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HUMAN RIGHTS COUNCIL  
Thirteenth session  
Item ... of the provisional agenda

Draft report of the open-ended working group on an optional protocol to the  
Convention on the Rights of the Child to provide a communications procedure

(Geneva, 14-18 December 2009)

Chairperson-Rapporteur: Mr. Drahoslav Štefánek (Slovakia)

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## **Introduction**

1. At its eleventh session, the Human Rights Council decided, in its resolution 11/1 of 17 June 2009, to establish an open-ended working group 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. It also decided that the working group should hold its first session for five working days before the end of 2009.

2. In adopting this resolution, the Council took into consideration, inter alia, the almost universal ratification of the Convention on the Rights of the Child, the celebration of the twentieth anniversary of the Convention in 2009 and the fact that procedures allowing for individual communications have been established for other core international human rights treaties.

3. Pursuant to this resolution, it was decided that the working group would meet from 14 to 18 December 2009. However, in view of the fact that the United Nations Secretariat was not in a position to provide interpretation services into the six official languages on 14 and 15 December, the working group could only carry out its activities from 16 to 18 December 2009.

4. The session was opened by Ms. Jane Connors, Director of the Special Procedures Division and officer in charge of the Office of the High Commissioner for Human Rights on 16 December 2009. Ms. Connors welcomed the Human Rights Council's interest in the question of a communication procedure under the Convention on the Rights of the Child and its decision to set up the working group. She recalled that, since the adoption of the Convention in 1989, the treaty body system has evolved significantly, particularly in terms of drafting new instruments and adapting the working methods of the treaty bodies to the numerous challenges they face today. Important landmarks in that respect are, among others, the adoption of an optional protocol to CEDAW in 1999 and to ICESCR in 2008, both establishing communication procedures. The Convention on the Rights of Persons with Disabilities and its Optional Protocol, which also provide for a communication procedure, entered into force as well in 2008. Further, we are only four ratifications away from the entrance into force of the International Convention for the Protection of All Persons from Enforced Disappearance which also includes a procedure for individual communications. Accordingly, we now have a situation where all core international human rights treaties, except the Convention on the Rights of the Child, provide individuals with a mechanism by which they can file complaints before the respective treaty monitoring body. Ms. Connors encouraged delegates to carefully reflect upon the results of recent negotiations of similar communication procedure instruments and to keep in mind the need to ensure consistency and coherence within the existing body of international human rights law.

### **A. Election of the Chairperson-Rapporteur**

5. At its first meeting, on 16 December 2009, the working group elected Mr. Drahoslav Stefanek (Slovakia) as its Chairperson-Rapporteur, by acclamation. Mr. Stefanek was nominated by the Core Group of states (Chile, Egypt, Finland, France, Kenya, the Maldives, Slovakia, Slovenia, Thailand and Uruguay) supporting the initiative for a new optional protocol on a communications procedure under the Convention on the Rights of the Child. It was mentioned in the nomination statement made on behalf of the Core Group by Uruguay that the proposal was based on the understanding of the Core Group contained in the note verbale sent by Chile on 16 November 2009, addressed to the President of the Human Rights Council and circulated to all states through their regional coordinators and presented to more than 60 countries at the information meeting held on 18 November.

## **B. Attendance**

6. Representatives of the following States members of the Human Rights Council attended the working group's meetings: Argentina, Bahrain, Bangladesh, Belgium, Bosnia and Herzegovina, Brazil, Burkina Faso, Chile, China, Egypt, France, Hungary, India, Indonesia, Italy, Japan, Mexico, Netherlands, Nigeria, Norway, Pakistan, Philippines, Qatar, Republic of Korea, Russian Federation, Senegal, Slovakia, Slovenia, South Africa, United Kingdom and Uruguay.

7. The following States non-members of the Human Rights Council also participated in the working group's meetings: Algeria, Azerbaijan, Australia, Austria, Belarus, Bulgaria, Canada, Colombia, Costa Rica, Republic of Congo, Cyprus, Czech Republic, Denmark, Djibouti, Finland, Germany, Ghana, Greece, Guatemala, Haiti, Iceland, Israel, Iran, Libya, Kazakhstan, Kuwait, Maldives, Moldova, Morocco, New Zealand, Oman, Panama, Paraguay, Poland, Portugal, Serbia, Singapore, Spain, Sri Lanka, Sweden, Switzerland, Syrian Arab Republic and Sudan.

