendations as consolidation of the state practice. The national impact and effectiveness of the recommendations given to a specific state in a specific context have received more limited attention; often, such analysis formally evaluates national compliance with international legal norms instead of constituting substantive examination of the recommendations' effectiveness.^{*7}

This article focuses on the recommendations that the CRC Committee^{*8} has made for the Estonian child-protection system. Estonia's legal system transitioned rapidly from communism to democracy in the 1990s^{*9}, and the country's legal system is regarded as receptive to international human-rights law, and international treaties and the associated supervision practices are implemented directly by national courts.^{*10} Correspondingly, Estonia is among the countries where the impact of international human-rights law (especially the European Convention on Human Rights and the practice of the European Court of Human Rights) is visible and where the state addresses any international criticism via implementation relatively quickly.^{*11}

The main research question considered here is this: what has been the impact and effectiveness of the CRC Committee's Concluding Observations with regard to the Estonian child-protection system? A second aim with this article is to elucidate the factors that contribute to the (in)effectiveness of these recommendations. Impact is defined as influencing change in the national legal system or practice, whereas effectiveness is understood as the level of impact.

Fulfilling an obligation to create an effective child-protection system is one of the central ways in which a state protects children from violence or danger, as the CRC's Article 19 notes. This paper examines only those elements of the child-protection system that the CRC Committee has dealt with in its comments on the development of Estonia. Assessing its effectiveness and the impact on the child-protection system requires an understanding of the general set-up of the Estonian child-protection system (CPS); against that backdrop, the changes and the reasons for those changes can be analysed.

The article starts by giving an overview of the legal context and of the obligation to create a child-protection system as entailed by the CRC. Secondly, it provides a description of the way in which Estonia has adopted the CRC and co-operated with the CRC Committee, together with a brief overview of the Estonian child-protection system. Then, an overview of the theoretical framework and the way it is conceptualised for purposes of analysing the various elements of the child-protection system is offered. These elements of the child-protection system are considered in light of the developments in the system, for identification of possible impacts of the COs by the CRC Committee. The following features of the child-protection system have been identified for analysis: central requirements connected with the CPS, the CPS's organisation, implementation of child-protection principles, and family environment and public care.

⁷ With regard to Finland, the Netherlands, and New Zealand, see, for example: Jasper Krommendijk, 'The Domestic Effectiveness of International Human Rights Monitoring in Established Democracies: The Case of the UN Human Rights Treaty Bodies' (2015) 10(4) *The Review of International Organizations* 489. DOI: <https://doi.org/10.1007/s11558-015-9213-0>. For an analysis of Finland, Estonia, and Russia, see: Katre Luhamaa, *Universal Human Rights in National Contexts: Application of International Rights of the Child in Estonia, Finland and Russia* (University of Tartu 2015).

⁸ A treaty body created for the supervision related to the CRC.

⁹ Katre Luhamaa, 'Estonia: Transition through Human Rights' in Vinodh Jaichand and Markku Suksi (eds), *60 Years of the Universal Declaration of Human Rights in Europe* (Intersentia 2009); Merike Ristikivi and others, 'An Introduction to Estonian Legal Culture' in Sören Koch and Jørn Øyrehagen Sunde (eds), *Comparing Legal Cultures* (Fagbokforl 2017).

¹⁰ Madis Ernits, 'The Use of Foreign Law by [the] Estonian Supreme Court' in Giuseppe Franco Ferrari (ed), *Judicial Cosmopolitanism: The Use of Foreign Law in Contemporary Constitutional Systems* (Brill | Nijhoff 2019). DOI: https://doi.org/10.1163/9789004297593_021.

¹¹ Julia Laffranque, 'Estonia's Trump in Europe – Protection of Human Rights' in Andres Kasekamp and others (eds), *Estonian Foreign Policy Yearbook* (Estonian Foreign Policy Institute 2013); Julia Laffranque, 'European Human Rights Law and Estonia: One- or Two-Way Street' (2015) 23 *Juridica International* 4. DOI: <https://doi.org/10.12697/ji.2015.23.01>; Luhamaa (n 7). The Supreme Court has observed that 'the general principles of law developed by the institutions of the Council of Europe and the European Union should be taken into consideration alongside the Constitution'. Judgement of the Constitutional Review Chamber of the Supreme Court of Estonia III-4/A-5/94, of 30 September 1994, with translation available at: <http://www.nc.ee/?id=482> (accessed 21 March 2020).

The legal framework

The CRC's child-protection requirements

Family is central to the full and harmonious development of the child (per paragraph 5 of the CRC preamble). Article 19 of the CRC provides for a child's right to be free from all forms of violence and obliges the state to protect children from all forms of physical and mental violence, including abuse by parental powers.^{*12} The definition of violence in Article 19 is all-encompassing: it includes, besides physical and mental violence, several other types of potentially harmful activities – injury or abuse, neglect or negligent treatment, and maltreatment or exploitation (including sexual abuse).^{*13} Furthermore, Article 3(2) states that the child has the right to such protection and care as are necessary for his or her well-being. The obligation to protect the child might require separating him or her from parental care.^{*14}

Article 19 is an overarching article that guides the state's action also under other provisions of the CRC. The state's overall obligation to ensure the survival and development of the child to the maximal possible extent (Article 6) and its specific obligations to provide appropriate assistance to parents (Article 18), together with the rights to health (Article 24), to benefit from social security (Article 26), to an adequate standard of living (Article 27), and to education (Article 28), are all particularly relevant with regard to prevention of neglect. Furthermore, child safety is guaranteed in practical terms by means of separation from the parents (Article 9), protection of children who are deprived of a family environment (Article 20), and child-protection-oriented adoptions (Article 21), where necessary.^{*15}

In order to provide a child with appropriate protection, the child-protection system foreseen under Article 19 should include a reporting and referral mechanism both for the child and for adults who notice that a child is in danger (per the Committee's General Comment (GC) 13, para 49). Said process should entail a multidisciplinary assessment of the needs of the child and the caregivers, giving due weight to the views of the child, with referral of the child (and family) to the necessary services, follow-up, and evaluation of the intervention (see para 50). Article 19 does not list the types of measures that the CPS has to take; rather, such measures are at the discretion of the state. While separating the child from the family is not usually desirable and should be an option of last resort, the measures taken to protect the child might indeed include separation.^{*16} A guiding principle in this regard is that the state should perform 'the least intrusive intervention [...] warranted by the circumstances' (GC 13, para 54).

