NEW OPTIONAL PROTOCOL ON A COMMUNICATIONS PROCEDURE UNDER THE CONVENTION ON THE RIGHTS OF THE CHILD

Background

In 2007, a group of child rights organisations initiated an international 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[1].

In June 2009, the UN Human Rights Council established an “Open-ended Working Group” to discuss the elaboration of such a new Protocol. The Working Group held its first session in December 2009 and will present its report to the Human Rights Council for adoption in March 2010.

In March 2010, a new resolution to extend the mandate of that Working Group and, hopefully, strengthen its mandate to “start the elaboration” of a new Optional Protocol to the CRC will be presented for adoption by the Human Rights Council.

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.

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”.

In the case of the CRC, having a communications procedure would mean that children and/or their representatives could present communications alleging the violation of their rights under the CRC by a State Party to the CRC before the Committee on the Rights of the Child. As this is an international procedure, they would need to first “exhaust national remedies”, i.e. present the same allegations before national courts up to the highest court (The Supreme Court, for example), or demonstrate that such national remedies are ineffective, for example where they do not exist, or “unduly prolonged”.

**Why we need a communications procedure under the CRC**

Children and/or their representatives can already present communications before other human rights treaty bodies when their rights under those treaties have been violated by a State Party.

However, they are still unable to claim the rights they have under their own Convention, the Convention on the Rights of the Child.

The CRC is indeed 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:**

1. The full range and detail of rights in the CRC are not covered, separately or together, by any other human rights mechanism;

1. Children must have an international mechanism to appeal to when national remedies do not exist or are ineffective.

1. 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:**
1 Complement the State party reporting process and reinforce the implementation of the CRC

1 Encourage States to strengthen/develop appropriate remedies at national level

1 Provide practical and authoritative interpretation of the CRC provisions, States' obligations and perspectives on implementation

1 Develop international jurisprudence and influence domestic judicial systems

1 Raise international recognition of children as rights holders

1 Provide interim measures to avoid possible irreparable damage to the well-being and development of a child or children concerned by a communication

1 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. Why a communications procedure?

**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) establishing an Open-ended Working Group and the first session of this OEWG in December 2009, the process has now reached stage two.

In March 2010, there will be an opportunity to reach stage three with the presentation of a new resolution to the Human Rights Council.

The NGO Group in cooperation with national NGOs and institutions will actively work to ensure that this new resolution provides a drafting mandate to the OEWG.

**What can you do?**

In order for the campaign 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**

   Over 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](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/](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

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, 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. 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

5. 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]
How we can help you to engage in the campaign

Advocacy Toolkit

The NGO Group has developed an Advocacy Toolkit in December 2009 to support those who are interested in joining the campaign for a communications procedure under the Convention on the Rights of the Child.

This Toolkit 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.

Coordination of the international campaign and of national and international advocacy and lobbying actions

The NGO Group for the CRC is coordinating the campaign, particularly in Geneva at the UN level. But for this campaign to succeed, it is crucial that we all join forces and coordinate advocacy and lobbying actions at international and national levels.

If you want to join the campaign or if you want to update us on your current actions on the OP, please contact the NGO Group Advocacy Officer, Anita Goh, at goh@childrightsnet.org or +41774460083

Updated information on the UN process and States positions

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.

If you would like to know more about your State's position on this initiative in Geneva, you can also contact the NGO Group Advocacy Officer, Anita Goh, at goh@childrightsnet.org or +41774460083

[1] To date, over 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”. To sign the petition and for further information, see http://www.crin.org/petitions/petition.asp?petID=1007