8. The Holy See and Palestine were also represented by observers.

9. The following intergovernmental organizations were represented at the meetings of the working group: African Union and the European Union, as well as the Organisation Internationale de la Francophonie.

10. UNICEF participated in the session as well.

11. The following non-governmental organizations (NGOs) in consultative status with the Economic and Social Council were represented by observers: International Save the Children Alliance, Save the Children – Japan, International Commission of Jurists, International Service for Human Rights, Kindernothilfe, Norwegian Centre for Human Rights, SOS Children's Villages International, Terre des Hommes International Federation, World Organisation against Torture, World Vision International.

12. Pursuant to paragraph 3 of resolution 11/1, the Chairperson of the Committee on the Rights of the Child, Ms. Yanghee Lee, and Vice-Chairperson Mr. Jean Zermatten also attended the session of the working group as resource persons.

### **C. Documentation**

13. The working group had before it the following documents:

A/HRC/WG.7/1/1	Provisional Agenda
A/HRC/WG.7/1/CRP.1	Submission made by expert Ms. Nevena Vuckovic Sahovic
A/HRC/WG.7/1/CRP.2	Submission made by expert Mr. Peter Newell
A/HRC/WG.7/1/CRP.3	Submission made by expert Ms. Najat Maalla M'jid
A/HRC/WG.7/1/CRP.4	Submission made by expert Mr. Paulo Sérgio Pinheiro
A/HRC/WG.7/1/CRP.5	Joint submission presented by International Save the Children Alliance, Kinder Nothilfe, Organisation Mondiale contre la Torture (OMCT), SOS Children's Villages International, World Vision International, the Child Rights Information Network (CRIN), the Global Initiative to End Corporal Punishment and the NGO Group for the CRC.
A/HRC/WG.7/1/CRP.6	Submission made by expert Ms. Yanghee Lee
A/HRC/WG.7/1/CRP.7	Submission made by expert Ms. Marta Santos Pais
A/HRC/WG.7/1/CRP.8	Submission made by expert Mr. Jean Zermatten
A/HRC/WG.7/1/CRP.9	Submission made by the European Network of Ombudspersons for Children
CRC/C/GC/10	General Comment No.10 (2007). Children's rights in juvenile justice
CRC/C/GC/12	General Comment No. 12 (2009). The right of the child to be heard

### **D. Organization of the debate**

14. In his opening statement, the Chairperson-Rapporteur recalled that 2009 marked the twentieth anniversary of the Convention and many events had taken place in that connection. Resolution 11/1 was the result of cross-regional efforts within the Human Rights Council. In that respect, a core group of States representing all regions had been formed in order to facilitate the preparation of the working group's session. He underlined the basic principles for conducting the session of the working group, i.e. transparency, constructiveness, open and frank discussions on all relevant issues with a view to achieve a consensual outcome.

15. At its first meeting, on 16 December 2009, the working group adopted its agenda, as it appears in document A/HRC/WG.7/1/1, and programme of work without comments.

16. Upon the proposal of the Chairperson, the working group agreed to hold a general debate, to be followed by expert presentations and discussions around the following topics: a) Reasons and timing to elaborate a communication procedure under the Convention; b) Existing international mechanisms, their efficiency and accessibility by children; c) Efficiency in protection of the rights of the child under mechanisms existing at national and regional level; d) Unique nature of the rights of the child and specific rights enshrined in the Convention, including the right of the child to be heard; and e) Implications of a communication procedure under the Convention and feasibility of the procedure.

## **II. GENERAL DEBATE**

17. At its first meeting, on 16 December 2009, States delegations and representatives of intergovernmental and non-governmental organizations made opening statements during the general debate expressing their preliminary views on options regarding the elaboration of an optional protocol to the Convention on the Rights of the Child to provide a communications procedure and on key issues to be addressed by the working group. Some 37 delegations took the floor, some of which spoke on behalf of regional and sub-regional groups. Two NGOs, one of which represented a coalition of 11 organizations, and UNICEF also made statements. In general, participants welcomed the convening of the working group as an important step to strengthen the implementation of children's rights.