Reporting procedure under the CRC

The CRC-associated monitoring process is rooted in the obligation of the states to submit periodic reports (reporting every five years) to the CRC Committee, hereinafter also 'the Committee' (see Article 44 of the CRC). Independent experts^{*17} with the Committee (per Article 43 of the CRC) examine the report in constructive dialogue with the state, and interventions are allowed on the part of national and international non-governmental organisations (NGOs) and human-rights institutions. The assessment of the report ends with the adoption of the recommendations included in the Concluding Observations (COs).^{*18}

State reports submitted to the Committee should present both the nation's positive developments and the difficulties related to national implementation of the CRC. The guidelines for initial reports stress that reporting allows a state to conduct a comprehensive review of the national implementation measures.

¹² CRC Committee, 'General Comment No. 13: The Right of the Child to Freedom from All Forms of Violence' (CRC/C/GC/13, 18 April 2011) 13.

¹³ CRC Committee, 'General Comment No. 8: The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment' (CRC/C/GC/8, 2 March 2007).

¹⁴ Kirsten Sandberg, 'Children's Right to Protection Under the CRC' in Asgeir Falch-Eriksen and Elisabeth Backe-Hansen (eds), *Human Rights in Child Protection: Implications for Professional Practice and Policy* (Springer International Publishing 2018). DOI: https://doi.org/10.1007/978-3-319-94800-3_2.

¹⁵ For further reading, see: Rachel Hodgkin and others, *Implementation Handbook for the Convention on the Rights of the Child* (UNICEF 2007) 257.

¹⁶ Sandberg (n 14) 29–30.

¹⁷ Valentina Carraro, 'Electing the Experts: Expertise and Independence in the UN Human Rights Treaty Bodies' (2019) 25 *European Journal of International Relations* 826. DOI: <https://doi.org/10.1177/1354066118819138>.

¹⁸ Kälin (n 6).

Initial reports should describe the central legislative regulation and policies, while the subsequent reports should focus on the changes that have occurred in the years since the preceding report.^{*19}

Estonia's accession to the CRC

International treaty norms are an integral part of the Estonian legal system, inseparable from it (as stated in Article 3 of the Estonian Constitution)^{*20}, and are a formative part of the national legal system, guiding the creation and implementation of national law and practice.^{*21} Estonia joined the CRC signatories in 1991, shortly after it declared independence and began efforts to separate its legal system from the Soviet one and build a new democratic legal system.^{*22} Estonia's decision to become a party to the CRC in 1991 was, in the typology of Simmons,^{*23} strategic – subordination to human rights marked a path into the international community. It also demarcated Estonia's aspirations as clearly distinct from those of the Communist USSR. Estonia joined the CRC during its pre-Constitution era as its legal system was undergoing rapid transition.^{*24} Accession to the CRC did not follow from any national discussion, nor was there a clear understanding of what this accession meant for the state in practice.^{*25} One indicator of the limited understanding in this connection is that Estonia delayed translation of most of the treaties ratified in 1991, producing a translation and publishing the Estonian-language CRC only in 1996^{*26} in the wake of criticism from the Constitutional Review Chamber of the Supreme Court in a case related to a child's right to association.^{*27} Currently, international human-rights instruments and the CRC, in particular, are utilised by the national courts in interpretation of child-protection regulation.^{*28}

Estonia submitted its first report to the CRC Committee in 2001. During the first reporting cycle, the country provided a general overview of its CPS, and the second reporting cycle (2013–2017) saw Estonia report on the changes the system had undergone (see the summary in Table 1). Because of these peculiarities of the reporting, the earliest impact and the effectiveness of the first set of COs can only be evaluated between the two reporting periods, in light of the analysis by the state in the second reporting cycle. Thus far, the potential impact of the COs from the second reporting cycle is visible only at the national (rather than international) level, since the state has not yet reported to the CRC Committee on their implementation.

Submission of the initial report to the CRC Committee was strategically important, coming in 2001, when Estonia wanted to become a member of the European Union. This required that Estonia show that it substantively honoured the rule of law and international human rights, among them the rights of the child. International research shows that many similar actions of Estonia internationally have been influenced by a wish to belong to European legal culture.^{*29}

Estonia's strategic approach changed somewhat before the second round of reporting, in that the country had made a genuine attempt to improve its child-protection system. Nevertheless, Estonia submitted

¹⁹ CRC Committee, 'Treaty-Specific Guidelines Regarding the Form and Content of Periodic Reports' (CRC/C/58/Rev3, 3 March 2015).

²⁰ The Constitution of the Republic of Estonia (*Põhiseadus*) RT I, 15.5.2015, 2.

²¹ Article 123 of the Constitution of Estonia provides that Estonia shall enter into only treaties that are in conformity with the Constitution; when national law is in conflict with a treaty, the international treaty prevails.

²² Luhamaa (n 9).

²³ Beth A Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press 2009). DOI: <https://doi.org/10.1017/CBO9780511811340>.

²⁴ The accession document was adopted in the form of a resolution of the government, with this resolution including a list of 28 international treaties to which Estonia had acceded at the time. See the Estonian-language article on the accession of the Republic of Estonia to international agreements for which the Secretary-General of the United Nations is the depositary: 'Eesti Vabariigi ühinemisest rahvusvaheliste lepingutega, mille depositaariks on ÜRO peasekretär' RT 1991, 35, 428. <https://www.riigiteataja.ee/akt/13031565> (accessed 15 October 2019).

²⁵ For further analysis of the transition process, see, for instance: Luhamaa (n 9).

²⁶ See the State Gazette: RT II 1996, 16, 56. <https://www.riigiteataja.ee/akt/24016> (accessed 15 October 2019).

²⁷ Judgement of the Constitutional Review Chamber of the Supreme Court 3-4-1-1-96, of 10 May 1996. <https://www.riigikohus.ee/en/constitutional-judgment-3-4-1-1-96> (accessed 15 October 2019).

²⁸ For example, the judgement of the Administrative Law Chamber of the Supreme Court of 24 October 2012: 3-3-1-53-12, para 14.

²⁹ Simmons similarly discusses the influence of international human-rights law in the context of the abolition of the death penalty: Simmons (n 23) 194.

its second report five years late, in 2013, with the aim of doing so only when there were genuine improvements that could be reported. As the second review cycle with the CRC Committee took some time, Estonia followed up on its report proactively by making substantive changes to the child-protection system. For example, it reformed the organisation of its child protection and also initiated juvenile-justice reform, both after submitting its report but before the completion of the second review cycle.

