ngo group for the crc

ADVOCACY TOOLKIT

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

For activities targeting the Open-ended Working Group to elaborate a new OP to the CRC (December 2010 – February 2011) and the Human Rights Council June 2011 session

November 2010

About the NGO Group for the CRC

The NGO Group for the Convention on the Rights of the Child is a network of 77 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.

Tell us what you think about this Toolkit

We would very much appreciate any comment you might have on this Advocacy Toolkit. We would particularly like to know how you have used it, what you found most helpful and if you think that other aspects of the campaign should be addressed.

We have also included a feedback form at the end of this toolkit for you to fill out and send back to us. Thank you!

Please email Anita Goh, the coordinator of the OP CRC campaign, at goh@childrightsnet.org with your comments or if you wish to know more about your State's position on this initiative in Geneva.

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.

The present toolkit is a revised version of previously published toolkits. We endeavour to send you an updated version every time some significant developments happen with regards to the campaign.[1] It is designed to inform and support those who are interested in joining the campaign for a communications procedure under the Convention on the Rights of the Child.

Updated versions will be circulated via the CRINMail and members of the NGO Group as the OP process unfolds.

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.

Through the CRIN website and CRINmails, we send regular updates on the UN process regarding the new Optional Protocol as well as ways to engage.

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

[1] A first toolkit was circulated in December 2009 to prepare the first session of the UN Open-ended Working Group and a first update was circulated in June 2010

How the campaign started

Upon the 10th anniversary of the CRC, the Committee on the Rights of the Child decided to "consider initiating discussions on an Optional Protocol to the Convention providing a mechanism for individual communications, to ensure the availability of legal remedies at the international level with regard to the Convention" and encouraged "States parties to support its efforts in this respect".[2]

In 2006, a group of child rights organisations initiated a campaign for a new Optional Protocol to the UN Convention on the Rights of the Child (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.

In 2008, the campaign was 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.

In 2009, the Working Group started an important awareness raising campaign to mobilise support from UN Member States as well as NGOs and UN experts both in Geneva and at national level. Activities included organising events and expert meetings on the new OP, including during the official celebration of the 20th anniversary of the CRC in Geneva, submitting and delivering written and oral statements at the UN Human Rights Council, producing leaflets and advocacy papers and lobbying States in Geneva and in capitals. Thanks to the coordination of efforts at both national and international levels, a 'core group of friendly States' was formed and backed the idea of proposing a new OP to the Human Rights Council.

To strengthen its capacity to respond quickly to developments in Geneva, in April 2010, the Working Group established a 'Core Group' for the drafting period of the Optional Protocol until June 2011. The Core Group is also responsible for setting campaign priorities and strategies for influencing states, while the wider Working Group continues to be consulted on major issues.

By May 2010, over 600 international and national NGOs, National Human Rights Institutions (NHRIs) 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".[3]

---

2 See http://www.ohchr.org/EN/HRBodies/CRC/Documents/Recommandations/ten.pdf p.14

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

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 and national NGOs, national human rights institutions or ombudsman offices, with 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 term “communications procedure” in our campaign instead of “individual complaints mechanism”.

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 remedies for the full range of rights under 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 said that this "mechanism could significantly strengthen the monitoring of the Convention and the furtherance of children's rights".[4]

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 by a Committee with expertise on children's rights.

An international communications procedure will:

- 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

[4] Presentation of the UN High Commissioner for Human Rights at the UN conference celebrating 20th birthday of the CRC, 8 October 2009, Geneva, Switzerland

How do we achieve this?

Establishing this communications procedure will be done by developing 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 all UN Member States interested. This is why governments' support is essential.

Getting a new OP established would normally consist of five key stages:

1. **Creation of a forum for discussion**: States support the idea and create an appropriate forum for discussion, usually this will be called an intergovernmental 'Open-ended Working Group' (OEWG) [DONE in June 2009][5]

2. **Discussion on the need for the new OP**: Such an OEWG discusses the proposal for the OP [DONE in December 2009].[6] Once the proposal discussed the OEWG gets backing from the UN on the need to draft the OP [DONE in March 2010] [7]

3. **Drafting and adoption of the OEWG's draft OP**: The OEWG drafts the OP [ONGOING] and adopts it.

