When governments around the world signed up to the UN Convention on the Rights of the Child (UNCRC) they committed to promote, protect and fulfil the rights enshrined in it. Twenty years on these basic rights are still not being met. Governments are failing to keep their promises under the convention and in many countries there are no effective legal mechanisms that can hold them to account. We at Save the Children think that’s unacceptable and are asking for a new international mechanism that would give children the opportunity to challenge violations of their rights.

A lack of accountability
The UNCRC is rightly praised for what it has achieved in the last 20 years. It has influenced legislation, public institutions, policies and practice. But a fundamental flaw persists. Children and young people cannot complain directly to their expert committee about violations of their rights by their governments.

The Committee on the Rights of the Child (the Committee) – the body of independent experts that monitors the implementation of the UNCRC by its state signatories – does not have a mandate to consider and decide on individual or collective complaints or to undertake enquiries into violations.

Yet in many countries children continue to suffer widespread and often severe breaches of their basic rights. Many countries, particularly fragile and conflict-affected states, do not have functioning legal systems capable of protecting children. In others, poverty and/or discrimination prevent certain groups of children from accessing those legal systems that do exist.

In addition, in many countries the UNCRC is still not fully incorporated into national law, which means violations cannot be challenged through the national courts. This is also the case for economic, social and cultural rights, which include a child’s right to survival, an adequate standard of living and health, and access to an education. These rights are rarely legally enforceable in national courts, which means that the vast majority of violations of child rights go unchallenged and unpunished.
In the absence of national-level accountability, regional and international scrutiny is crucial. But at present, with the exception of the Council of Europe and the Inter-American system, regional mechanisms tend to be weak or non-existent.

The African Committee of Experts on the Rights and Welfare of the Child, for example, could be a powerful tool in addressing child rights violations. But it is under-funded and lacks specialist knowledge and capacity. As a result, it has yet to complete a single investigation in a region blighted by grave violations. In Asia children have no regional mechanism at all.

The Committee is the best-placed international body to assure children’s rights and, in the absence of effective national justice systems, is essential to hold governments accountable to children.

**What we are calling for**

Children and their representatives need a new international mechanism or, in technical terms, a ‘communications procedure’ for the UNCRC. The new procedure would enable children, and their representatives, whose rights have been violated by governments and where national legal systems are inadequate, to bring a complaint before the Committee.

In order to establish this new mechanism, an optional protocol to the UNCRC needs to be drafted, signed and ratified by states. An optional protocol is a new legal instrument that complements and adds to an existing treaty – in this case the UNCRC. We are asking that the Human Rights Council agree to the drafting of the protocol and once drafted for all states to ratify it.

**Why we think it’s important**

For rights to have meaning children must be able to access justice when their rights are violated. When national legal systems fail to provide an effective remedy for the violation of a child’s rights, children and their representatives need an effective option at international level.

Children need a mechanism to protect all the rights contained in their convention. Although children and their representatives can use the mechanisms already established under other international instruments to pursue some of their rights, those instruments do not cover, separately or together, the full range of rights for children set out in the UNCRC.

Children need to be able to claim their rights before a specialist committee of child rights experts. Women, people with disabilities and migrant workers are all able to pursue their complaints before a specialist panel. It is a matter of serious discrimination that children are not afforded the same opportunity.

It is an essential last resort with real benefits to governments. Child rights violations should be dealt with wherever possible at the national level. But many countries do not have the systems in place to provide justice and redress. In those circumstances a communications procedure is an essential last resort.
Communications will only be heard by the Committee when all national remedies have been exhausted. In other words children and their representatives will have to seek justice at the national level before they can appeal to this international mechanism. So in practice recourse to an international mechanism will be rare in countries with effective legal systems.

Unlike a court of law, the Committee can’t enforce its decisions if ignored by states. But that doesn’t mean its decisions are not important or influential. Identifying violations through the Committee will put pressure on the relevant state to take appropriate action. It would also provide an opportunity for the Committee to produce judgements similar to case law which will positively influence policy and practice at the national level.

These decisions will help states better understand their obligations and assist with the incorporation and effective implementation of child rights at national level. The very fact that an international mechanism is available may also encourage states to strengthen national legal systems.

**Children have a right to be heard.** The UNCRC establishes the right of children to express their views and have them taken seriously. A communications procedure would be a step closer to realising that right by enabling children to bring complaints to the committee directly or through their representatives. As a mechanism designed specifically for children it will support their participation in a way that no other human rights body does.

**Making the new mechanism work**

While other human rights communications procedures can serve as a guide to best practice, an effective mechanism will need to reflect the special needs and evolving capacities of children. It will need to be accessible to children and able to protect them from the risks associated with any complaints system (for example, ensuring anonymity and protection from reprisals).

Children, particularly younger children, will need to rely on the support of others to make a complaint – but this does not lessen the need for a complaints channel. It is up to everyone to find innovative ways to support them to claim their rights. This is no different from most other human rights complaints, which are made by legal firms and organisations on behalf of their clients.

The mechanism will need to be designed in a way that ensures speed and efficiency. On average, other treaty bodies take two years to process complaints. That is a very long time in a child’s life. The committee will need to find a way to respond quickly to cases of child rights violations.

**A call for action**

Civil society needs to call for an optional protocol, governments need to positively engage in the drafting and speedy adoption of it and UN agencies need to support states to engage with it. Children have waited long enough.
We need child-focused NGOs to:

- engage with governments to prompt a supportive position on the proposal for a communications procedure, identifying any concerns and answering them\(^5\)
- support coalitions of civil society organisations and children to lobby for the mechanism at the national, regional and international level.

We need UNICEF to:

- use its considerable influence with states to publicly support the establishment of this new mechanism and encourage national governments to ensure it is established as quickly as possible.

We need all states to:

- once adopted, sign and ratify the optional protocol, promote rapid ratification by other states and work to ensure that adequate resources are provided to support the committee in its new role
- raise awareness about this new mechanism in their respective countries to ensure that potential victims know how to use it
- strengthen national legal systems by making sure all the rights in the convention are justiciable in national courts and ensuring access to justice for all through legal-aid schemes, child-friendly procedures and increased child-rights awareness among the judiciary.

We need OHCHR\(^6\) to:

- actively support the process at the UN level and assist states by providing them with relevant background information
- raise awareness about this new mechanism among OHCHR regional offices and collect and circulate any relevant information they receive from the ground.

References

1 'Laying the Foundations for Children’s Rights’, Philip Alston, Innocenti 2005
3 There are two important conditions that would need to be met before any complaint would be heard: the complainant must have exhausted the possibility of a domestic remedy through the national authorities and the state in question must have ratified the new optional protocol bringing the mechanism into force
4 Including for example the International Covenant on the Elimination of All Racial Discrimination; International Covenant on the Elimination of all forms of Discrimination Against Women and the Convention on Rights of Persons with Disabilities
5 Please see the Child Rights Information Network’s website for lobbying materials and updates www.crin.org
6 Office of the High Commissioner for Human Rights