Table 1: Timeline of Estonia's dialogue with the CRC Committee

Reporting cycle	State report	Shadow reports	Oral session(s)	Concluding observations
1	7 June 2001 (due in 1993) ^I	None	14 January 2003	17 March 2003 ^{II}
2–4	30 April 2013 (due on 1 November 2008) ^{III}	5 (1 Estonia's, 3 from international NGOs, and 1 from ombudsman)	17–18 January 2017	8 March 2017 ^{IV}
5–7	Due in 2022			

^I CRC Committee, 'State Party Report: Initial Report of Estonia' (CRC/C/8/Add45, 11 July 2002).

^{II} CRC Committee, 'Concluding Observations: Estonia (Initial Report)' (CRC/C/15/Add196, 17 March 2003).

^{III} CRC Committee, 'State Party Report: Second, Third and Fourth Report of Estonia' (CRC/C/EST/2-4 2014); CRC Committee, 'Concluding Observations' (n 31) para 56.

^{IV} CRC Committee, 'Concluding Observations: Estonia (Second to Fourth Report)' (CRC/C/EST/CO/2-4, 8 March 2017).

Of central importance for analysis of the impact and effectiveness are the national developments after the adoption of the first COs of the CRC Committee and before the second report by Estonia, since this is the time in which Estonia should have responded to the recommendations of the Committee with implementation actions. Estonia reported on these developments in 2013, and the Committee evaluated them in its 2017 COs. At the same time, because the review process took three years, the Committee also asked questions about more recent developments in Estonia and took these into consideration in its COs.

Estonian child-protection legislation

Although the Child Protection Act^{*30} is a central element of child-protection law in Estonia, in that it defines the general principles and organisation of the nation's child protection, the regulation of particular measures for child protection is scattered about and found in several other legal acts.^{*31} The description in the initial report of Estonia does not give a comprehensive and systematic overview of the child-protection system – particular parts of the system are presented in various isolated portions of the report. In this section of the paper, a general overview of the child-protection system in Estonia is presented, to address this issue in part. The details and criticism of the system are discussed further along in the paper.

The Constitution of Estonia has as a core premise that all the rights protected under the Constitution extend to protection of children. Article 27 of the Constitution establishes specific protection of the family. Even though its focus is more on supporting the family and less on protecting the rights and welfare of the child, Section 4 of Article 27 does state that the protection of children is provided by law. Therefore, it can be argued that the Constitution creates a child's subjective right to protection and simultaneously obliges the state to create an appropriate child-protection system.

The regulation of family law in Estonia has undergone rapid transformation over the last 30 years. The Marriage and Family Code of the Estonian Soviet Socialist Republic^{*32} (or the 1969 MFC) regulated all matters related to child protection, alongside parental-rights issues, until the Child Protection Act was adopted,

³⁰ The Child Protection Act (*Lastekaitseadus*) RT I, 6.12.2014, 1; RT I, 12.12.2018, 49.

³¹ Merle Linno and Judit Strömpl, 'Child Protection Systems in Estonia and Latvia' in Jill Duerr Berrick and others (eds), *International Handbook of Child Protection Systems* (forthcoming).

³² ESSR Code of Marriage and Family Law (*ENSV Abielu ja perekonnakoodeks*) (Eesti Raamat (Tallinn) 1969).

in 1994. Family relations and their limitation are governed by the Family Law Act (1994),^{*33} which was revised in 2010.^{*34} Estonia adopted its Child Protection Act (CPA) in 1992, with entry into force in 1993^{*35}; this was amended in 1996 and again in 1998. The Estonian child-protection system was revamped in its entirety via reforms in 2014.^{*36}

The central concept in Estonian child-protection legislation until 2014 was that of ‘the child in danger’, or *hüdaohus olev laps* (see §32 of the 1993 CPA). Since 2014, the legislation has focused instead on ‘the child in need of assistance’, or *abivajav laps* (per Chapter 6 of the CPA), with the distinction being that children who are in danger (addressed in Chapter 7 of the CPA) are a subgroup of children in need of assistance that entails immediate intervention. In practice, the local government units are responsible for the children under their jurisdiction; they must provide support to the child and his or her family when necessary and must initiate the process to remove a child in danger to safety (see §§ 27, 31, and 32 of the CPA) and arrange substitute care for the child. The Social Welfare Act (SWA)^{*37} lists specific types of services, including substitute-care arrangements available in Estonia. A single judge of a generalist county court makes all decisions related to parental rights, alongside public care for children.

Courts typically appoint a ‘kinship guardian’ or the child-protection services (CPS authorities) of the local government as the guardian of children without parental care.^{*38} The child-welfare services of local governments are responsible for social work with the child and for the organisation of family-based foster care or residential care; they also participate in the adoption process, but the Social Insurance Board is the central unit for all adoptions in Estonia.^{*39} Alongside the state^{*40} and local governments, non-governmental organisations support families that raise young people who are not their biological children.^{*41}

The analysis framework and method applied

Numerous national and international factors can influence legal or policy change in society.^{*42} The study presented here employed a socio-legal research method wherein the focus is on the ways in which international legal norms alter national legal understandings or the behaviour of the state.^{*43} In this regard, I have taken inspiration from the analysis framework proposed by Heyns and Viljoen^{*44} and later fleshed out

³³ Family Law Act (*Perekonnaseadus*) RT I 1994, 75, 1326; repealed RT I 2009, 60, 395.

³⁴ Family Law Act (*Perekonnaseadus*) RT I 2009, 60, 395; RT I, 9.5.2017, 29.

³⁵ Child Protection Act (*Lastekaitse seadus*) RT 1992, 28, 370; repealed RT I, 6.12.2014, 3.

³⁶ Child Protection Act (*Lastekaitse seadus*) (n 34). A general characteristic of Estonian laws in the 1990s is that they were short and simple in their wording and referred to a range of principles rather than modern legal norms guiding the actions of the subjects of law. This means that the discretion of the decision-makers was much wider in interpreting the legislation and that the practice of the courts was more substantially guided by the interpretation by the Supreme Court. Secondly, this era manifested frequent changes in legislation. See: Luhamaa (n 9).

³⁷ Social Welfare Act (*Sotsiaalhoolekande seadus*) RT I, 30.12.2015, 5; RT I, 21.4.2020, 37.

³⁸ Children in public care in Estonia are divided into two groups: those under the guardianship of an individual (typically family/kinship-based placement) and children under the guardianship of the local government, who are placed with a foster family, in a family home, or in residential care. Estonian legislation refers to residential care units as ‘substitute homes’. See: Linno and Strömpl (n 35).

