



# **ADVOCACY TOOLKIT**

**Campaign for a new Optional  
Protocol to the CRC establishing a  
communications procedure**

**For activities targeting the Open-ended Working  
Group to discuss the possibility of elaborating a new  
OP to the CRC (December 2009) and the Human  
Rights Council March 2010 session**

**November 2009**

## **About the NGO Group for the CRC**

The NGO Group for the Convention on the Rights of the Child is a network of 80 international and national non-governmental organisations, which work together to facilitate the implementation of the United Nations Convention on the Rights of the child. It was originally formed in 1983 when members of the NGO Group were actively involved in the drafting of the Convention.

Since the adoption of the Convention, the NGO Group has been supporting the work of national and international NGOs as well as the Committee on the Rights of the child to monitor and implement the Convention and its Optional Protocols.

Our mission is to promote, implement and monitor the UN Convention on the Rights of the Child.

## **How to use this Advocacy Toolkit**

This Advocacy Toolkit has been prepared by the NGO Group for the CRC to support those who are interested in joining the campaign for a communications procedure under the Convention on the Rights of the Child.

It contains background information about the campaign, lists of campaigning and lobbying activities you could undertake at national level, questions and answers, a glossary and a feedback form.

For this campaign to succeed, it is crucial that we all join forces. The NGO Group for the CRC is coordinating the campaign, particularly in Geneva at UN level. As a network, our aims are to strengthen links between national and international advocacy and lobbying actions.

## **Tell us what you think about this Toolkit**

We would very much appreciate any comment you might have on this Advocacy Toolkit and especially we would like to know how you use it, what you find most helpful and if you think that other aspects of the campaign should be addressed. Please email Anita Goh, the NGO Group for the CRC Advocacy Officer at the UN, at [goh@childrightsnet.org](mailto:goh@childrightsnet.org) with your comments.

## Table of Content

The toolkit is organised in the following different sections so you can pick and choose the parts that are most useful to you:

What are we trying to achieve.....	4
What is a communications procedure.....	4
Why we need a communications procedure.....	5
How do we achieve this?.....	6
Where are we now?.....	6
Meeting of the Working Group.....	7
What can you do?.....	8
Political support.....	11
What the Procedure should look like.....	13
Questions and Answers – short version.....	15
Questions and Answers – long version.....	18
Unique rights under the UN CRC.....	20
Annex 1: Glossary.....	31
Annex 2: Resolution establishing the OEWG.....	34
Annex 3: Feedback on your lobbying.....	37
Annex 4: Questionnaire on need for new OP.....	38

## What are we trying to achieve?

In 2007, a group of child rights organisations initiated a campaign for a new Optional Protocol to the CRC establishing a communications procedure. Such a procedure would provide a mechanism that would ensure the availability of legal remedies for children at the international level.

The campaign was then established as a Working Group of the NGO Group for the CRC. Founding organisations include: Child Rights Information Network (CRIN), European Network of Ombudspersons for Children (ENOC), Global Initiative to End All Corporal Punishment of Children, Kindernothilfe, Plan International, Save the Children Norway, Save the Children Sweden, Save the Children UK, SOS Villages International, World Organisation against Torture (OMCT) and World Vision International.

By November 2009, almost 600 international and national NGOs, human rights institutions and other bodies had signed a petition: “An international call to strengthen the enforcement of the UN Convention on the Rights of the Child by the drafting and adoption of an Optional Protocol to provide a communications procedure”<sup>1</sup>.

## What is a communications procedure?

A communications or complaints procedure allows individuals, groups or their representatives who claim that their rights have been violated by a State that is party to an international human rights *Convention* or *Covenant* to bring a complaint before the relevant '*treaty body*' or *Committee*, provided that the State has recognised the competence of the Committee to receive such complaints.

As mentioned above, communications procedures are also called 'complaints mechanisms'. Some are 'individual complaints mechanisms', this means that only individual victims or groups of victims can complain about violations of their right(s). If they are not limited to individuals, they will be referred to as '*collective complaints*'. This means that a complaint can be brought on behalf of a group by, for instance, an NGO, and they do not have to represent an individual victim.

Given the special status of children and the special difficulties for them in seeking remedies, it seems essential to allow the possibility of collective complaints by international NGOs, with consultative status before the United Nations Economic and Social Council and particular competence in the matters covered by the CRC, alleging unsatisfactory application of any of the rights set forth in the CRC by a State Party.

This is why we use the terms “communications procedure” in our campaign instead of “individual complaints mechanism”.

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<sup>1</sup> To sign the petition and for further information, see <http://www.crin.org/petitions/petition.asp?petID=1007>

## Why we need a communications procedure under the CRC

The CRC is the only core international human rights treaty without a communications procedure; this means that children and their representatives are unable to pursue the full range of rights within the Convention and its two Optional Protocols to an international mechanism. This is a serious matter of discrimination against children.

The Committee on the Rights of the Child has stated that it believes such a procedure “would significantly contribute to the overall protection of children's rights” and the UN High Commissioner for Human Rights, Ms. Navanethem Pillay stated “This mechanism could significantly strengthen the monitoring of the Convention and the furtherance of children's rights”.

### A new communications procedure under the CRC is needed because:

- The full range and detail of rights in the CRC are not covered, separately or together, by any other human rights mechanism;
- Children must have an international mechanism to appeal to when national remedies do not exist or are ineffective.
- Even when admissible, child rights complaints to existing human rights bodies are not considered with by a Committee with expertise on child rights.

### An international communications procedure will be a useful tool to :

- Complement the State party reporting process and reinforce the implementation of the CRC
- Encourage States to strengthen/develop appropriate remedies at national level
- Provide practical and authoritative interpretation of the CRC provisions, States' obligations and perspectives on implementation
- Develop international *jurisprudence* and influence domestic judicial systems
- Raise international recognition of children as rights holders
- Provide *interim measures* to avoid possible irreparable damage to the well-being and development of a child or children concerned by a communication
- Allow the Committee on the Rights of the Child to undertake inquiries if they receive reliable information indicating grave or systematic violations of rights set forth in the CRC by a State Party.

## How do we achieve this?

The most likely method to establish a communications mechanism would be through the development of a new *Optional Protocol* (OP) to the CRC. An Optional Protocol is a stand alone treaty that needs to be ratified by States. It is important to keep in mind that such treaties are drafted by governments, in this case, by members of the United Nations Human Rights Council (HRC). This is why we have to get governments to support this new OP.

Usually, the process for the elaboration of such a new OP would consist of **five key stages**:

- 1) Put the new OP on the UN's agenda and create an appropriate forum for discussion, usually this will be called an intergovernmental 'Open-ended Working Group' (OEWG).
- 2) This Working Group discusses the need for/proposal for the OP
- 3) Elaboration of the OP by the OEWG and adoption of the draft OP by the OEWG
- 4) Adoption of the draft OP by the HRC, then by the UN General Assembly (GA)
- 5) Opening of the Optional Protocol for signature and ratification by States

To pass from one stage to another, States must reach consensus, usually by adopting a Resolution in the Human Rights Council.

There is no time limit for each of these stages: discussions amongst States will continue until they reach consensus to enter the next stage.

## Where are we now?

With the adoption of the Resolution in June 2009 (A/HRC/11/L.3), the process has now reached stage two. The Resolution established the Working Group and governments are meeting for the first time in Geneva this December.

# Meeting of the Working Group

## **Mandate of the OEWG – Resolution A/HRC/11/L.3**

The mandate of the Working Group, officially referred to as the Open Ended Working Group (OEWG), is 'to explore the possibility of elaborating an optional protocol to the [Convention on the Rights of the Child](#) to provide a communications procedure complementary to the reporting procedure under the Convention'.

