Workshop on challenging persisting violations of children's rights:
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Why we need strong legal advocacy to challenge violations of children's rights – and what do we mean by legal advocacy?

It is over 25 years since the Convention on the Rights of the Child was adopted; it has been fully accepted by the states represented here. It is a formal legal instrument, part of international law. We tell children that it safeguards their rights.

But in reality in almost all states in all regions there are many continuing serious, systematic violations of their rights. The Committee on the Rights of the Child began examining states' reports 20 years ago and has by now examined three or four successive reports from most states. This is a vital process for children's rights; the first process to make states externally accountable for how they treat children and their rights. The reporting procedure – and the involvement in it of national NGOs and human rights institutions - has made visible, in some cases for the first time, grave, systematic violations of children's rights – economic and social as well as civil and political. But, as the Committee in Geneva examines states for the second, third and fourth time, its concluding observations increasingly repeat the same concerns and recommendations, with added emphasis.

Progress towards ending even the most grotesque violations is hesitant, patchy, far too slow for children.

We tell children that they are rights holders alongside us. But to be real, for rights to have meaning, there must be effective remedies for violations of them. I suspect we will all agree that for most children in many states, the idea that they have genuinely enforceable rights remains a fairy story, a fantasy.

We have to admit in general that children's rights advocacy, and particularly legal advocacy, is still in its infancy, eclipsed by, for example, advocacy on women's issues, environmental issues, LGBT rights. And that is particularly serious because children are the least empowered group in any society.

The community of active child rights advocates remains a very small one globally. The rights-based approach is only hesitantly and inconsistently being adopted to replace the welfare/charity approach to children as objects of concern: hence CRIN's workshop bags – rights not charity!

UNICEF, for example, has a strong, rights-based mission, but does not consistently challenge governments to fulfil their human rights obligations to children. Similarly with the big child development INGOs, which drop the language of rights if they find it unpopular with governments or with donors, and often add, in their marketing, to the portrayal of children as objects of concern, rather than people and rights-holders.

To CRIN, a vital and to us most important way forward for children's rights in the third decade of the CRC must be to emphasise loudly that we are talking about legally enforceable rights under international law, which must be legally enforceable under national law; that states are not free to pick and choose which rights to respect, which recommendations of the Committee on the Rights of the Child and other treaty bodies or in the Universal Periodic Review to ignore. And I repeat this means emphasising and showing that for children's rights to have meaning, there must be readily available, effective legal remedies to challenge violations.

That's why CRIN is increasingly focussing – and this workshop is focussed - on encouraging effective legal advocacy. And that is why CRIN, with the support of pro bono lawyers, has researched children's access to justice – whether and if so how children and their representatives can take legal action to challenge violations – in most states globally (you have the resulting reports on Tanzania, Uganda and Kenya.

The Convention has certainly led to a positive emphasis on children's rights to have their views heard and given due weight. The article 12 right is promoted as a right to participate – and that is of course positive too. But there is a serious danger now that some governments – and some children's organisations, see a focus on children's participation as a relatively simple alternative to seeking respect for the full range of children's rights. They also forget that "children" include all those from birth to 18. Many of the worst violations affect the development of babies and young children; in fact "affect" is in many cases an understatement - kill or devastatingly impair their development. Young children are not going to pursue remedies for violations of their rights for themselves. In fact it is quite obvious that most older children, in particular those suffering the worst violations, isolated, starving, detained, disabled etc, cannot be self-advocates.

All the violations we are discussing are adult violations of children's rights and it is adults' active responsibility to fight to end them. Of course it is good if we can find children who want to work on self-advocacy; there should be every encouragement for it. But we cannot wait for it; advocacy is not dependent on child participation. Also, at the moment adults are quite often wrongly hesitant about going out looking for and "using" child victims for the purpose of advocacy, raising child protection excuses. Of course, we need the informed

consent of children who have the capacity to give it and they should be fully informed and as involved in any advocacy on their behalf as they wish to be. And of course we must not expose children to unnecessary serious risks of significant harm. But we do have to weigh that against the benefits for individual children of being taken seriously as rights-holders, of seeing adults actively pursuing their rights.

This workshop is focussed on looking in depth at how systematic, serious violations can be challenged by legal advocacy.

What do we mean by legal advocacy? We want to encourage more serious consideration of domestic legal action, applications to courts, including constitutional challenges etc. CRIN is also encouraging use of available international and regional complaints/communications procedures. These almost invariably require the exhaustion of domestic legal remedies. They are also weaker forms of action, because in most cases they produce decisions and recommendations that are not legally enforceable – although they can add embarrassment and the decisions can be quoted in later legal action.