³⁹ Kenneth Burns and others, ‘The Hidden Proceedings – an Analysis of Accountability of Child Protection Adoption Proceedings in Eight European Jurisdictions’ (2019) 6 *European Journal of Comparative Law and Governance* 1. DOI: <https://doi.org/10.1163/22134514-00604002>.

⁴⁰ The National Institute for Health Development, for example, provides training for provision of better services, including PRIDE training for foster parents.

⁴¹ Examples: NGO Own Family (*MTÜ Oma pere*), *MTÜ Igale lapsele pere*. <https://kasupered.ee>; the Estonian Union for Child Welfare (*Lastekaitse liit*). <https://www.lastekaitseliit.ee>.

⁴² On international factors, see, for example: Simmons (n 23). The ways in which the CRC has been incorporated into national law and practice are addressed by, among others: Stern (n 4); McCall-Smith (n 4); Ursula Kilkelly, ‘The UN Convention on the Rights of the Child: Incremental and Transformative Approaches to Legal Implementation’ (2019) 23 *The International Journal of Human Rights* 323. DOI: <https://doi.org/10.1080/13642987.2018.1558974>; Simon Hoffman, ‘The UN Convention on the Rights of the Child, Decentralisation and Legislative Integration: A Case Study from Wales’ (2019) 23 *The International Journal of Human Rights* 374. DOI: <https://doi.org/10.1080/13642987.2018.1558978>.

⁴³ O’Donovan, ‘Socio-Legal Methodology: Conceptual Underpinnings, Justifications and Practical Pitfalls’ in Laura Cahillane and Jennifer Scheppe (eds), *Legal Research Methods: Principles and Practicalities* (Clarus Press 2016).

⁴⁴ Christof H Heyns and Frans Viljoen (eds), *The Impact of the United Nations Human Rights Treaties on the Domestic Level* (Kluwer Law International 2002).

further by Krommendijk^{*45} for examining the way in which the impact and effectiveness of international human rights under a national legal system can be analysed. With the present article, I develop this theoretical approach further and differentiate among various levels of impact.

Simmons^{*46} showed that states ratify treaties for many reasons and that these factors have consequences for how states comply with international human-rights treaties, implement them in the national legal system, and treat the international supervisory bodies for those treaties. Simmons divides states into three broad categories: sincere ratifiers, false negatives, and strategic ratifiers. In this context, parties in the first category value the content of the treaty and anticipate compliance; some ratify it so as to set an example. Those in the 'false negatives' class are committed to the values of the treaties in principle but do not ratify them, for domestic political reasons. Finally, strategic ratifiers ratify treaties because others are doing so or because they see another short-term benefit to ratification. Simmons does not discuss non-ratifiers; neither are they important in the context of children's rights and the CRC, since the CRC has achieved nearly universal ratification. Estonia ratified the CRC in 1991 without any declarations.^{*47} At the time, Estonia could be classed as a strategic ratifier, for its central aim at that point was to be respected as a state that could be part of the international community. Therefore, there was no national public discussion of the reasons for acceding to the CRC or of the obligations that this treaty would bring.^{*48} In 2009, Simmons characterised Estonia as a partial/transitional democracy with moderately strong rule of law.^{*49}

The CRC is an exceptional treaty in that it has been ratified by all the governments of the world apart from that of the USA.^{*50} At the same time, only a quarter of the states have accepted more thorough review of their national practice through the individual-complaints procedure. Estonia is not among these countries.^{*51} Therefore, one could well ask whether only a quite limited subset of the ratifications of the CRC have been sincere ones within the meaning of the categories articulated by Simmons.

Each state's motivation for ratification has consequences for how it complies with the standards of the treaty and whether there is political mobilisation for true implementation of the rights expressed in the conventions.^{*52} Simmons explained the universal ratification of the CRC in terms of the importance of the aims stated for the treaty and the aspirational nature of the obligations encompassed by it. She also pointed to the possible weakness of the enforcement procedure under the CRC.^{*53}

Krommendijk^{*54}, who has operationalised the way the national impact of treaty obligations can be analysed, sees the impact of treaty bodies' recommendations as 'the way in which domestic actors have referred to, used and discussed' these recommendations. For purposes of this paper, 'domestic actor' refers to the state in its presentation of its report on the implementation of the CRC for review. Krommendijk has, further, defined effectiveness as 'the extent to which policy, legislative or other measures have been taken as a result of the COs'. Here, he differentiates between compliance (which can be accidental) and impact (referring to action that was taken because of the COs). Accordingly, examining effectiveness puts the focus directly on the relationship between the recommendations in the COs and the government's behaviour.

Krommendijk's analysis of effectiveness is limited, as it presupposes that change in itself demonstrates effectiveness. With the present analysis, in contrast, I propose that the effectiveness of impactful COs should be viewed on a scale: ineffective, of limited effectiveness, and effective. The core aim behind the CRC is to

⁴⁵ Jasper Krommendijk, 'Finnish Exceptionalism at Play? The Effectiveness of the Recommendations of UN Human Rights Treaty Bodies in Finland' (2014) 32 *Nordic Journal of Human Rights* 18. DOI: <https://doi.org/10.1080/18918131.2014.876752>; Krommendijk (n 7).

⁴⁶ Simmons (n 23) 58 ff.

⁴⁷ Among others: *ibid* 99.

⁴⁸ Luhamaa (n 9).

⁴⁹ Simmons (n 23) 396.

⁵⁰ For the status of ratification of the CRC, consult: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-11&chapter=4&clang=_en (accessed 9 March 2020). The USA might be regarded as a 'false negative' in this context, in that it substantively follows most requirements of the CRC.

⁵¹ In fact, Estonia only acceded to the individual-complaints mechanism of the Human Rights Committee established by the Optional Protocol to the International Covenant on Civil and Political Rights (adopted on 16 December 1966, entered into force 23 March 1976, 999 UNTS 171) in 1991, simultaneously with its accession to the CRC.

⁵² Simmons (n 23) 113.

⁵³ *Ibid* 60.

⁵⁴ Krommendijk (n 49) 19.

have a substantive and positive impact on the life of the child.⁵⁵ Therefore, the only recommendations that can be deemed fully effective are those that bring about positive change in practice, since effectiveness requires actual implementation. The analysis presented here uses this further differentiation, employing a three-class division to address the effectiveness of those recommendations that have had an impact (see Table 2): ineffective COs, COs with limited effectiveness, and effective COs. For example, a CO recommending legislative change has an impact but limited effectiveness when said legislation is only planned, not adopted, or when it is adopted but not implemented in practice.