18. Many speakers referred to the almost universal ratification of the Convention and the substantial impact it had made in asserting children's status as right-holders. Several delegations provided examples of positive developments which had taken place at the national level regarding the protection and promotion of children's rights. However, a number of speakers highlighted that those efforts were still insufficient in all respects and there were still children in all parts of the world who continued to be abused and exploited. In many countries, children did not have access to effective remedies for the violations of their rights and domestic remedies were often inadequate or non-existent.

19. Most delegations considered that a communications procedure would constitute an additional tool to make further progress and referred to the fact that the Convention was the only major human rights treaty which did not have such procedure. It was highlighted that it would be part of a continuum of accountability mechanisms, starting at community level and comprising national justice systems, ombudspersons offices and regional mechanisms. The procedure should be available and accessible for all children, including the excluded and marginalized. In that respect, reference was made to article 4 of the Convention, which requires States to undertake all appropriate legislative, administrative and other measures for the implementation of rights. Furthermore, in General Comment 5 the Committee expressed that for rights to have meaning, effective remedies must be available to redress violations.

20. Numerous delegations expressed their openness to explore the issue and look at the added value that such procedure would represent. A few delegations stated that an optional protocol should not be elaborated simply in order to replicate the procedures established under other treaties but after a careful examination of its added value. Existing communications procedures should be carefully considered but, given the specific characteristics of the Convention, they could not be simply reproduced. New and differentiated approaches should therefore be examined through a comprehensive debate and discussion. In this regard, a number of delegations emphasized that they were ready to consider different options and engage in a constructive debate.

21. A few delegations stressed that, in examining the question of a communications procedure it would be important to bear in mind issues related to cultural and religious elements and the role of the family; the role of traditions; the setting in which children live; the national judicial systems; or the situation of developing countries. Furthermore, effective protection of children rights should start at domestic level.

22. The majority of speakers welcomed the presence of experts and their written contributions. Many expressed their interest in hearing the views of experts and other participants regarding key issues involved, such as: the question of legal capacity of children; representation of children before the proposed mechanism and request of his/her consent; how to avoid politically motivated complaints; how to ensure that communications received under such procedure are indeed in the best interest of the child concerned; the exercise of the child's right to be heard in the procedure; exhaustion of domestic remedies; the need to strengthen national mechanisms vis-à-vis an international one; overlapping with existing communications procedures under other human rights treaties; duration of proceedings, given the special status of children; scope of the optional protocol; implications for the workload of the Committee; possibility of submitting collective complaints; the inclusion of an inquiry procedure; resource constraints affecting the treaty body system; the need to take into consideration cultural particularities.

23. Several delegations and participants expressed the wish that the working group would be able to recommend that the Council provide it with a mandate to begin the actual elaboration of an optional protocol and that the mandate of the working group could be reinforced. A few delegations mentioned that they had an open position and that they would listen to the discussion with a view to forming a position. In general, all participants agreed to work in an open and constructive manner.

24. At the end of the general debate the Chairperson noted that almost 40 delegations and participants had taken the floor. This showed the great interest that the issue had raised. He felt that a communications procedure in the framework of the Convention was long overdue and there was a need to explore the reasons for it.

### **III. REASONS AND TIMING TO ELABORATE A COMMUNICATIONS PROCEDURE UNDER THE CONVENTION ON THE RIGHTS OF THE CHILD**

24. This topic was introduced by Ms. Yanghee Lee, Chairperson of the Committee. She recalled that the idea of a communications procedure was debated in the late eighties, during the negotiation process of the Convention, and brought back at the commemorative celebration of the 10<sup>th</sup> anniversary of the Convention in 1999. However, the proposal did not make progress because at that time the international community was mainly focussed on the definition of children rights, rather than on procedural matters.