'Open Ended' means that all interested States can attend. The mandate that the Working Group has means that they cannot begin drafting an OP, they can only discuss whether they should be drafting one. It will be an opportunity for States to raise their concerns, express their support and/or ask any question they might have about such a communications procedure.

## **First session of the OEWG**

The first session of the OEWG will take place from **14 to 18 December 2009** in Geneva, Switzerland. All interested States have been invited. There will also be a number of experts, representatives from other UN agencies and the Committee on the Rights of the Child, Children's Ombudsmen and NGOs.

Confirmed experts include: Yanghee Lee, Chair of the CRC, Jean Zermatten, Vice-Chair of the CRC, Ms Nevena Vucovic, former member of the CRC, Ms Najat M'jid Maalla, Special Rapporteur on sale of children, child prostitution and child pornography, Ms Marta Santos Pais, Special Representative of the Secretary General on Violence against Children, Mr Paulo Sergio Pinheiro, Commissioner and Rapporteur on the Rights of the Child of the Inter-American Commission, and Mr Peter Newell, child rights expert and Vice-Chair of the NGO Group for the CRC.

A number of experts will also be making written contributions in advance of the meeting, including from Ms Marta Santos Pais, Ms Najat M'jid Maalla, Mr Paulo Sergio Pinheiro, Ms. Nevena Vučković and Mr Peter Newell.

## **Format of the Discussion**

The discussion will be led and moderated by the Chairperson-Rapporteur of the WG who should be elected/agreed upon at its first session. Intergovernmental agencies, NGOs and National Human Rights Institutions present will be able to make statements on each meeting after States' discussions. At the end of each meeting the Chairperson-Rapporteur will make concluding remarks/summary of the discussion.

The WG session should be divided into meetings – two meetings per day (morning meeting from 10 am to 1 pm and afternoon meeting from 3 pm to 6 pm). Each meeting should be devoted to one specific topic – based on the programme of work that will be agreed upon during the first meeting of the WG..

The outcome report of the first session should include a summary of proceedings of the OEWG (to be adopted by consensus (ad referenda) by the OEWG at its final meeting on 18 December and recommendations from the Chairperson-Rapporteur.

The OEWG will then have to report back to the Human Rights Council (HRC) at its March 2010 session.

### **Content of the discussions**

The *Core Group* of States recently circulated a concept paper to all UN delegations with information about suggested topics for discussion. The paper proposes that the Working Group:

- Hears the views of Member States and other stakeholders on the issue
- Discusses the reasons and timing for having this discussion
- Discusses the efficiency of protecting children's unique rights<sup>2</sup> under existing mechanisms at national, regional and international level (effective remedies available to redress violations)
- Discusses the complementarity/compatibility of a new communications procedure with other existing international communications procedures and its relationship with domestic procedures; admissibility and exhaustion of domestic remedies
- Discusses the issue of the right of the child to be heard, inter alia, the question of children as complainants; and the issue of representation of children in proceedings at national, regional and international level, including best practices in this area.

### **Adoption of the OEWG report in March 2010**

As mentioned earlier, the Chairperson-Rapporteur will present the report of the Working Group meeting at the March session of the HRC for adoption.

In parallel, a new resolution will be presented for adoption by the HRC to renew the mandate of the OEWG. This new resolution is the only opportunity to change the mandate of the OEWG. It is very important that the mandate is changed to enable them to begin drafting the OP.

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<sup>2</sup> See Annex: Children's Unique Rights under the UNCRC

## What can you do?

In order for us to succeed, it is essential that we work together on this. Below are some suggestions for activities you could undertake. You can also contact us if you would like to find out more on your government's position.

### 1. Sign the petition

Almost 600 organisations from around the world have already signed it. The petition was launched in January 2008 calling to strengthen the enforcement of the UN Convention on the Rights of the Child by the drafting and adoption of an Optional Protocol to provide a communications procedure.

If you have not signed it yet, go here: <http://www.crin.org/petitions/petition.asp?petID=1007>

### 2. Network with other NGOs

You could find out whether other like-minded NGOs in your country are active on this campaign or would like to join forces with your organisation. For instance:

- Find out whether there is a National Coalition in your country by going to the website of the NGO Group: <http://www.childrightsnet.org/>
- Find out who has signed the petition from your country as they may well be willing to work together with you on campaigning activities:  
<http://www.crin.org/petitions/signatures.asp?petID=1007&orderby=country>
- You can find links to other NGOs on the CRIN website here:  
<http://www.crin.org/organisations/index.asp>

### 4. Contact your Children's Ombudsperson or Commissioner

A number of children's ombudspersons have already signed the campaign and some have taken part in meetings. It is very important to get the support of ombudspersons.

1. Is there an ombudsperson in your country?

**Europe**, check here: <http://www.crin.org/enoc/members/index.asp>

**Latin America** and **Oceania**: <http://www.crin.org/enoc/network/index.asp>

2. If you are not sure, you can also contact the general national human rights institution:

For **Africa**, contact the Permanent Secretariat of the Network of African NHRIs

Mr. Gilbert Sebihogo ([gsebihogo@knchr.org](mailto:gsebihogo@knchr.org))

For **Asia-Pacific**, you can contact the Asia Pacific Forum

<http://www.asiapacificforum.net/>

Mr. Kieren Fitzpatrick ([kierenfitzpatrick@asiapacificforum.net](mailto:kierenfitzpatrick@asiapacificforum.net))

Further links to National Human Rights Institutions from the website of the OHCHR: <http://>

## **5. Lobby your government**

While developments at the UN might seem very far away and abstract, you have a crucial role to play, in your respective countries. Some suggestions for what you can do:

1. Write to your Ministries to find out whether your country knows about this process. If not, send them information about it and request a meeting
2. Find out whether the relevant Ministries has a formal position on this issue.
3. Find out whether they will be involved in the December meeting

## **6. Media activities**

- Write an article or an opinion piece about this campaign and try and get it published in your national or local paper
- Contact any journalist you may know who would be sympathetic to this issue and ask them to write about it
- HELP? If you need advice on writing to the media, check out CRIN's Media Toolkit. See further tools and information section [[http://www.crin.org/docs/media\\_toolkit2.pdf](http://www.crin.org/docs/media_toolkit2.pdf)]

## **Feedback: We need your input**

It is very important that we share information to be more influential with the lobbying at the UN level. We need you to tell us what sorts of activities you have been involved in, did you get any media coverage, what did your Ministries say, etc.

At the end of this toolkit, you will find a **feedback form**, which we kindly ask you to fill out and send back to us. Email Anita Goh, the NGO Group for the CRC Advocacy Officer at the UN, at [goh@childrightsnet.org](mailto:goh@childrightsnet.org)

We particularly need **concrete examples** of where an international communications procedure could have made a difference in a specific case of child rights violations. For this purpose we have also drafted a **questionnaire** which we would be grateful if you could fill out and send back to us.

***Remember that the meeting is taking place from 14 to 18 December, so the sooner you send us information, the better! Thank you.***

## **Further tools and information that might be useful to you:**

- Webpage of OHCHR on the event:  
<http://www2.ohchr.org/english/bodies/hrcouncil/OEWG/index.htm>
- See ratification table, country by country: find out whether your government has ratified other similar communications procedures under other UN treaties or regional

systems. Go here: [http://www.crin.org/docs/Ratification\\_table\\_December2009.pdf](http://www.crin.org/docs/Ratification_table_December2009.pdf)

- Email us for the most updated information about your State's position
- Further news and information: [http://www.crin.org/law/CRC\\_complaints/](http://www.crin.org/law/CRC_complaints/)
- Children's use of existing regional and international complaints mechanisms:  
[http://www.crin.org/docs/Children's\\_use\\_of\\_complaints\\_procedures09.doc](http://www.crin.org/docs/Children's_use_of_complaints_procedures09.doc)

## **Political Support for the OP CRC**

Although some States have been envisaging a communications procedure for the CRC for quite some time at domestic and/or regional levels (like Germany, Slovenia, or the *MERCOSUR* States) and African States already have such a mechanism under the *African Charter on the Rights and Welfare of the Child*, this initiative is still relatively new for most States.