Table 2: Operationalisation for assessment of impact and effectiveness

Impact and effectiveness	Indicators
No impact:	<ul style="list-style-type: none"> – The government discusses the recommendation neither in its national practice nor in the next report
COs with impact	
Ineffective COs: <ul style="list-style-type: none"> – COs that are (explicitly) rejected – Standing policy and legislative measures that are already in line with the COs and simply coincide with them 	<ul style="list-style-type: none"> – The government challenges the CO on factual and/or legal grounds, either nationally or internationally – Follow-up measures get announced before the CO is issued – the system reform does not involve discussing the elements mentioned in the CO – Domestic actors do not use the COs in their lobbying leading to the relevant measures
COs with limited effectiveness: <ul style="list-style-type: none"> – Recognition of the problem but lack of active measures addressing the issue – Adoption of formal measures 	<ul style="list-style-type: none"> – The link between the measure and the CO is weak or one whose only connection is time – A measure is taken or initiated after issuing of the CO, but adoption is delayed – The measures taken do not substantively address the concern expressed in the CO
Effective COs: <ul style="list-style-type: none"> – Policy initiatives or allocation of additional resources for (existing) policy measures – Legislative changes – Acknowledgement of the salience of the issue (in an agenda-setting function) – Initiation of studies or evaluations – The establishment of a new institution or the strengthening of an existing one – Prevention of a previously intended policy or legislative course's implementation 	<ul style="list-style-type: none"> – An explicit link is evident between the CO and legal measures, policy documents, or reports – Measures are taken or at least initiated after issuing of the CO and prior to the next reporting round – The measures address the substantive concern and bring about a change in practice

Impact assessment in this context requires the analysis of written documents. Central in this regard are the two sets of COs from the Committee (from 2003 and 2017) and the second periodic report (SR 2-4) of Estonia, from 2013 (see Table 1). It is often impossible to detect a direct causal effect between the recommendation made and the political or legal change that followed. In contrast, a correlation can be more clearly ascertained when the actors have made reference to the CRC in conjunction with presenting the need for change. There are cases of this sort, in which correlation can be established because the preparatory legislative work laid out the need for changes and thereby reveals a direct link between said change and the CRC.

⁵⁵ Laura Lundy and others, 'Incorporation of the United Nations Convention on the Rights of the Child in Law: A Comparative Review' [2014] *The Future of Children's Rights* 305. DOI: https://doi.org/10.1163/9789004271777_015.

Nevertheless, for the purposes of the research presented here, it is regarded as sufficient for a state to have declared a change to be a response to a recommendation by the CRC Committee.

Findings on the impact and effectiveness of the Committee's Concluding Observations

Recommendations of the CRC Committee may be either general and overarching or related particularly to the child-protection system. The discussion of the latter, below, examines four sub-topics in turn. Discussed first are general principles with relevance for the child-protection system. Secondly, recommendations related to the institutional CPS set-up are addressed. The third subsection presents issues related to the implementation of the child's right to be free from any form of violence, along with any relevant procedural rights. The final topic discussed is recommendations connected with the placement of a child within the child-protection system.

In the subsections, the areas of concern are presented as indicated in the COs, followed by the responses, expressed in terms of which relevant national changes had taken place between issuing of the CO and the time of the second report. Also discussed are any follow-up comments as presented by the CRC Committee in the second review. Both the central recommendations of the CRC Committee and national responses are summarised in a table for each of the four topics.

Requirements for the child-protection system

Table 3, below, presents a summary of the Committee's general recommendations with relevance for child-protection-system matters, Estonia's responses to those recommendations, and the follow-up recommendations made.

Table 3: Summary of the CPS-related general recommendations, national responses to them, and follow-up recommendations

Recommendation	Accepted?	Mention in SR 2?	Legisl. change?	Other measures?	Effect	CO follow-up?
Bring the laws into conformity with the CRC (CO 1, para 6(a))	Yes	Yes	Planned	Yes	Effective	Limited
Ensure effective implementation by the courts (CO 1, para 6(b))	Yes	Yes	Yes	Yes	Limited in CP	Yes
Establish a comprehensive national plan of action (CO 1, para 14) and strategy for preventing violence (CO 1, para 31(I))	Yes	Yes	No	Yes	Limited in CP	Yes
Ensure effective budgetary allocation (CO 1, para 6(b))	Yes	Yes	No	Yes	Limited in CP	Yes
Collect disaggregated child-rights data (CO 1, para 10 (a–b))	Yes	Yes	No	Yes	Limited	Yes
Establish a monitoring structure (CO 1, para 12)	Yes	Yes	Yes	No	Effective	Yes

CP = child protection; CO = Concluding Observations; SR = State Report.

The criticism from the CRC Committee in the first CO materials for Estonia (2003) focused on a lack of detailed regulation and policy planning, extending to child protection.^{*56} Even though the first child-protection legislation of the 1990s was primarily a continuation following on from the Soviet child-protection legislation, the inclusion of the individual rights of the child in the protection-focused legislation had proved to be difficult.^{*57}

The CRC Committee noted a lack of detail in various legislation, including child-protection-specific legislation, and stated a requirement for adoption of more detailed legislation, with particular regard to budgetary allocation (CO 1, paras 5–6), the implementation of the rights, and (on account of its special importance) child-rights impact assessment for legislative acts. The Committee's presumption seems to have been that full implementation of all the CRC principles requires detail-level regulations (CO 1, paras 5–6). While the Estonian legal norms did refer to general principles set forth in the CRC (non-discrimination, the interests of the child, and the child being heard), these norms were declaratory in nature, while substantive implementation of these principles and rights was limited in practice. There was also a lack of detailed guidance and budgetary allocation as would support the implementation of these rights. Also, Estonia was mandated to adopt a long-term policy plan for children's rights (CO 1, para 14).

Estonia's reception of these recommendations was positive, and the country reflected on all these recommendations in the second report with an aim to demonstrating positive developments in all of the general areas addressed (SR 2-4, Chapter 1). Nevertheless, the child-protection legislation did not substantively change before 2013 and the second report. In the course of the reporting period, Estonia clarified the pre-conditions for public care in the Family Law Act (FLA, 2010) and introduced the concept of the 'well-being of the child'. The law further clarified the conditions wherein a child may be separated from the family (in §§ 134–135 of the FLA and SR 2-4's para 267). Section 123 of the FLA introduced the notion of the interests of the child, albeit vaguer in its scope than the articulation of this principle in the CRC itself (Article 3).^{*58} Estonia incorporated some of the general children's rights into other laws. One example is the Code of Civil Procedure, designed to ensure that a child who is at least 10 years old is heard^{*59} (setting such an age limit is not required by the CRC's Article 12).