4. **Official adoption of the draft OP by the UN**: The draft is adopted by the UN Human Rights Council (HRC), then by the UN General Assembly (GA)

5. **Ratification of the new OP by States**: The new OP is open for signatures, accession and ratification.

Consensus: It is important to know that for this type of standard-setting exercise, States usually must reach consensus before moving onto the next step. This will usually be done through a Resolution adopted by the HRC.

Latest developments

Since the HRC resolution giving the mandate to the OEWG to draft the new OP in March 2010, the Chairperson of the OEWG has been holding informal information talks and consultations with governments, representatives of civil society and key experts to collect inputs for his initial draft. In August 2010, he circulated his proposal for a draft[8] which will serve as a basis for the negotiations.

The next meeting of the OEWG is scheduled to take place from **6 to 10 December 2010** in Geneva. During this meeting, States will discuss the Chair's draft. If they reach consensus on the draft, it will go to the HRC for adoption, if not, they will hold another five day meeting during the second half of February 2011.

---

5 In June 2009, the HRC adopted a first resolution (A/HRC/RES/11/1) establishing an "Open-ended Working Group" (OEWG) to explore the possibility of elaborating a new communications procedure for the CRC.

6 In December 2009, the OEWG held a three day meeting (the meeting was initially scheduled to last for five days but had to postpone, see xxx) during which State representatives, UN agencies, independent experts, NGOs and others discussed different aspects of an OP. For the full report of the session and the submissions made by the experts, see http://www2.ohchr.org/english/bodies/hrcouncil/OEWG/1stsession.htm For an account of the session day by day, see http://www.crin.org/resources/infoDetail.asp?ID=21261&flag=event

7 In March 2010, the HRC adopted a Resolution (A/HRC/RES/13/3) changing the mandate of the OEWG from simply 'considering' the need for an OP to actually drafting the procedure. The Resolution also requires the Chairperson to prepare an initial draft of the OP for the next meeting.

8 To read the Chair's draft and its explanatory memorandum, go to: http://www2.ohchr.org/english/bodies/hrcouncil/OEWG/2ndsession.htm

Next Meeting of the OEWG in Geneva - December 2010

Mandate of the OEWG – Resolution A/HRC/RES/13/3

The mandate of the Working Group, officially referred to as the Open Ended Working Group (OEWG), is 'to elaborate an optional protocol to the Convention on the Rights of the Child to provide a communications procedure'.

As mentioned in the previous section, the Resolution (A/HRC/RES/13/3) that changed the mandate of the OEWG also asks the Chairperson to prepare a draft text of the OP. Specifically, "taking into account the views expressed and inputs provided during the first session of the OEWG in December 2009 and giving due regard to the views of the Committee on the Rights of the Child and, where appropriate, to the views of relevant United Nations special procedures and other experts".

The OEWG will be able to meet for up to ten days in the coming year, divided into two five-day sessions. If the OEWG does not reach consensus on a draft in December, a second five-day session will be scheduled during the second half of February 2011.

If consensus is reached after the December session, the OEWG will report back to the HRC at its March 2011 session; if a second session is necessary, the OEWG will report back to the HRC in June 2011 at the latest.

Chair's draft and next session of the OEWG

The Chair's proposal for a draft[9] was circulated in English to all UN missions in August 2010. On the basis of this draft, States are now considering their positions on each of the provisions for the upcoming negotiations in December 2010.

The next session is scheduled to take place from **6 to 10 December 2010** in Geneva, Switzerland. All States will be invited. One representative of the Committee on the Rights of the Child is expected to be invited as a resource person and other relevant stakeholders, such as UN experts, representatives from UN agencies, Children's Ombudspersons and NGOs may also attend, provided that they have the appropriate accreditation.

Similarly, those interested (who hold the appropriate accreditation) can make written contributions in advance of the meeting.[10]

The NGO Group for the CRC and partner organisations have prepared a joint submission[11] in response to the Chair's draft. If your organisation would like to support our submission, please contact Anita Goh, Advocacy Officer of the NGO Group at goh@childrightsnet.org

The Committee on the Rights of the Child also prepared Comments[12] on the Chair's proposal for a draft which concur with the main positions defended in the NGO joint submission.