This was particularly obvious as many delegations mentioned their lack of information and need for more informed discussions and expert papers (notably Argentina, Canada, China, Lithuania, the Russian Federation, Sweden, the UK and the US).

It is therefore crucial that they get a good understanding of the implications of such a communications procedure and reassurance that it will be similar to existing complaints mechanisms with some adjustments specific to children.

The vast majority of States are either neutral or supportive.

### **Difficult States**

Certain States show more caution and could become obstructive in the process. These States include Canada, Sweden, the United Kingdom and the United States. They claim that most of the rights provided by the CRC are already covered by other instruments (ICCPR, ICESCR) with existing complaints mechanisms and that there were only very few unique rights under the CRC that might need a communications procedure. They also raise concern with regard to the representation of children at the international level.

### **Supportive States**

The majority of Latin American States support this initiative, as well as most European States, with the exception of Sweden and the United Kingdom. It is crucial to ensure that they will participate to the Working Group in December and that they will be ready to address the concerns of other States.

### **Neutral States**

Though not reluctant, African and Asian States have not actively engaged in the negotiations of the resolution establishing the Working Group. It will be crucial to have them in the Working Group to support the initiative, especially African States since a similar procedure exists before the African Committee of Experts on the Rights and Welfare of the Child.

If you would like some specific information regarding your State's position, don't hesitate to contact the NGO Group for the CRC Advocacy Officer at the UN, Ms Anita Goh, at [goh@childrightsnet.org](mailto:goh@childrightsnet.org) or +41 774460083

## **What the procedure should look like**

Below are the key provisions that should be contained in the new OP to the CRC. These are based on existing provisions from other complaints mechanisms.

### **Who can submit a complaint? Complainants**

- Communications submitted by or on behalf of a child or groups of children
- Child's consent unless the representative can justify acting on their behalf without such consent, in which case the Committee shall decide whether it is in the best interests of the child or children to consider the communication
- Collective communications by international NGOs with particular competence in the matters covered by the Convention and with ECOSOC status should be allowed (those communications would not need to be related to an individual victim and would be based on the unsatisfactory application of any of the rights set forth in the Convention – Opt-in option for the State Party)

### **Complaint**

- Communications claiming a violation of any of the rights set forth in the CRC or in one of its Optional Protocols
- Non-written material should be allowed, such as audio-visual material, drawings, etc

### **Exception to exhaustion of remedies**

- The rules of exhaustion of remedies should be child-specific: the Committee shall interpret “unreasonably prolonged” in a manner sensitive to the impact that delays may cause to the child's or children's well-being and development

### **Procedure**

- Procedural delays should be reduced the Committee should bring any communication to the attention of the State Party concerned “without delay”;
- The receiving State Party should submit written explanations to the Committee “within 3 months” (instead of 6);
- The Committee should transmit its views, and recommendations, if any, on the communication to the parties concerned “without delay”;
- The State Party concerned should submit any written response, including information on any action taken in the light of the views and recommendations of the Committee, “within 3 months” (instead of 6)

- The Committee should be able to hold open meetings (instead of the traditional closed meetings when examining communications) if it decides that it is in the best interests of the child or children concerned.

### **Interim measures**

- Interim measures should be possible
- The rules for interim measures should be child-specific as to also avoid possible “irreparable damage” to the well-being and development of the child or children concerned.

### **Inquiry procedure**

- Inquiry procedures should be possible if the Committee receives reliable information indicating grave or systematic violations by a State Party of the rights set forth in the Convention. The State Party concerned should submit its observations to the Committee's findings, comments and recommendations “within 3 months” (instead of 6)

### **Confidentiality, protection and support**

- Protection of the child's privacy: the identity of the child or group of children concerned shall not be revealed to the State party or otherwise without his/her/their express consent.
- Protective measures for the child:
  - State Parties should ensure that individuals under their jurisdiction are not subjected to ill-treatment or intimidation as a consequence of submitting a communication to the Committee
  - the Committee shall establish, in its *Rules of Procedure*, a mechanism to ensure that petitioners receive adequate protection and support
- The Committee should give particular attention to the need to adopt working methods and rules of procedures that are in the best interest of children.

### **Publicity**

- States Parties should undertake to make the principles and provisions of the OP widely known and promoted by appropriate means, to adults and children alike
- States Parties should undertake to facilitate access to information about the views and recommendations of the Committee, in particular, on matters involving that State Party, by adults and children alike.
- In determining whether and how to publicise communications under the OP, the best interests of the child or children concerned should be the paramount consideration.

## **Key answers to questions raised regarding the new OP CRC (short version)**

The main questions that will be discussed during the Working Group session in December will concern:

- 1) the added value of a communications procedure for the CRC (what existing gaps will it fill), and
- 2) the feasibility of a communications procedure for the CRC (how will it work in practice)

### **WHY A COMMUNICATIONS PROCEDURE UNDER THE CRC IS NEEDED**

#### ***1 – To protect the full range of children's rights under the CRC***

While children and their representatives can use the mechanisms already established under other international *instruments* to pursue many of their rights, those instruments do not cover, separately or together, the full range and detail of rights for children set out in the CRC. Indeed, the CRC contains many “unique rights” (see Annex), that only exist under the CRC and cannot be found under any other existing binding international instrument. More importantly, the interpretation of the rights under the CRC requires a holistic approach. As highlighted by the Committee on the Rights of the Child four general principles underline all CRC rights: non-discrimination (Art.2 CRC); the best interests of the child (Art.3 CRC); child's survival and development (Art. 6 CRC) and the right to be heard (Art.12 CRC)<sup>3</sup>.

Violations of children's rights need to be challenged. It is therefore a matter of serious discrimination that no communications mechanism exists for the full range of children's rights in the CRC. A communications procedure would not only provide children a mechanism to address violations of their rights, it would also strengthen and underpin their status as right holders.

Women, people with disabilities and migrant workers all have communications procedures allowing petitions to be considered by a specialist committee. A communications procedure under the CRC would allow children's issues to be considered by “their” specialist Committee on the Rights of the Child

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<sup>3</sup> Committee on the Rights of the Child, General Comment No. 5 para. 12, CRC/GC/2003/5, see [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CRC.GC.2003.5.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CRC.GC.2003.5.En?OpenDocument)

## **2 - To ensure that children have effective remedies available to redress violations**

The Committee has highlighted that for rights to have meaning, effective remedies must be available to redress violations. It has also emphasised that: “children’s special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights.” (General Comment No. 5). When domestic complaints mechanisms fail to provide an effective remedy for the violation of a child’s rights, or do not exist, children and their representatives need an available remedy at the international level. Without it, they have no enforceable rights in practice.

A communications procedure under the CRC would fill this gap. It would also highlight and help to stimulate the development of more effective national and regional systems for remedies.

## **3 - To strengthen the effective implementation of the CRC and the accountability of States Parties**

There is ample evidence, from the reporting process under the Convention and from UN agencies and NGOs, that the rights of millions of children are not adequately respected and that States’ legal obligations are in many cases not being fulfilled.