During the second reporting cycle, Estonia illustrated the planned changes in legislation in the wake of the recommendations of the Committee. Several of these changes were still in progress at the time of submission of the report. Estonia brought the completely revised CPA into force in 2016. For example, Section 21 of this version of the CPA listed the considerations that any decision-maker has to employ when making a decision that should be in the best interests of the child and affects a child. That development is in line with the requirements of the CRC; nevertheless, this provision has received limited attention in court practice to date.^{*60} Therefore, one can conclude that the COs of the CRC Committee had limited effect before the submission of SR 2-4. However, several of the COs were effectively implemented soon after the submission of the state report, with clear reference to both the CRC and the recommendations of the Committee.^{*61}

The lack of policy planning was remedied with the adoption of the national strategy for children and families for 2012–2020.^{*62} This strategy had limited effect on the CPS, as the strategic focus was not on child protection and the framework lacked comprehensive analysis of some elements of child protection, such as child-protection-motivated adoptions (COs 2–4, paras 6–7).^{*63} Planning was made more difficult by the lack of disaggregated child-protection data. The NGOs pointed to lack of development in this regard when the second periodic review was being conducted: the statistics collected on children separated from

⁵⁶ This recommendation reflects the limits of the transitional legal-drafting process of the 1990s, wherein legal texts were minimal and there was a lack of substantive understanding of how to legislate and protect individuals' rights and, specifically, children's rights effectively. See: Luhamaa (n 9); Ristikivi and others (n 9).

⁵⁷ Linno and Strömpl (n 35).

⁵⁸ Estonian legislation has omitted 'best' and uses the term 'interests of the child'; see Luhamaa (n 7) 148–51.

⁵⁹ Code of Civil Procedure (*Tsiviilkohtumenetluse seadustik*) RT I, 19.3.2019, 22.

⁶⁰ Until June 2020, it was mentioned in only one judgement of the Civil Law Chamber of the Supreme Court: 6 April 2018, 2-15-16111/116.

⁶¹ E.g., Government of Estonia, 'Explanatory Report to the Draft Child Protection Act (*Seletuskiri Lastekaitse seaduse Eelnõu Juurde*)' (677 SE 2014). Available at: <https://www.riigikogu.ee/tegevus/eelnoud/eelnou/f3beec87-7eaf-4aad-afa0-aacbd-de93a4c/Lastekaitse seadus> (accessed 2 May 2020).

⁶² Ministry of Social Affairs of Estonia, 'Strategy of Children and Families 2012–2020: Smart Parents, Great Children, Strong Society (*Targad vanemad, toredad lapsed, tugev ühiskond. Laste ja perede arengukava 2012–2020*)' (2011).

⁶³ For an analysis of the limitations of child-protection adoptions, see, for example: Burns and others (n 43).

families did not include information on the background of the families in question.⁶⁴ Following up on this, the recommendations of the Committee in the second set of COs noted a continued need to develop a comprehensive information system and a need to collect and publish child-focused data (COs 2–4, para 11). Hence, this requirement had no substantive effect before submission of the report. The issue was, however, rectified later through centralised data collection and introduction of systems such as the STAR database.

The CRC Committee noted, in addition, the absence of a National Human Rights Institution (NHRI) tasked with monitoring the status of children's rights in Estonia. The response included appointing the Legal Chancellor as Ombudsman for Children, in 2011 (CO 1, paras 11–12; SR 2-4, paras 72–74). In the second review, the Committee welcomed this appointment but noted that the commitment still must be accompanied by sufficient funding and a strong enough mandate for the staff (COs 2–4, para 13).⁶⁵

Child-protection institutions

The summary in Table 4 presents the Committee's recommendations with regard to the CPS institutional arrangements, Estonia's responses to them, and the follow-up recommendations.

Table 4: Summary of the CRC Committee's recommendations as to the CPS institutional set-up, Estonia's responses to those recommendations, and the follow-up recommendations made

Recommendation	Accepted?	Mention in SR 2?	Legisl. change?	Other measures?	Effect	CO follow-up?
Ensure that there are enough qualified professionals and support local governments' CPS work (CO 1, para 16 (d–e))	Yes	Yes	No	Limited	Limited	Yes
Provide training in the management of cases of poor treatment (CO 1, para 31 (h))	Yes	Yes	No	Yes	Effective	Yes
Establish procedures for complaints, including intervention (CO 1, para 31(d))	Yes	No	No	Yes	Limited in CP	No
Assess the causes, nature, and extent of treating children poorly and of abuse (CO 1, para 31(a))	No	No	N/M	N/M	No impact	Yes

CP = child protection; CO = Concluding Observations; SR = State Report; N/M = not mentioned.

The CRC Committee's discussion of institutional challenges in 2003 focused on the small number of specialist child-protection workers in Estonia and the limited support given to the local governments. The Committee recommended an increase in the number of professionals working with children and support to the child-protection work done by the local governments (CO 1, para 16 (d–e)). In response, Estonia's SR 2-4 pointed out that numbers of child-protection workers were indeed increasing (SR 2-4, paras 92–93). The latter report still stressed that child-protection work is the task of the local governments, which have to provide support and advice for those families in need of support. Estonia's second report was submitted shortly

⁶⁴ Estonian Union for Child Welfare, 'Additional Report on the UN Convention on the Rights of the Child' (CRC/NGO/EST/22404 2015) para 53.

⁶⁵ The Ombudsman for Children submitted additional 'shadow reports' in the second review cycle, pointing to lack of implementation of the CRC in several areas. Her report to the Committee was sharp in its criticism in the course of summarising the cases it had reviewed and advised on while she was fulfilling her functions. See: Chancellor of Justice, 'Report of [the] Chancellor of Justice of the Republic of Estonia on Implementation of [the] UN Convention on the Rights of the Child about the Fourth and Fifth Regular Report of [the] Republic of Estonia' (INT/CRC/NGO/EST/22403 2015).

after the economic crisis of 2008. This gave the state the opportunity to portray not having decreased its child-protection funding as a positive measure (SR 2-4, Chapter 1.8.1). Nevertheless, the NGOs noted also in their comments during the second reporting cycle that the Committee's recommendations had been implemented at formal level and in a limited manner. They pointed to an absence of preventive measures supporting the child and family and to a low number of child-protection workers.⁶⁶ The CRC Committee took note of this criticism, and in 2017 it repeated its recommendation and expressed concern over the small number of child-protection workers in Estonia (COs 2-4, paras 32-33).