Mr Peter Newell, one of the experts invited at the first session of the OEWG in December 2009, submitted a new brief in preparation of the second session of the OEWG on Collective communications.[13]

---

9 To read the Chair's draft and its explanatory memorandum, go to: http://www2.ohchr.org/english/bodies/hrcouncil/OEWG/2ndsession.htm

10 Rules for submitting a written contribution to the OEWG are similar to those explained above : NGOs need to either have ECOSOC status, or submit a contribution together with an ECOSOC status NGO; Children's Ombudsmen need to either be considered as a Status A National Human Rights Institution (NHRI) or be submit together with a Status A NHRI.

11 To read the NGO joint submission, go to: http://www.crin.org/resources/infoDetail.asp?ID=23481&flag=report

12 To read the Committee's Comments, go to: http://www2.ohchr.org/english/bodies/hrcouncil/OEWG/2ndsession.htm

13 To read Mr Newell's submission, go to : http://www2.ohchr.org/english/bodies/hrcouncil/OEWG/2ndsession.htm (the

Format of the December 2010 negotiations

The negotiations will be led and moderated by the Chairperson-Rapporteur of the OEWG who will be elected/agreed upon at the beginning of the session. It is expected however that the Chairperson will remain Mr Drahoslav Štefánek (Slovakia) who chaired the first session of the OEWG. Intergovernmental agencies, NGOs and National Human Rights Institutions present should be able to make statements on each draft provision after States' discussions.

The exact methodology and format of the session are still unknown and might change as the negotiations develop.

The outcome report of the session should include a summary of proceedings of the OEWG and potentially a revised draft OP.

Outcome of the negotiations

Although consensus among all States is not required to reach an outcome (any decision of OEWGs and the HRC can be voted on) when drafting a new international instrument, States tend to prefer reaching consensus over voting.

Therefore, it is expected that if consensus on a draft OP can be reached by the end of the December OEWG session, or by the end of the extra February session, the Chairperson-Rapporteur will report back to the HRC in March or June 2011 and present the draft OP for adoption by the HRC.

If consensus has not been reached after the two OEWG sessions, since the OEWG only has a one-year mandate, the Chairperson-Rapporteur will have to report back to the HRC and request a new resolution to extend the mandate of the OEWG in order to continue negotiations.

Our objectives

Although we want a speedy process, the most important thing for us is that the new OP contains the key provisions that will ensure its effectiveness and utility for victims of violations of their rights under the CRC and its two existing OPs.

Our aim is that States make full use of the ten days that have been allocated for negotiations in December 2010 and February 2011 and that a draft OP which allows for collective as well as individual communications is presented before the HRC in June 2011.

Note on collective communications:
Collective communications[14] are communications that can be submitted without identifying an individual victim. They describe potential or actual violations of rights that have resulted or that will likely result in victimization if they are not addressed.

In the context of children's rights violations, collective communications would be instrumental to:

- ensure that situations that would be difficult, if not impossible, to address through individual communications (e.g. victims of child pornography, children in illegal situations, etc.) can be brought to the Committee's attention, and

- avoid involving children victims in the process when there are concerns over confidentiality, re-victimization and protection of these children

submission should be uploaded around mid-November)

[14] For further explanations on the added value of collective communications, please see the submission of Mr Peter Newell, one of the experts invited at the first session of the OEWG in December 2009, at: http://www2.ohchr.org/english/bodies/hrcouncil/OEWG/2ndsession.htm

What can you do?

In order to ensure that the new OP is effective and used by children and young people, it is essential that we work together on influencing the negotiations and States' positions.

Your State is currently forming the position it will defend during the negotiations of the draft. Now is a crucial time to influence your State's position and get their support for the key provisions we want to get in the new OP!

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. 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 (Justice, Foreign Affairs, Social Affairs, etc.) 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 have discussed a formal position on this issue.
3. Find out whether they will be involved in the December meeting.
4. Find out what is the reaction of your State to the proposal for a draft and what will be its position and key issues/concerns during the December meeting

To assist you in your lobbying activities, we have prepared a draft model letter (see annex) and an Advocacy Brief (see p. 12) to guide you through the Chair's draft and the NGO joint position.

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

You can also contact us if you would like to know who is already active in your country.