A communications procedure under the CRC will allow communications from children and their representatives to be dealt with by an internationally elected specialist committee of experts. This expert Committee, the Committee on the Rights of the Child, will be able to develop an international jurisprudence that will clarify the provisions of the CRC and help States Parties to better understand their obligations and how to implement them.

Every other core human rights instrument has a communications procedure in addition to a reporting procedure: these are complementary procedures and just as necessary for achieving the potential of the CRC as for other Conventions and Covenants.

Thanks to a communications procedure, the Committee on the Rights of the Child will be able to produce decisions similar to *case-law*. The establishment of such a jurisprudence on child rights by a Committee of international experts will help the incorporation and effective implementation of child rights at the national level and help States to better understand their obligation to protect, respect and fulfill the rights of children.

In addition, the creation of an international communication procedure taking into account the special status of children and their need for appropriate representation will set a standard and model for other child-sensitive processes at the national, regional and international levels.

## HOW A COMMUNICATIONS PROCEDURE UNDER THE CRC WOULD WORK

- The implementation of a communication procedure under the CRC will build on the experience and best practices of existing communications procedures of the other treaty bodies and the regional human rights systems.
- Children with the necessary understanding and capacity to pursue communications are not very different from adults (and many adults, like children, have special protection/communication needs). Most communications to the existing procedures are made by adults with the support of organizations, lawyers or both. Most children with capacity will need exactly the same sort of support.
- Children, especially young children, who lack the capacity to draft and submit a communication will need to be fully supported and represented by adults. This lack of capacity will certainly represent the major challenge of a communications procedure under the CRC. However, just as for people with disabilities, lack of capacity cannot be invoked to question the universal recognition of children as right holders and its corollary, the provision of adequate remedies in case of violation of their rights. Innovative mechanisms, drawing from national and/or regional best practices, will need to be incorporated in the Optional Protocol to ensure that all children can enjoy protection of the full range of their rights.
- In order to ensure children's protection and avoid putting them unnecessarily at risk, the communication procedure will have to be designed with children's safety in mind and allow for specific safeguards for vulnerable petitioners – anonymity provisions, protection from reprisals, etc.
- The Committee on the Rights of the Child and its Secretariat in the Office of the High Commissioner for Human Rights (OHCHR) are widely acknowledged to have developed an efficient reporting system. They have responded effectively to the demands created by the almost universal ratification of the Convention and substantial additional ratification of the two existing Optional Protocols to the CRC. The Committee together with OHCHR has made special arrangements, including a two-chamber system, to deal effectively with the build-up of reports. Similarly, when the communications procedure enters into force, it will enjoy support from the Petitions Team Unit of the OHCHR, which filters and administers communications submitted under other procedures.

## **Key answers to questions raised regarding the new OP CRC (long version)**

Below are more detailed questions and answers that cover most issues and concerns regarding the Optional Protocol. These should help you in your advocacy work. The questions are based on the concerns that were most commonly raised by States in formal and informal meetings.

Concerns and questions can be clustered into the five main themes described below:

- 1) The need for a communications procedure,
- 2) The substance of such a procedure,
- 3) Its effectiveness,
- 4) Its concrete implications, and
- 5) How it will relate to existing mechanisms.

### **I – ON THE NEED FOR A COMMUNICATIONS PROCEDURE UNDER THE CRC**

#### **1 - What is the added value of the mechanism: what gaps need to be filled?**

For rights to have meaning effective remedies must be available to redress violations (General Comment No. 5 of the Committee on the Rights of the Child). In the absence of a communications procedure at the international level, when national systems fail them (especially in cases where some rights guaranteed by the CRC are not protected by domestic law), children do not have any means to get redress for violations of their rights. They have no enforceable right in practice.

A similar rationale led to the establishment of a communications procedure under all the other core international human rights treaties (ICCPR, ICESCR, CERD, CAT, CEDAW, CMW, CED, CRPD).

States Parties to the CRC have agreed to implement the rights set out in the Convention and to provide national remedies in case of violations. However, there is ample evidence, from the reporting process under the Convention and from UN agencies and NGOs that the rights of millions of children are not adequately respected and that States' legal obligations are in many cases not being fulfilled.

The creation of a communications procedure under the CRC will enable children and their advocates to pursue breaches of the full range of children's rights with the Committee on the Rights of the Child – a specialist Committee of experts. Even if it is only a quasi-judicial procedure, it will give an opportunity to victims to obtain redress through the mere recognition of the violation they have suffered. It will also provide an opportunity to design a procedure specifically for children and those working on their behalf and serve as best

practice for States Parties when implementing national remedies for child rights violations.

In addition, such a communications procedure will also provide an opportunity for the Committee on the Rights of the Child to produce decisions similar to case-law. The establishment of such jurisprudence on child rights by a Committee of international experts will help the incorporation and effective implementation of child rights at the national level and help States to better understand their obligation to protect, respect and fulfill the rights of children.

The creation of an international communication procedure taking into account the special status of children and their need for appropriate representation will also set a standard and model for other child-sensitive processes at the national, regional and international levels.

## **2 - Why can't children use other international remedies, what can't be pursued through other mechanisms?**

It is true that the communications procedures established under existing international instruments are open for use by children. They are available to children because the rights those instruments guarantee are either for "everyone" (as in the International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights), or for certain defined groups which include both children and adults (such as CEDAW or the new Convention on the Rights of Persons with Disabilities). Certain international instruments with a communications procedure do also contain some specific provisions on children (ICCPR, CEDAW, CMW,...)

However, none of these procedures was designed specifically with children in mind and none of them do cover, separately or together, the full range and detail of rights for children set out in the CRC. As noted by the Human Rights Committee in its General Comment No.17 on the rights of the child (Art.24)<sup>4</sup>: "In enunciating a right, some provisions of the [ICCPR] expressly indicate to States measures to be adopted with a view of affording minors greater protection than adults. In most cases, however, the measures to be adopted are not specified in the Covenant and it is for each State to determine them in the light of the protection needs of children in its territory and within its jurisdiction" (paras 2 and 3). Consequently, if a complaint is submitted to the Human Rights Committee regarding a right guaranteed both by the ICCPR and the CRC, the general principles for the protection of children guaranteed under the CRC<sup>5</sup>, as identified by the Committee on the Rights of the Child, will never be taken into account by the Human Rights Committee in its interpretation of that 'similar' right (for more detail on this question see 3- What are the unique rights under the CRC?).

Since treaty bodies can only "receive and consider [...] communications from individuals claiming to be victims of violations of any of the rights set forth" in their respective treaties (see Art.1 OP ICCPR for example), no right under the CRC can ever be claimed by a child victim or his/her representative before existing mechanisms.

Consequently, although children, as any human being, can access existing

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4 Human Rights committee, General Comment No. 17, see [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/cc0f1f8c391478b7c12563ed004b35e3?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/cc0f1f8c391478b7c12563ed004b35e3?OpenDocument)

5 Committee on the Rights of the Child, General Comment No. 5 para. 12, CRC/GC/2003/5, see [http://www.unhchr.ch/tbs/doc.nsf/\(symbol\)/CRC.GC.2003.5.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(symbol)/CRC.GC.2003.5.En?OpenDocument)

communications procedures, children victims can never claim their 'own' rights, ie. the rights that were designed with children's specific needs in mind and are protected under the CRC.

In addition, when children use existing international mechanisms to get redress, the body in charge of examining the complaint will do so without any expertise regarding child issues. Besides posing problem for the interpretation of rights, lack of expertise in child rights might also lead those bodies to deem complaints inadmissible where, if seized of the case, the Committee on the Rights of the Child would have decided the contrary.