The Committee noted that the CPS institutional set-up lacked procedures for complaints to address violence against children, along with lack of a comprehensive strategy, alongside inadequate allocation of resources (CO 1, para 30). As for suggested ways of remedying the situation, the Committee recommended studying the causes, nature, and extent of children's ill treatment and abuse and, accordingly, designing policies to address these (CO 1, para 31(a); COs 2-4, paras 50-51). This recommendation had no impact; the Estonian report did not discuss it, explicitly or implicitly.

Estonia was more successful in providing training for people managing cases of poor treatment of children and shown to have improved in its co-ordination of the work crossing boundaries between various state agencies (e.g., the police and social workers) in exchanging information and planning interventions (CO 1, para 31(d, h); SR 2-4, Chapter 5.10.3). The effectiveness of these COs indeed was mentioned by the Committee in 2017, which commended the associated developments in Estonia. However, the Committee noted that any training should be provided regularly and to a broader range of professionals – for instance, encompassing teachers (COs 2-4, paras 15, 29, and 31). The existence of this more detailed follow-up recommendation should not be taken to indicate that the initial recommendation was ineffective. After all, the aim of the Committee is to ensure gradual and progressive improvement of the CPS.

Implementation of principles of child protection

Table 5, below, summarises the CRC Committee's recommendations related to the fundamental principles for child protection, the responses of Estonia to them, and the follow-up recommendations from the Committee.

Table 5: Summary of the CRC Committee's recommendations related to child-protection principles, Estonia's responses to them, and follow-up recommendations

Recommendation	Accepted?	Mention in SR 2?	Legisl. change?	Other measures?	Effect	CO follow-up?
Appropriately integrate the general principles (2, 3, 6, and 12) into the legislation and apply them in all decisions (CO 1, para 22(a-b))	Yes	Yes	Planned	Yes	Limited	Yes
Implement respect for the views of the child and the best interests of the child across all institutions and bodies (CO 1, para 27(a))	Yes	Yes	Yes	Yes	Limited	Yes
Explicitly prohibit corporal punishment and prevent physical and mental violence (CO 1, para 31(b))	Yes	Yes	Planned	Yes	Effective	No
Investigate and prosecute for children's ill treatment and provide legal proceedings that protect the child (CO 1, para 31(e))	Yes	Yes	No	Yes	Limited	Yes

CP = child protection; CO = Concluding Observations; SR = State Report.

⁶⁶ Estonian Union for Child Welfare (n 68) para 53.

The Committee's 2003 recommendations focusing on the general principles of the Estonian child-protection system pointed out the need to implement the rights of the child in practice. The following were highlighted: incorporation of the general principles for child protection into systems (CO 1, para 22(a–b)), including that of hearing the views of the child (CO 1, para 27(a)); ascertaining the causes, nature, and extent of children's abuse and poor treatment (CO 1, para 31(a)); prohibiting corporal punishment, physical violence, and mental violence (CO 1, para 31(b)); investigating and prosecuting cases of poor treatment; and protecting the child in the context of legal proceedings (CO 1, para 31(e)). The version of the Child Protection Act that entered into force in 2016 implemented necessary legislative changes, and institutional changes to the child-protection system were implemented in 2017. Therefore, one can conclude that by the time of the second review, the COs connected with principles had an impact that was effective to a limited extent.

Causing bodily harm had been criminalised in Estonia, but the legislation in this regard lacked a clear prohibition of corporal punishment (CO 1, para 31(b)). Inclusion of such a prohibition was planned for the Child Protection Act (SR 2-4, Chapter 2.7.1; §24 of the CPA of 2016). This change in national legislation was strongly influenced by the CRC Committee's COs, even though it was not fully implemented by the time of the second report. The Committee viewed the planned changes in legislation as sufficient, so the CO in question can be regarded as effective.

It is difficult to assess the effectiveness of preventive work with families at risk (see paragraphs 58–59). Estonia did provide training in the general child-protection principles to judges (SR 2-4, Chapter 1.10.1) and the police (SR 2-4, paras 241–242). Therefore, even though these recommendations' effectiveness in terms of government policy was low, this particular recommendation was clearly picked up on by a national NGO, which both lobbied for substantive change and indicated to the Committee that the recommendation was of limited effectiveness during the second review process.

Family environment and public care

The final element, the family environment and public care, is presented in Table 6, below.

Table 6: Summary of the CRC Committee's recommendations related to the family environment and public care, the Estonian responses to the recommendations, and the follow-up recommendations made

Recommendation	Accepted?	Mention in SR 2?	Legisl. change?	Other measures?	Effect	CO follow-up?
Promote the family as the best environment for the child through counselling and financial support (CO 1, para 33(b))	Yes	No	No	Yes	Limited	Yes
Increase and strengthen foster care, family-type foster homes, and other family-based alternatives (CO 1, para 33(c))	Yes	No	Yes	Yes	Limited	Yes
Study the institutionalisation of children (CO 1, para 33(a))	N/M	No	No	No	No impact	Yes
Establish mechanisms for complaints, monitoring of standards of care, and performing periodic review of placements (CO 1, para 33(h))	Yes	Yes	No	Yes	Limited	Yes
Provide follow-up and reintegration services for children leaving care (CO 1, para 33(i))	Yes	Yes	Limited	Yes	Limited	Yes

CP = child protection; CO = Concluding Observations; SR = State Report.

Estonia's responses to the recommendations related to support for families and public care were less elaborate and more focused on formal requirements related to public care. Also, these were the recommendations the Estonian report did not directly discuss. Therefore, the impact and effectiveness of these recommendations are inferred from the responses of the state.

The Committee's comments echoed some of the more general issues brought up in its general recommendations. One example is the need to provide adequate support for the local governments in child-protection cases (CO 1, para 16), accompanied by paying attention to the lack of adequate data on the review process connected with placements (CO 1, para 32). The Committee was concerned about the high number of children placed in residential substitute care (CO 1, para 33(a)).⁶⁷ In particular, it noted the large number of children who were in shelters because of difficult economic conditions. Furthermore, the conditions in the institutions were poor, and there was not adequate periodic review of placements (CO 1, para 32). The Committee recommended further support to the families, as the family constitutes the best environment for a child (CO 1, para 33(b)), and noted a need to increase and support foster care, family-type foster homes, and/or family-based alternative care (CO 1, para 33(c)). It further recommended that children in care be given access to a complaint system (CO 1, para 33(h)).