But we recognise that actually going to court or submitting a communication is going to remain quite rare and only to be embarked on after careful evaluation of its likely impact, and any risks of losing.

Just briefly to use the example of corporal punishment. In Europe, successive use of applications by children and their representatives to the European Court of Human Rights has forced my Government, the UK, to prohibit corporal punishment in every setting outside the home, and those judgments have been usefully quoted in many high level courts in other states.

> **For example: Zimbabwe** Supreme Court 1988, 1990 (challenged judicial corporal punishment): *Parliament changed Constitution to justify corporal punishment (new 2013 Constitution does not include these provisions, but does not explicitly prohibit).*
> **Namibia** Supreme Court 1991 (judicial and school): *school corporal punishment was prohibited in 2001 Education Act and it is not authorised in penal system for children.*
> **South Africa** Constitutional Court 1995 (judicial): *prohibited in judicial system in 1997; in schools in 1996*
> **Again in 2000: South Africa** Constitutional Court 2000 (rejection of challenge to schools ban)
> **Zambia** High Court 1999 (judicial; set aside sentence of caning): *in 2003 various laws amended to prohibit corporal punishment as sentence and as punishment in penal institutions for children; 2013 new draft Constitution prohibits all corporal punishment*
> **Supreme Courts in Italy (1996) Israel (2000), Nepal 2005 and Costa Rica (2005) have declared corporal punishment in all settings unlawful, quoting CRC, etc .**

High level court decisions can force very significant change.

Our wider aim is to encourage a systematically more legalistic, rights-based approach to advocacy. Generally, this involves systematically using legalistic, rights-based language: referring to failures to meet children's needs as violations of their rights; insisting that there must be legal remedies for violations. In addition, it may be valuable to draft or commission formal legal Opinions, setting out how particular treatment of children or gaps in services violates the Constitution and/or the CRC or other international instruments and how a legal challenge could be pursued.

These can be used, formally or informally, to make clear the threat of legal action. A formal legal opinion, used in advocacy with government, or with parliamentary committees or others, can be enough to force change and again it is emphasising the concept of legal rights.

Another element in this approach is trying to make more "legalistic" use of the recommendations of the Treaty Bodies to our states and also of their General Comments and General Recommendations – and also the recommendations that arise in the UPR process.

In the UK, while our Government has a very dismissive attitude to children's rights and has ignored most of the "difficult" issues, our courts, including our Supreme Court, have begun to quote the CRC and the Committee's concluding observations and General Comments. They would not have done that unless children's rights organisations and human rights lawyers had not begun to use them systematically in their advocacy.

So - this is all about trying to increase the cumulative pressure on states to fulfil their legal obligations, and legalistic or legal action can be a strong form of pressure.

And this stronger approach to children's rights advocacy is not just for lawyers. We do need more lawyers who are really committed to children's rights, and to using the law creatively for children's rights. But children equally need people who are working or living closely with them – teachers or carers or health workers for example - to have an understanding of their rights, people who can recognise violations and understand the point of documenting and using them in a legalistic way; people without legal training but not intimidated by the law and increasingly seeing it as a tool for securing rights.

And while in this workshop we want to focus on legal/legalistic action, we must ensure there is understanding that legal action is not an alternative to other more common forms of advocacy but needs to be seen as complementary to more common forms – research and preparing and presenting reports, using the media, briefing Treaty Bodies and UPR and using their recommendations, lobbying government and parliament, forming alliances, petitions, using new

information technology and social networking, direct activism and so on. Any legal action certainly needs to have a comprehensive advocacy plan to accompany it. We hope this will be reflected in the detailed Legal Action Plans which you will be preparing tomorrow.

And some final points: the violations we are discussing imply the need for legal action to force change in laws which actually authorise the violation, as for example with the legality of corporal punishment in Tanzania and Uganda. Or, where the violation is already unlawful, but the legislation is not effectively enforced, or there are no clear remedies for children and their representatives when it is violated, as I suspect is the case with corporal punishment in Kenya.

We are unlikely to be successful in lobbying government and parliament to change laws or procedures for enforcing them unless we have worked out exactly what we want: so this legalistic approach to violations includes ensuring that the deficiency in the law has been fully analysed and the necessary changes actually drafted. Every state needs one or two at least children's rights advocates who are not intimidated by the task of drafting new or amended legislation and repeals and equally important who understand fully the governmental/parliamentary path to enactment.