### 3 - What are the unique rights under the CRC?

What we call “unique rights” are the rights that only exist under the CRC, ie. that cannot be found under any other existing binding international instrument.

List of unique rights for children provided under the Convention on the Rights of the Child:

Best interests of the child to be a primary consideration in all actions concerning children  
Obligation to give due weight to children's expressed views in all matters affecting the child; also to provide opportunity for child to be heard in judicial or administrative proceedings  
Obligation to ensure maximum survival and development of the child  
Institutions and services etc. for care and protection of children to conform to established standards  
Right of the child to know and be cared for by parents  
Preservation of the child's identity  
Right not to be separated from parents unless in best interests with judicial review  
Obligations to prevent abduction and non-return of children abroad  
Detailed aims defined for the education of the child  
Specific protection from sexual exploitation and abuse including child pornography  
Obligation to ensure the child's access to information and material from a diversity of national and international sources  
Right to protection from “all forms of physical or mental violence”  
Prohibition of life imprisonment of children without possibility of release; arrest, detention, imprisonment of the child only as a last resort and for shortest appropriate period  
Specific limitations on recruitment and involvement of children in armed conflict  
Right of access for child to health-care services and obligations to take specific measures for health; protection from traditional practices prejudicial to health  
Distinct aims for juvenile justice systems and rights of children involved

The two existing Optional Protocols to the CRC add further unique rights and safeguards.

It is however important to note that all rights under the CRC are unique in the sense that they are to be interpreted in the light of the general principles set out in the Convention identified by the Committee in its General Comment No. 5, paragraph 12, as being:

**Article 2:** the obligation of States to respect and ensure the rights set forth in the Convention to each child within their jurisdiction without discrimination of any kind. This non-discrimination obligation requires States actively to identify individual children and groups of children the recognition and realization of whose rights may demand special measures;

**Article 3(1):** the best interests of the child as a primary consideration in all actions concerning children, including those that indirectly affect children;

**Article 6:** the child's inherent right to life and States parties' obligation to ensure the maximum extent possible the survival and development of the child. Implementation measures should be aimed at achieving the optimal development for all children;

**Article 12:** the child's right to express his or her views in "all matters affecting the child", those views being given due weight. This principle applies equally to all measures adopted by States to implement the Convention.

Those general principles show that effective implementation of the CRC requires a holistic approach of the Convention. The same approach is needed to decide on complaints claiming violations of child rights and only the Committee on the Rights of the Child is competent to do so.

#### **4 - Is a communications procedure the best way?**

Ideally, national systems should address and redress child rights violations. As noted before, it is however clear that this is not the case in all States Parties to the CRC.

Therefore, a communications procedure at the international level appears to be the most effective way of addressing this problem. The traditional admissibility criterion of all existing communications procedures requiring the 'exhaustion of domestic remedies' before submitting a complaint before a treaty body ensures that where the national system is effective, chances that the victims will eventually turn to the treaty body are very low. In cases where national systems fail however, victims will have the possibility to ask for redress at the international level.

If a violation is found by the treaty body, the communication will serve as a warning to the State Party concerned by highlighting the failure of its national system and encouraging the State to amend it in accordance with the treaty body's recommendations. If the State Party correctly implements those recommendations, the communications procedure will have ensured that similar cases can be addressed and redressed at the national level in the future.

This type of procedure is complementary to the state reporting obligations as it enables the Committee to provide more specific recommendations through concrete individual cases.

#### **5 - Is it not too early to start the process of drafting an OP?**

The establishment of an Open-ended Working Group to discuss the possibility of elaborating such an Optional Protocol is a clear signal of the need for such a procedure.

All other internationally recognized vulnerable groups, such as women and disabled people, as well as all other core international human rights treaties have their own communications procedure. The drafting process of an OP to the CRC will draw from those instruments and most of its provisions will indeed be similar, they will be 'agreed language'.

Therefore, while it is understandable that States want to have a preliminary discussion on what such an OP will contain, there is no reason why the Working Group could not start elaborating a draft by its second session in 2010. Indeed, the novelty of this communications procedure will mainly reside in the provisions that are specific to children, such as representation and the right to be heard.

## **II - ON THE PROVISIONS OF A COMMUNICATIONS PROCEDURE UNDER THE CRC**

### **1 – Would the communications procedure apply to all rights under the CRC (justiciability of rights)? Would it also apply to rights under the 2 existing OPs?**

The question of the justiciability of economic, social and cultural rights has been settled with the adoption of the OP to the ICESCR.

All existing communications procedures apply to the full range of rights provided by the relevant international instrument and there is no reason why this approach should be different in the case of child rights. Picking and choosing which rights children can claim would be a very negative setback to the quasi-universal recognition of the need for the full range of rights provided by the CRC and of children as right-holders.

The issue of whether the communications procedure should apply to the CRC only or to its two existing Optional Protocols as well will need to be discussed by the Working Group. The two existing Optional Protocols to the CRC provide details and specificities about some rights under the CRC and Ms Yanghee Lee stressed that those rights would certainly benefit from a communications procedure.

A provision whereby States could choose whether the communications procedure applies to the CRC or to the CRC and one or both of the Optional Protocols could be envisaged.

### **2 – How would children be represented (concern regarding the risk of manipulation and instrumentalisation of children)?**

None of the existing communications procedures impose any requirement concerning the legal capacity of individuals submitting a communication.

In practice, most communications to the existing procedures are made by adults with the support of organizations, lawyers or both. Likewise, most children with reasoning capacity will need exactly the same sort of support.

Children, especially young children, who lack the capacity to draft and submit a communication will need to be fully supported and represented by adults who will present their claims and represent their interests. Since they might not be of an age to authorize such representation, flexibility in that regard will be needed.

Innovative mechanisms, drawing from national and/or regional best practices, will need to be incorporated in the Optional Protocol to ensure that all children can enjoy protection of the full range of their rights.

For instance, to decide whether a person is qualified to represent the interests of a child, the European Court of Human Rights has decided that account must be taken of the link between a child and his/her representative the object and purpose of the application, and any conflict of interest (see for instance *S.P., D.P., and A.T. v. UK*, 20 May 1996, Application No 23715/94 (in English) and *Giusto, Bornacin and V. v. Italy*, 15 May 2007, Application No 38972/06 (in French)).

The Inter-American Commission accepted a complaint presented by two NGOs, the

Centre for Justice and International Law (CEJIL) and Casa Alianza, on behalf of five dead children (see Villagrán Morales et al. v. Guatemala, 19 November 1999, the “Street Children” case).

In the context of a communications procedure under the CRC, a key criteria to use to ensure that those representing children are not instrumentalising their cases would be through the determination of whether the representative is acting “in the best interests of the child”, to be determined by the CRC. In addition, a provision in the OP ensuring the right to be heard of children by the Committee would be a supplementary safeguard in that regard.

### **3 – How would the mechanism work in practice?**

The implementation of a communication procedure under the CRC will build on the experience and best practices of existing communications procedures of the other treaty bodies and the regional human rights systems.

It will be similar to the existing communications procedures with the addition of specific provisions taking into account the specificities of children, such as the representation of children and their right to be heard. In order to ensure children's protection and avoid putting them unnecessarily at risk, the communication procedure will also have to be designed with children's safety in mind and allow for specific safeguards for vulnerable petitioners, such as anonymity provisions, protection from reprisals, etc.

### **4 – What are States' obligations under a communications procedure?**

Under existing communications procedures, concerned States Parties are required to cooperate with the relevant treaty body and provide information on communications submitted to the treaty body. States Parties usually have six months to present submissions on the admissibility and on the merits of communications.

If a violation is found by the treaty body, the State Party will be invited to inform the treaty body on the course of action taken in conformity with the treaty body's suggestions and/or recommendations.