The recommendations related to the system of substitute care were limited in their effectiveness even though they did trigger national legislative change. Changes to national law and practice were discussed extensively in the second report of Estonia (SR 2-4, Chapter 5.7.1). In 2005, Estonia amended the Social Welfare Act⁶⁸ to set more explicit requirements for foster-care families and in relation to the review process. Now, every child in foster care has to have a development plan; there is an obligation to hear the opinion of any child who is at least 10 years of age in conjunction with placing him or her in foster care and preparing the development plan; and the child has a right to visit the foster family prior to placement (R 2-4, paras 275–276). In the preparations related to the placement system and development plans, one element added was a requirement to review each placement at least once per year. Estonia's report included a statement that the '[w]ork with the biological family whose child has been placed in substitute care needs to be strengthened to enable the return of the child to his or her family' (R 2-4, para 299); however, it is unclear whether this reflected plans for a policy change or, rather, merely an admission of limitations to the existing system of social work with families.

Estonia had reformed the substitute-home system over the course of the reporting period, by creating smaller residential-care units modelled after family homes (R 2-4, paras 279–282). Nevertheless, the report does not specify whether and to what extent these substitute homes differ from the institutions previously in place.

Estonia's child-protection NGOs⁶⁹ generally agreed with the government that the number of children separated from families had dropped. It still was pointed out that, even though the legislation in force prevented removing a child on the basis of poverty, material exclusion, and insufficient parenting skills, there were cases wherein children had, in fact, been removed in the absence of sufficient justification (NGO 2-4, para 57). The relevant NGO did not cite examples of this class of cases but did point out that the Supreme Court had expressed similar opinions.⁷⁰

NGOs indicated, furthermore, that only 30% of the children removed in 2014 were placed in foster families, placed under guardianship, or adopted. Other children were placed in some type of institutional setting (NGO comments, para 65). Part of the problem was the obligation of the local governments to uphold these institutions, an obligation that hindered placement of children in family-based foster care on account of the local governments' limited resources and their desire to utilise the available institutional substitute homes as fully as possible (NGO 2-4, paras 65–68).

The CRC Committee was still concerned over the large number of children placed in institutions, as indicated by the second set of COs, and recommended the establishment of clear standards for the institutions, together with increased support for foster families, periodic review, and monitoring of foster-care placements (CO 2, paras 36–37). These recommendations covered adoptions from care settings also, since

⁶⁷ The Estonian system recognises four types of substitute care (*asendushooldus*): guardianship (typically kinship-based care) and three types of care organised by the local government, in the forms of foster care, residential care, and adoption.

⁶⁸ Social Welfare Act (*Sotsiaalhoolekande seadus*) RT I 1995, 21, 323; repealed RT I, 30.12.2015, 111.

⁶⁹ Estonian Union for Child Welfare (n 68).

⁷⁰ With reference to judgement of the Civil Law Chamber of the Supreme Court 3-2-1-13-11, of 4 May 2011, or 3-2-1-121-12, of 14 November 2012.

there was no effective system for the screening of foster or adoptive parents – let alone a set of national standards and efficient mechanisms to prevent the sale and trafficking of children – to review, monitor, and follow up on the placement of children and to collect statistics on foster care and adoption, including inter-country adoptions. The Committee recommended the development of national policy and guidelines governing foster care and adoption (CO 1, paras 36–37). Estonia adopted the Strategy of Children and Families for 2012–2020,^{*71} which discusses both support for the families involved and essential developments to the country's foster care. The strategy did not articulate a substantive policy for adoptions from care^{*72}, though. Hence, the recommendations had limited effect.

Conclusion

As noted above, most of the COs of the Committee had only limited effects on the Estonian child-protection system during the reporting period, and both of the Estonian reports focused on the changes planned rather than on the progress achieved during the reporting period. In the analysis performed for this paper, such developments are classified as having limited effect. This conclusion has been confirmed by the CRC Committee in that several of its comments were repeated in the second review.

Simmons explained the universal ratification of the CRC as rooted in the importance of the aims for the treaty and the aspirational nature of the obligations brought by it. She also pointed to possible weakness of the enforcement procedure specified in the CRC.^{*73} This view conflicts with the findings of Krommendijk, who found that the states he studied took their obligations under the CRC very seriously and implemented the recommendations of the CRC Committee at a pace more rapid than that of the other treaty bodies.^{*74} The analysis of the Estonian case revealed only two recommendations that had no impact on Estonia in that Estonia did not discuss them during the review process. At the same time, there were no recommendations that Estonia explicitly contested. Instead, the country seemed to take the proposed changes seriously, and many of the adjustments to the national child-protection system were made in the wake of submission of the second report.

In conclusion, even though the legislative developments took some time, Estonia did review its central child-protection and family-law legislation and reformed the national child-protection system. There was a connection between the recommendations of the Committee and the amendments to the legislation. In its second report, Estonia displayed that it had striven to address the COs of the Committee. This was evident also from internal communication in the explanatory report connected with the Child Protection Act and during the parliamentary debate preceding adoption of the CPA. Other legislative changes, such as those with the Family Law Act 2009, were not focused on the recommendations by the Committee, although they did draw some inspiration from the CRC.

The analysis showed that the COs of the Committee were effective in initiating work to adopt corresponding national legislation, while the implementation practice was less effective. Estonia was relatively successful, albeit slow in adopting relevant legislation and integrating the requirements of the CRC into national legislation with respect to COs 2–4. This position is quite consistent with the Committee's general view that incorporation of the CRC's requirements into the national legislation is central to the implementation of the rights enshrined in the CRC.^{*75} However, as discussed above, the policies and legislative changes did not go far enough, and there was no clear evidence of successful implementation in practice. During the second review, the shadow reports gave the Committee further insight into the limited national practice and showed that implementation of legislative changes takes time, illustrating also that the effectiveness of these measures should be amenable to analysis in the following reporting cycle.

⁷¹ Ministry of Social Affairs of Estonia (n 66).

⁷² Ibid.

⁷³ Simmons (n 23) 60.

⁷⁴ Krommendijk (n 7) 505.

⁷⁵ See, for instance: Hoffman and Stern (n 3).

Finally, the study presented above correlates with the findings of Lundy et al., who showed that the CRC reporting process itself is a fundamental element of building a culture of respect for rights.^{*76} Constructive engagement in the reporting process is evidenced by the number of changes that immediately followed report submission. Along similar lines, the CRC reporting process gave a voice to the national NGOs and the Ombudsman for Children, who reviewed the entire child-protection system and supported the national changes.

⁷⁶ Lundy and others (n 59) 325.