3. 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)
   For **Asia-Pacific, you can contact the** Asia Pacific Forum
   http://www.asiapacificforum.net/
   Mr. Kieren Fitzpatrick (kierenfitzpatrick@asiapacificforum.net)

Further links to National Human Rights Institutions from the website of the OHCHR:
http://www.ohchr.org/EN/Countries/NHRI/Pages/NHRIMain.aspx

4. 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]

Further tools and information that might be useful to you:

- Webpage of OHCHR on the UN Open-ended Working Group : http://www2.ohchr.org/english/bodies/hrcouncil/OEWG/index.htm

- 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

- Further news and information: 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

Feedback: We need your input

To be more influential, it is very important that we share information and experiences on our lobbying efforts. We need you to tell us about activities you have been involved in, whether you got any media coverage, or a response from your Ministries, 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

NGOs Position on the Chair's draft - Advocacy Brief

Below you will find the key provisions of the Chair's draft[15] which was circulated to all UN missions in August 2010 and our response to each of them, based on the joint submission[16] prepared by the NGO Group and partner organisations. This brief aims at helping you in your advocacy activities. If you would like to get further details on each of our arguments, please refer to our complete joint submission.

Most of the provisions contained in the Chair's draft are "standard" provisions, i.e. they already exist in similar instruments establishing communications procedures. But some provisions are specific to children and do not exist in other international instruments. These have been marked **[NEW]**.

Note that these provisions are the starting point for the negotiations, not the end product. What is kept in the final draft OP will depend on States' positions. It will therefore be crucial to discuss with your State to know what their position will be on each provision and to lobby for the support of our position and recommendations on key provisions.

Individual communications

Who can submit a communication? (Article 2.1, 2.4 and 2.5 of the Chair's draft)

Chair's draft	NGO Joint position
•Communications can be submitted by or on behalf of an individual or group of individuals	• We support this provision
If a communication is submitted on behalf of an individual or group of individuals, this should be with their consent unless the author of the communication can justify acting on their behalf without such consent	• We support this provision
If the author of a communication is acting on behalf of a child or a group of children, the Committee on the Rights of the Child shall determine whether it is in the best interests of the child or group of children concerned to consider the communication **[NEW]**	• We recommend amending this point to make sure that the Committee only determines whether a communication is made in the best interests of the child or group of children concerned if it is not satisfied that the child(ren) victim(s) have expressed their consent to be represented. This would ensure the respect of the views of the children who have consented to such representation **! Position shared by the Committee on the Rights of the Child**

***Note**: the term "individual" is used instead of the term "child" to ensure that victims who were children at the time of the violation but could not exhaust their domestic remedies before they reached the age of 18 would still be able to submit communications to the Committee*

[15] To read the Chair's draft and its explanatory memorandum, go to: http://www2.ohchr.org/english/bodies/hrcouncil/OEWG/2ndsession.htm

[16] To read the NGO joint submission, go to: http://www.crin.org/resources/infoDetail.asp?ID=23481&flag=report

Grounds for a communication (Article 2.1 and 2.2 of the Chair's draft)

Chair's draft	NGO Joint position
Communications shall claim a violation of any of the rights guaranteed in the CRC and/or in the OPSC and/or in the OPAC **[NEW]**	• We support this provision
•But States can declare that they do not recognise the Committee's competence to examine communications claiming a violation of any of the rights guaranteed in the OPSC and/or in the OPAC. **[NEW]** This is called an "opt-out option". This means that until the State declares the contrary, it is assumed that communications alleging a violation of any right guaranteed by the CRC and/or the OPSC and/or the OPAC can be brought against that State. The State is however allowed to declare that communications alleging a violation of a right guaranteed by the OPSC and/or by the OPAC can no longer be brought against it. Once it does so, communications can only concern violations of rights guaranteed by the instruments not concerned by the declaration ***Examples**:* *State A declares that it does not recognise the competence of the Committee to examine communications under the OPSC and the OPAC. Communications brought against State A will therefore be limited to those claiming a violation of a right guaranteed by the CRC.* *State B declares that it does not recognise the competence of the Committee to examine communications under the OPAC (and State B ratified the OPSC). Communications brought against State B will therefore be limited to those claiming a violation of a right guaranteed by the CRC and/or by the OPSC.*	• Allowing an "opt-out" effectively closes access to a remedy for certain rights and would undermine the principles of indivisibility, interdependence and inter-relatedness of all rights • We therefore recommend the deletion of the opt-out option to ensure that the communications procedure apply to all the children's rights obligations accepted by a State party and to avoid any differentiation between rights **! Position shared by the Committee on the Rights of the Child** • We also recommend amending the draft to specify that communications can only be based on an instrument that the State has ratified ***Implications of our recommendations**:* *If State A has ratified the CRC, the OPSC and the OPAC, the communications procedure will cover the rights guaranteed by the three instruments and the State will not be allowed to take an instrument out of the communications' scope.* *If State C has only ratified the CRC and the OPSC, the communications procedure will cover the rights guaranteed by the two instruments (and not by the OPAC).*