### **5 – How would the implementation/follow-up of decisions on communications work?**

Generally, once a treaty body has decided that the State party violated the rights of the complainant, it gives 3 months to the State to provide information on the steps taken to give effect to the Committee's views. If the State party fails to take appropriate steps, the Human Rights Committee and the Committee against Torture refer the case to one of their members, the Special Rapporteur on Follow-up of Views for consideration of further measures to be taken. Follow-up measures include, for example, specific requests to the State party and requests to meet with the State party's representatives to discuss the action taken.

The CRC will be able to draw from those best practices when it will set its own working methods under its Rules of procedure. Special consideration for the vulnerability of

children will need to be taken into account to ensure that the follow-up of decisions is as effective as possible.

### **III - ON THE EFFECTIVENESS OF A COMMUNICATIONS PROCEDURE UNDER THE CRC**

#### **1 – What could ensure that the complaint is processed in a quick manner (so that children do not become adults by the time of the decision and so that their hopes are not raised unnecessarily)?**

It is hard to foresee the length of a procedure that doesn't exist yet. In reality, communications are generally dealt with within 1 to 2 years (CAT, CEDAW, CERD) with the exception of the Human Rights Committee (ICCPR) which may take several years to adopt its Views.

It is of course paramount for children that their communications are processed in a quick manner. This can be ensured by the addition of the terms “without delay” in several provisions of the OP concerning the process, such as when the Committee notifies a communication to the attention of the State Party concerned, when the Committee transmits its views on the communications, etc.

Details on the working methods of the Committee will be provided in its Rules of procedure and those should be designed to ensure swiftness in processing communications. If delays in examining communications appear to exceed 'reasonable time', several additional measures could be further envisaged. For example, views on communications could be adopted with a majority vote instead of trying to reach consensus, with the possibility of attaching individual opinions, as it is the case in regional systems (ECHR, IACHR, ACHR); quasi identical communications could be clustered, etc.

#### **2 - What would ensure that such a mechanism would be used (see example of OP CEDAW)?**

The little use made of OP CEDAW till now can be used as a lesson for the CRC. Little use of a communications procedure does not mean that violations do not occur. We believe that to ensure that a mechanism is fully used, it must be widely known by all relevant stakeholders, in this instance, by adults and children alike. It is up to all concerned parties to ensure that children all around the world and those working on their behalf are aware that such a remedy is available.

A provision explicitly calling for raising awareness about the communications procedure could be included in the OP in similar terms to those existing under the CRC and its existing Protocols (see Art. 42 CRC, Art. 9 OP CRC on Sale of Children and Art. 6 OP CRC on Children in Armed Conflict): “States Parties undertake to make the principles and provisions of the Optional Protocol widely known by appropriate and active means, to adults and children alike”.

Other types of initiatives, that have already proven to be successful for raising awareness about the Convention and its existing Protocols, could also be used for the new OP on a communications procedure. For example, websites specifically designed for children could present and explain the communications procedure to children. The NGO Group for the CRC, which has the mission of promoting, implementing and monitoring the UN Convention on the Rights of the Child, and has notably facilitated the creation of and supported the work of national coalitions for the Convention, is ready to play a similar role

once the communications procedure will enter into force. Information offices on children's rights and assistance and advice to children on submitting an application to the Court will be key to ensure that the communications procedure is widely used.

## **IV - ON THE IMPLICATIONS OF A COMMUNICATIONS PROCEDURE UNDER THE CRC**

### **1 – Wouldn't it put some extra burden on the CRC, especially with regard to the existing backlog and with regard to its duties concerning the examination of States reports?**

The Committee on the Rights of the Child and its Secretariat in the Office of the High Commissioner for Human Rights (OHCHR) are widely acknowledged to have developed an efficient reporting system. They have responded effectively to the demands created by the almost universal ratification of the Convention and substantial additional ratification of the two existing Optional Protocols to the CRC. The Committee, together with OHCHR, has made special arrangements, including a two-chamber system, to deal effectively with the build-up of reports, mainly due to the submission of initial reports for the two existing OPs (which results in the review of 3 reports instead of 1 by the committee for more than 100 countries). Similarly, when the communications procedure enters into force, it will enjoy support from the Petitions Team Unit of the OHCHR, which filters and administers communications submitted under other procedures.

As the last treaty body to have a communications procedure, the CRC will draw from the best working methods of other Treaty Bodies when dealing with communications and will therefore set in its Rules of Procedure the most effective way to deal with communications, including through the establishment of special bodies on communications, such as case rapporteurs, Special Rapporteurs on Communications, and/or a Working Group on Communications, as it has been done for the other communications procedures.

The review of States' periodic reports will remain the primary duty of the CRC. Communications procedures have never jeopardized the review of States reports, there is no reason why this would be different for the CRC.

### **2 – What extra resources would be needed for this new mechanism (human resources, time resources, etc)?**

The adoption of a new communications procedure will result in the need of additional staff for the OHCHR Petitions Team Unit which filters and administers communications submitted under other procedures and will play a similar same role for communications under the OP CRC.

In terms of time resources, some treaty bodies have established a Working Group on Communications that meets for one week prior to every session (HRC and CAT for example), these practical questions will be dealt with by the Committee on the Rights of the Child according to the number of communications it will receive.

### **15 – Would the composition of the CRC change then (issue of the lack of legal expertise of the CRC as a whole, as opposed to the Human Rights Committee)?**

The legal expertise of members of treaty bodies that deal with a communications procedure has never been a formal criteria for election. In fact, only the ICCPR and the CAT, establishing respectively the Human Rights Committee and the Committee against Torture, do specify that when the experts of these bodies are elected, consideration should

be given “to the usefulness of the participation of some persons having legal experience” (Art. 28 ICCPR and Art. 17 CAT). All the other conventions that establish treaty bodies with the jurisdiction to review communications only mention that the principal legal systems should be represented within each Treaty body (see ECOSOC resolution 1985/17 establishing the Committee on Economic, Social and Cultural Rights; Art. 8 CERD; Art.17 CEDAW; Art.72 CMW; Art. 34 CRD).

It is not different for the CRC which provides in its article 43 that “consideration [should be] given to equitable geographical distribution, as well as to the principal legal systems”. Actually, the proportion of legal experts within a treaty body depends on the preselection made by States Parties when they nominate their candidates.

Therefore, if there is a concern that the Committee on the Rights of the Child might lack legal expertise to review communications, States Parties should present a higher number of legal experts as candidates. Besides, the Human Rights Committee and the Committee against Torture also do comprise members who do not have legal expertise. And in fact, the diversity of backgrounds represented within a treaty body, when dealing with communications, also provides an added value to its decisions as it offers different perspectives of one particular case.

## **V - ON THE RELATIONSHIP BETWEEN THIS NEW MECHANISM AND EXISTING INTERNATIONAL AND NATIONAL MECHANISMS**

### **1 – What would be the overlaps with existing international communications procedures?**

As explained under questions 2 and 3, technically speaking, there should be no overlap with existing international communications procedures since the rights guaranteed under the CRC are designed to include the specific needs of children and, in this sense, do not exist in any other international instrument with a communications procedure and no other existing international communications procedure is competent to adjudicate over rights provided under the CRC.

In practice, some degree of overlap might exist between the proposed instrument and existing international communication procedures, notably for the 'thematic rights' (such as freedom of association, for instance) guaranteed under the CRC that do also exist under other international instruments. Concerns over duplication of international mechanisms have however proven unproblematic for the existing ones (see the competence of CAT and the HR Committee over torture communications) thanks to the well established principle of non duplication and the existence of procedural clauses that prevent the simultaneous examination of a communication by two or more international mechanisms.