***Remember**: in any case, communications can only be based on an instrument that the State has ratified!*

Exception to exhaustion of remedies (Article 4 (d) of the Chair's draft)

Exhaustion of domestic remedies (and exceptions) – explanation[17]
As a general rule, before any individual communication can be submitted at the regional and international level, the complainant must, in general, have exhausted all remedies in his/her own State before bringing a claim to a committee. This means that the claim should be first pursued through the national court system until it reaches the highest court before being submitted to a Committee.

There are, however, limited exceptions to this rule. If the exhaustion of domestic remedies would be unreasonably prolonged, or if they would plainly be ineffective (if, for example, the law in your State is quite clear on the point at issue) or if the remedies are otherwise unavailable to the complainant (for example, when legal aid is denied in a criminal case), the complainant may not be required to exhaust domestic remedies and could directly present a communication at the international level.

The provision cited below refers to one of the exceptions to the exhaustion of domestic remedies and specifies that it should be interpreted from the standpoint of a child.

Chair's draft	NGO Joint position
•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 **[NEW]**	• We support this provision

Collective communications

Collective communications are communications that do not require the identification of an individual victim to be submitted.

This does not mean that they are pursued out of merely academic or hypothetical interest. On the contrary, such communications are made in the public interest and describe potential or actual violations of rights that have resulted or that will result in victimisation if unaddressed.

They can:

- bring to the Committee's attention situations that would be difficult, if not impossible, to address through individual communications (e.g., victims of child pornography who may not be identifiable);

- allow the Committee to examine violations of children's rights without directly involving individual child victims in the process, thus addressing the concerns over confidentiality, re-victimization and protection of children throughout the procedure

[17] This explanation is based on the OHCHR's "23 FAQ about Treaty Body complaints procedures" at http://www2.ohchr.org/english/bodies/petitions/docs/23faq.pdf

Who can submit a communication? (Article 3.1, 3.3 of the Chair's draft)

Chair's draft	NGO Joint position
•National human rights institutions and ombudsman institutions and NGOs with ECOSOC status with particular competence in the matters covered by the CRC and its OPs, which have been approved for that purpose by the Committee, can submit collective communications **[NEW]**	• We agree with the requirements relating to the competence of the NGOs and the need for the Committee's approval •BUT we are concerned by the ECOSOC status requirement as it would prevent local and national NGOs with specific knowledge and expertise about children's rights violations from submitting collective communications **! Position shared by the Committee on the Rights of the Child** •We recommend to follow the practices of the Committee on the Rights of the Child and of the Universal Periodic Review which do not require NGOs to have ECOSOC status to submit information
•States can declare that they allow any national NGO without ECOSOC status in their territory, which has particular competence in the matters covered by the CRC and its OPs, to submit collective communications **[NEW]**	•We are concerned about this provision as States' authorisation for national NGOs without ECOSOC status establishes a requirement unrelated to the competence of the NGO or the relevance of its communication and may unduly politicise the process

Grounds for a communication (Article 3.1 and 3.2 of the Chair's draft)

Chair's draft	NGO Joint position
•Collective communications shall allege "grave or systematic violations" of any of the rights guaranteed in the CRC and/or in the OPSC and/or in the OPAC **[NEW]**	• The threshold proposed for allowing collective communications, i.e. only about "grave or systematic violations" is too high and unduly restricts the use of this mechanism. For instance, communications alleging systemic or widespread, though serious, would not be allowed **! Position shared by the Committee on the Rights of the Child** • We recommend modification of the threshold for violations that can be alleged so as to include any violations of children's rights which may result in harm to multiple victims
•But States can declare that they do not	• We recommend the deletion of the opt-out

recognise the Committee's competence to examine communications claiming "grave or systematic violations" of any of the rights guaranteed in the OPSC and/or the OPAC **[NEW]** This is again an "opt-out option" (see the explanation of this option under the section on "Individual communications - Grounds for a communication")	option to ensure that the communications procedure apply to all the children's rights obligations accepted by a State party and to avoid any differentiation between rights **! Position shared by the Committee on the Rights of the Child** • We also recommend amending the draft to specify that communications can only be based on an instrument that the State has ratified

Competence of the Committee (Article 1.2 of the Chair's draft)	
Chair's draft	**NGO Joint position**
•The Committee shall exercise its functions under the new OP in a manner that respects the rights of the child and ensures that the best interests of the child is a primary consideration in all actions concerning the child. **[NEW]**	•We welcome the reference made to Article 3.1 of the CRC on the best interests of the child •We recommend the inclusion of an explicit reference to the children's right to be heard in line with Article 12.1 of the CRC **! Position shared by the Committee on the Rights of the Child**

Interim measures (Article 5 of the Chair's draft)	

Interim measures are measures taken provisionally to ensure that the right to complain and seek a remedy at the international level is not rendered ineffective through irreparable damage to the complainant.

Interim measures could therefore include the suspension of judicial or administrative decisions (e.g. deportation of illegal migrants) until the Committee can decide whether those decisions were taken in violation of the CRC and/or the OPs.

Chair's draft	**NGO Joint position**
•At any time after the submission of a communication to the Committee and its examination, the Committee can request the State party concerned to take such interim measures as may be necessary to avoid possible irreparable damage to the victim or victims of the alleged violations	•We support the possibility of interim measures •We recommend to expressly including in the text a requirement that States parties must implement the interim measures requested by the Committee **! Position shared by the Committee on the Rights of the Child**
Procedural provisions (Article 6, 8, 9 and 10 of the Chair's draft)	

The communications procedure is constituted of different stages which can each cause delays to the examination of the communication by the Committee.

Chair's draft	NGO Joint position
• Time limits are set for several stages of the communication process	• We support the time limits set • To ensure that the communications procedure is as swift as possible and to avoid any unnecessary delay that would be detrimental to children's development, we also recommend to explicitly state the necessity to avoid any unnecessary delay in the communications procedure and to extend time adjustments to each step of the process

Friendly settlement (Article 7 of the Chair's draft)

Chair's draft	NGO Joint position
• The Committee shall make available its good offices to the parties with a view to reaching a friendly settlement	• We note that friendly settlements can provide an opportunity to protect the rights of victims without a prolonged examination of their communications by the Committee • However, friendly settlements between a State and an individual are imbalanced and raises concerns about the relative powers of the two parties • We recommend to set additional safeguards to prevent misuse of the friendly settlement procedure, such as using coercion or financial incentives to induce the victim's consent, or not implementing the terms of the settlement • We also recommend to explicitly require that any friendly settlement respects the rights guaranteed in the CRC and/or its OPs • We further recommend that the Committee is given the power to monitor the implementation of any settlement agreed **! Position shared by the Committee on the Rights of the Child**
• An agreement on a friendly settlement closes consideration of the communication	• We recommend enabling the Committee to continue or re-open the consideration of communications if it considers that the

	circumstances justify such a course – if the settlement has not been implemented, for example **! Position shared by the Committee on the Rights of the Child**

Inquiry procedure (Article 10.7 of the Chair's draft)

Inquiry procedures are a key complementary tool to individual and collective communications and are a standard provision in instruments establishing communications procedures. They allow the Committee to take action as soon as it receives reliable information indicating grave or systematic violations of the CRC or its OPs.