In addition, once the Optional Protocol establishing such procedure under the CRC will come into force, one can expect that this type of 'overlap' won't occur as child victims will rather submit their communications to their expert committee.

### **2 – What would be the relationship between domestic and international procedures?**

As with the other communications procedure, communications under the CRC will only be admissible if domestic remedies available to children have been exhausted, unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.

Considering the special status of children, the Committee shall interpret “unreasonably prolonged” in a manner sensitive to the impact that delays may cause to the children's well-being and development.

An international procedure specific to child rights will also strengthen domestic procedures by setting a model for child-sensitive procedures and providing decisions similar to case-law for a better implementation of the CRC at the national level.

## Annex 1: Glossary

**ADJUDICATE:** to hear and decide on a case, using the judicial process.

**AFRICAN CHARTER ON THE RIGHTS AND WELFARE OF THE CHILD** spells out the rights that African States must ensure for children living in their jurisdiction. It is the main instrument of the African human rights system for promoting and protecting child rights.

The Charter, which was adopted by the Organisation of African Unity (now the African Union) in July 1990, entered into force in November 1999. The Charter was the first regional treaty to address child rights. The Charter is divided into two parts of four chapters. Part one deals with the rights, freedoms and duties of the child and has 31 articles. Part two deals with States' obligations to adopt legislative and other measures to implement the provisions of the Charter and has 18 articles.

The African Charter was created partly to complement the UN Convention on the Rights of the Child (CRC), but also because African countries were under-represented in the drafting process of the CRC, and many felt another treaty was needed to address the specific realities of children in Africa.

**CASE LAW:** Decisions and interpretations made by judges when deciding on legal matters.

**CONVENTION:** Also called Treaty or Covenant, it is a binding agreement between states. Conventions are stronger than Declarations because they are legally binding for governments that have signed them. When the UN General Assembly adopts a convention, it creates international norms and standards. Once a convention is adopted by the UN General Assembly, Member States can then ratify the convention, promising to uphold it. The UN can then censure governments that violate the standards set forth in a convention.

**CONVENTION ON THE RIGHTS OF THE CHILD (CRC):** adopted 1989; entered into force 1990): Convention setting forth a full spectrum of civil, cultural, economic, social and political rights for children. Since its adoption, it has been ratified more quickly and by more governments than any other human rights instrument. The USA and Somalia are the only countries which have failed to ratify. The Convention is also the only international human rights treaty that expressly gives non-governmental organisations (NGOs) a role in monitoring its implementation (under Article 45a).

**COMPLAINANT:** Also 'plaintiff' – the person or party bringing a case, for example a child who has had his/her rights breached.

**CORE GROUP:** This refers to the initial group of States that sponsored the Resolution of the Human Rights Council to establish the Open Ended Working Group for the Optional Protocol under the CRC.

**COVENANT:** Binding agreement between states; used synonymously with Convention and Treaty. The major international human rights covenants, both passed in 1966, are the

International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

**ECOSOC STATUS/ CONSULTATIVE STATUS:** Refers to a status that NGOs and other organisations may gain in order to participate in the work of the UN. Consultative status enables qualifying organisations to serve as technical experts, advisers and consultants to governments and Secretariat. Sometimes, as advocacy groups, they further UN themes, implementing plans of action, programmes and declarations adopted by the United Nations.

**INCORPORATION:** Assimilation of international treaties into domestic law.

**INQUIRY PROCEDURE:** A Committee may initiate on their own initiative inquiries if they have received reliable information containing well-founded indications of serious or systematic violations of the conventions in a State party.

**INSTRUMENT:** Legal tool used to designate, define and harmonise international human rights standards, for example Convention on the Rights of the Child, Convention on the Rights of Persons with disabilities, Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.

**INTERIM MEASURES:** Article 5 of the recently adopted Optional Protocol for the International Covenant on Economic, Social and Cultural Rights providing a complaints mechanism states that: "At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may be necessary in exceptional circumstances to avoid possible irreparable damage to the victim or victims of the alleged violations.

**JURISPRUDENCE:** The collection of reported cases from previous legal hearings that together form the body of law within a jurisdiction.

**MANDATE:** The literal definition of 'mandate' is simply a 'command' or 'instruction.' In the context of the UN, it is frequently used to refer to the document describing how a particular role is to be fulfilled. For example, the mandate of the Special Representative on Violence Against Children may include investigation into the different types of violence experienced by children. Or you might say s/he is mandated to investigate alleged cases of violence against children as perpetrated by governments, for example.

**MECHANISM:** A process or body that monitors the implementation of an instrument(s). The mechanism is usually created by the instrument that it monitors. E.g. the Committee on the Rights of the Child was created by [Article 43](#) of the Convention on the Rights of the Child. Other examples include the Human Rights Council, Special Rapporteurs, complaints procedure 1503.

**MEMBER STATES:** Countries that are members of the United Nations or other relevant inter-governmental body.

**MODALITIES:** Usually used in reference to the participation of non-governmental organisations in UN meetings, 'modalities' refers to specific measures or conditions.

**NATIONAL COALITIONS:** NGOs that collaborate on activities such as reporting to the Committee on the Rights of the Child by presenting one joint Alternative Report to the Committee. National Coalitions work closely with the NGO Group for the Convention on the Rights of the Child which provides them with technical support, training, and other support. [Read more](#)

**MERCOSUR** is an economic and political bloc of South American States which has been compared to the European Union. It stands for el Mercado Común del Sur (the Common Market of the South). It was founded by Argentina, Brazil, Paraguay and Uruguay in 1991 under the Treaty of Asunción. The initial goal of MERCOSUR was to establish a common economic market. In 1998 it also created a political forum with the aim of establishing common positions and resolving issues affecting the region. The political mechanism was expanded in December 2006 with the creation of a common parliament. The parliament, which first met in May 2007, will serve as an advisory committee for full Member States.

**NGO GROUP FOR THE CRC:** The NGO Group for the Convention on the Rights of the Child is a network of 80 international and national non-governmental organisations, which work together to facilitate the implementation of the UN CRC. It was originally formed in 1983 when members of the NGO Group were actively involved in the drafting of the Convention. Since the adoption of the Convention, the NGO Group has been supporting the work of national and international NGOs as well as the Committee on the Rights of the Child to monitor and implement the Convention and its Optional Protocols.

**OMBUDSMEN:** An ombudsman is an official, usually appointed by the government, parliament or other institutions such as the European Union, who is charged with representing the interests of the public by investigating and addressing complaints reported by individual citizens. In some jurisdictions, the Ombudsman is referred to, at least officially, as the 'Parliamentary Commissioner' (e.g., the West Australian state Ombudsman). As well as for a government, an ombudsman may work for a corporation, a newspaper, an NGO, or even for the general public. In the case of children, such roles may be referred to as both 'Children's Ombudsman' or 'Children's Commissioner'.

**OPTIONAL PROTOCOL (OP):** An optional protocol to a treaty is a multilateral agreement that States parties can ratify or accede to, intended to further a specific purpose of the treaty or to assist in the implementation of its provisions.

**PETITIONS:** A collective term embracing the various procedures for bringing complaints before competent treaty bodies. Petitions may consist of complaints from individuals or from States parties alleging violation of the treaty provision by a State party.

**QUASI-JUDICIAL:** Having to do with powers that are to some extent judicial, for example human rights commissions may have quasi judicial powers

**RATIFICATION, RATIFY:** Ratification, acceptance and approval all refer to the act undertaken on the international plane, whereby a State establishes its consent to be bound by a treaty. Most multilateral treaties expressly provide for States to express their consent to be bound by signature subject to ratification, acceptance or approval.

**RULES OF PROCEDURES:** The formal rules adopted by a treaty body to govern the way in which it undertakes its business. Each committee is empowered by the relevant treaty to adopt its own rules of procedure. The rules of procedure usually cover such matters as election of officers and procedures for adopting decisions especially where no consensus can be reached. Rules of procedures are related to, but distinct from, working methods.

**SPECIAL PROCEDURES:** They are a way for the Human Rights Council (as well as the public) to find out about human rights situations. They are the name given to 'mechanisms' created by the Commission on Human Rights (now the Human Rights Council) to address human rights situations in specific countries, or to address specific human rights themes eg, the right to education. Usually, Special Procedures are actually individual people, or groups of people (called Working Groups). If they are individuals, they may be called a Special Rapporteur, a Special Representative or an Independent Expert.

**SPECIAL RAPPORTEUR:** Special Rapporteur is not a title used exclusively by the United Nations, for example there are also Special Rapporteurs for the African Union. But they are all concerned with monitoring and investigating human rights. You can see a [list of United Nations Special Rapporteurs, including 17 frequently asked questions about them.](#) Read the [latest reports of the Special Rapporteurs](#) relevant to children

**STATES PARTY(IES):** A State party to a treaty is a State that has expressed its consent to be bound by that treaty by an act of ratification, acceptance, approval of accession etc, where that treaty has entered into force for that particular State. This means that the State is bound by the treaty under international law.

**TREATY:** Formal agreement between states that defines and modifies their mutual duties and obligations; used synonymously with Convention and Covenant. When Conventions are adopted by the UN General Assembly, they create legally binding international obligations for the Member States who have signed the treaty. When a national government Ratifies a treaty, the articles of that treaty become part of its domestic legal obligations.

**TREATY BODIES:** The committees formally established through the principal international human rights treaties to monitor States Parties' compliance with the treaties. Seven Treaty bodies have been set up for the core UN human rights treaties to monitor states parties' efforts to implement their provisions. There will be eight once the new Convention on the Rights of Persons with Disabilities enters into force and spawns its own committee.

## **Annex 2: Final resolution A/HRC/11/1**

### **11/1 Open-ended Working Group on an optional protocol to the Convention on the Rights of the Child to provide a communications procedure**

*The Human Rights Council,*

*Recalling* the Principles proclaimed in the Charter of the United Nations and that recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

*Recalling* that, in the Vienna Declaration and Programme of Action adopted in June 1993 by the World Conference on Human Rights (A/CONF.157/23), the World Conference reiterated the principle of “First Call for Children” and emphasized that the rights of the child should be a priority in the United Nations system-wide action on human rights,

*Welcoming* the almost universal ratification of the Convention on the Rights of the Child and the ratification by more than 120 States of each of the two Optional Protocols to the Convention,

*Taking note* of Council resolution 10/14 of 26 March 2009, in which the Council celebrated the twentieth anniversary of the Convention on the Rights of the Child, and called for effective implementation of the Convention by all States parties to ensure that all children may fully enjoy all their human rights and fundamental freedoms,

*Noting with interest* general comment No. 5 (2003) of the Committee on the Rights of the Child, in which the Committee emphasized that children’s special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights,

*Noting* that procedures allowing for individual communications have been established for other core international human rights treaties, namely, the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, and for the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman

or Degrading Treatment or Punishment, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention for the Protection of All Persons from Enforced Disappearance and the Convention on the Rights of Persons with Disabilities,

*Noting also* that children and their representatives lack a communications procedure under the Convention on the Rights of the Child by which communications concerning the effective implementation of the rights set out in the Convention can be considered by an appropriate committee of independent experts,

*Recalling* the view of the Committee on the Rights of the Child, expressed by its Chairperson in her oral report to the General Assembly at its sixty-third session, that the development of a communications procedure for the Convention on the Rights of the Child would significantly contribute to the overall protection of children's rights,

1. *Decides* to establish an Open-ended Working Group of the Human Rights Council to explore the possibility of elaborating an optional protocol to the Convention on the Rights of the Child to provide a communications procedure complementary to the reporting procedure under the Convention;

2. *Also decides* that the Working Group shall hold its first session for five working days in Geneva before the end of 2009, within existing resources;

3. *Further decides* to invite a representative of the Committee on the Rights of the Child to attend the session as a resource person and, where appropriate, relevant United Nations special procedures and other relevant independent experts, and also invites them to submit inputs to the Working Group for its consideration;

4. *Requests* the Working Group to submit a report on progress made to the Council for consideration at its thirteenth session.

*27<sup>th</sup> meeting*  
*17 June 2009*  
**[Adopted without a vote.]**

## Annex 3: Feedback on Your Lobbying

In order to coordinate our actions both at national and at international levels, it would be really great if you could complete this form and return to the NGO Group for the CRC via email to [goh@childrightsnet.org](mailto:goh@childrightsnet.org)

Name	
Organisation	
Contact details	
Does your organisation belong to a national child rights coalition/network?	
What is your Government's position on the OP CRC? What are you Government's main concerns/questions?	
Will your Government participate in the Open-ended Working Group in December?	
If so, please provide information about your Government's Delegation (who, how long are they staying, any particular background information on individuals we should know about?)	
Who you contacted – Name, Position and Department, when?	
Any other relevant information?	

## **Annex 4: Questionnaire on the need for the communications procedure**

Most of the questions raised by States so far concern the added value of a communications procedure for the CRC, ie. what cannot be addressed under existing national, regional and/or international mechanisms; and the feasibility of such a communications procedure.

To help us provide the Working Group with concrete examples and cases where an international communications procedure would have made a difference and/or cases where children have successfully accessed complaints mechanisms, please fill out this questionnaire and send it back to us.

### **1- Existing gaps in child rights protection**

#### **1.1. Examples of child rights cases claiming rights enshrined by the CRC that were brought to your attention and that you could not examine:**

- Why were you not able to examine that case (lack of material/territorial jurisdiction, lack of/ineffective access to justice for children, lack of/ineffective national remedies, lack of representation for children, etc.)?
- What did you do about the case (referral to another body/institution, informal mediation (“bons offices”), etc.)?
- How would a communications procedure under the CRC have made a difference?
- How would an inquiry procedure under the CRC have made a difference?

#### **1.2. If you have experience in a child specific type of communication procedure:**

- What was the rationale for creating such a mechanism?
- What changes has it produced with regard to implementation of child rights (at the national/regional levels)? What kind of remedies can be provided?
- What rights guaranteed under the CRC could not be invoked before this communication procedure? Why? Is there any other type of admissibility restrictions (material/territorial jurisdiction)?
- How could a communications procedure under the CRC strengthen this mechanism? How could they reinforce each other?

#### **1.3. If you have experience in a regional mechanism addressing child rights violations:**

- What are the rights guaranteed under the CRC that could not be invoked before this regional mechanism (material/territorial jurisdiction)? Why?
- What changes has it produced with regard to implementation of child rights (at the national/regional levels)? What kind of remedies can be provided?
- How could a communications procedure under the CRC strengthen this mechanism? How could they reinforce each other?

## **2 - Best practices regarding the use of judicial/quasi-judicial remedies by children and child representation that could be implemented at the international level**

Based on your experience (at national, regional and/or international level):

- How did you ensure use of mechanisms by child complainants?
- Have you used child-friendly materials? What were the results?
- How does representation of child victims work in your context?
- What are the safeguards against instrumentalisation/manipulation of child victims?
- How could this be implemented through a communications procedure under the CRC
- What would be the best way to achieve the use of a communications procedure under the CRC by children and, where needed, child representation?