Chair's draft	NGO Joint position
• States can declare that they don't allow inquiry procedures (opt-out option, see the explanation of this option under the section on "Individual communications - Grounds for a communication")	• We recommend deleting the opt-out option **! Position shared by the Committee on the Rights of the Child** • We recommend replacing it by requiring the State's consent before the Committee undertakes any country visit

Protection measures (Article 13 of the Chair's draft)

Chair's draft	NGO Joint position
• States shall ensure that individuals communicating with the Committee are not subjected to any form of ill treatment or intimidation	• We welcome the inclusion of a provision on protection measures • We recommend that the scope of measures be extended to prevent any retaliatory measures against a complainant or his/her representative

Reservations (Article 19 of the Chair's draft)

Chair's draft	NGO Joint position
• No reservations to the Optional Protocol shall be permitted	• We support this prohibition • The new Optional Protocol is a procedural instrument that does not introduce new, nor expand existing rights and obligations to those already accepted by the States

Questions and answers

Based on the Chairperson's proposal for a draft that was circulated to all UN missions in English in August 2010, the Open-ended Working Group will elaborate a draft OP and participating States will negotiate each of the future provisions of the new OP CRC.

Below you will find key answers to the questions that your State might raise in this context. Providing your State with convincing answers and suggestions will no doubt influence the drafting process and ensure that the new international communications procedure is tailored to children's needs. You can use the following brief in your discussions with State representatives.

If your State raises questions not covered in this brief, do not hesitate to contact us for assistance.

1 – 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.

2 – Should the new international communications procedure apply to all the rights covered by the CRC?

YES. Although it is true that some rights guaranteed by the CRC might be found under other existing binding international instrument, there will be minimal overlaps with existing international complaints mechanisms.

Indeed, 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.

Concerns over duplication of international mechanisms have proven unproblematic for the existing communications procedure (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.

Furthermore, the question of the justiciability of economic, social and cultural rights has been settled with the adoption of the OP to the ICESCR and thus no distinction should be made between economic, social and cultural rights and civil and political rights covered by the CRC.

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.

3 – What will 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.

This 'exhaustion of domestic remedies' requirement 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.

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.

4 – 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.

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 CRC0 as provided in the Chair's draft. 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.

Annex 1: Model letter to your government

DRAFT LETTER FROM NGOs TO MINISTRIES OF FOREIGN AFFAIRS/JUSTICE/SOCIAL AFFAIRS

In most States, the Ministry of Foreign Affairs (MFA) includes a human rights department which would be the relevant body developing the State's policy in relation to the process of drafting the new OP to the CRC. In some States, the Department most centrally involved with children's policy and/or the Department responsible for developing reports under the CRC, such as the Ministry of Justice and/or the Ministry of Social Affairs may also be involved by the MFA, or may even take the lead in the inter-ministerial discussions.

After discussions at national level, the State's Mission in Geneva would be instructed on what positions to take in the drafting process.

We would suggest that you send a letter both to the Ministry of Foreign Affairs and to the Ministry/person you normally work with on CRC issues (lead for the State's report, etc). It may be appropriate to write to a Minister, or to a senior official, adapting the following:

DRAFTING OF AN OPTIONAL PROTOCOL TO PROVIDE A COMMUNICATIONS PROCEDURE FOR THE CRC

Dear …,

As you will know, the process of drafting a third Optional Protocol to the Convention on the Rights of the Child (OP CRC), to provide a communications procedure, is now going ahead, through an Open-Ended Working Group of the Human Rights Council, which will have its next session in December 2010.

The CRC is the only core human rights instrument which lacks a communications procedure. We hope States will work rapidly in the Open-Ended Working Group to develop an effective and child-friendly procedure which will promote full implementation of the Convention.

We hope that *(name of your state)* will be actively involved in the drafting process and that it will support the inclusion of provisions which take account of the special status of children. In particular, we urge you to support the inclusion of the possibility of collective communications, in addition to communications from identified individual victims, or groups of victims, of violations.

While the right of individual victims, or others acting on their behalf, to pursue remedies for breaches of their rights is fundamental, we believe that allowing collective communications without the identification of individual child victims could substantially increase the effectiveness of the procedure; it could also limit the number of individual communications submitted for consideration to the Committee on the Rights of the Child.

We would welcome a meeting to discuss this and other issues concerning the process of drafting the new Optional Protocol.

…

Annex 2: 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

Name	
Organisation	
Contact details (email, telephone/fax number or Skype name, full postal address of the organisation and of the key person to contact)	
Does your organisation belong to a national child rights coalition/network? If so, which one (include contact details)	
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?	