25. For the past year and a half the Committee had considered the pros and cons of a communications procedure and come to the conclusion that such procedure was not only feasible and possible but also necessary, as it would contribute significantly to the overall protection of children's rights. It would take the dependent nature of children into consideration, fully understanding the evolving capacities of the child. Furthermore, the right to be heard at the international level would further enhance the promotion and protection of the rights enshrined in the Convention.

26. As for the timing, Ms. Lee recalled that children and their rights had been the subject of attention by the international community since the League of Nations. Furthermore, after the adoption of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the question of justiciability of these rights was no longer an issue. She therefore believed that the time was ripe and that a communications procedure was long overdue.

27. Ms. Lee's statement was followed by a debate in which many delegations indicated the reasons which, in their view, justified the establishment of a communication procedure, such as:

- The fact that many rights guaranteed by the Convention are not included in other human rights treaties, whereas others are dealt with under the specific principles enshrined in the Convention;
- Claims regarding violations of the Convention should be dealt with by the body with the appropriate expertise, i.e. the Committee on the Rights of the Child;
- The procedure would be able to provide a remedy when national systems fail, as many countries lack appropriate redress mechanisms;
- The Committee would be in a unique position to provide expert clarifications on complex issues regarding the implementation of the Convention;
- The jurisprudence that would develop would greatly contribute to the interpretation of the Convention, of which national mechanisms and bodies could benefit;
- It would strengthen the status of children as rights holders;
- There will be no interference with the national jurisdictions, as the exhaustion of remedies will be required;
- It would constitute an additional tool to reinforce the monitoring of the Convention;
- It would contribute to reinforce the State obligations under the Convention;
- It would contribute to the strengthening of national standards and policies;

28. As for the timing, several delegations which took the floor agreed with the arguments presented by Ms. Lee. Some underlined the fact that there was currently a strong support for an optional protocol and that this momentum should not be missed. Others found it difficult to say when was the right time.

29. At the end of this session, the Chairperson-Rapporteur, when summing up the discussion, mentioned that he had heard a good number of reasons for having an Optional Protocol, including: the fact that the child is a holder of rights; the Convention on the Rights of the Child is the only treaty without a communications procedure; the Protocol would give content to the right to be heard; would provide an effective remedy; would be a child sensitive mechanism for the interpretation of children's rights; and would establish jurisprudence and guidance at regional and national level.

30. On the timing, point of views varied on that time was ripe, overdue or that it was difficult to say when timing was right. In any case, it was the responsibility of states parties to comply with the obligations and commitments accepted when they ratified the Convention.

#### **IV. EXISTING INTERNATIONAL MECHANISMS, THEIR EFFICIENCY AND ACCESSIBILITY BY CHILDREN: PERSPECTIVE OF A SPECIAL PROCEDURE**

31. This topic was introduced by Mrs. Najat Maalla M'jid, Special Rapporteur of the Human Rights Council on sale of children, child prostitution, and child pornography.

32. The Special Rapporteur explained the functioning of her mandate in dealing with individual complaints, urgent appeals and country visits. She pointed out its limits, in particular regarding individual complaints where she was unable to act as the issues raised, although relating to children, were not covered by her mandate.

33. The Special Rapporteur welcomed the idea of an Optional Protocol on a communications procedure, as it would complement both her and the CRC's mandates. She stressed that cooperation between Special Rapporteurs and treaty bodies is essential. As far as the Committee of the Rights of the Child and her mandate are concerned, cooperation exists mainly in the form of exchange of information. Enacting a new Optional Protocol would also result in better protection of the rights of children. Ultimately, the adoption of the establishment of the new procedure would strengthen the indivisibility of the system of international human rights protection.

34. From her perspective, the Special Rapporteur provided the following reasons as to why the new procedure was needed: (a) the main flow of information she receives comes from NGOs, and thus there is a problem of full visibility and accessibility for children; (b) the complaints can not always be dealt with under her mandate; (c) her mandate has no systematised follow-up procedure. On the other hand, the efficiency of the new procedure, would depend on a number of factors, such as its accessibility by children or those working with children. Confidentiality and respect of the children private's life must also be taken into account.

35. A number of States parties posed questions about possible examination of identical complaints by different mechanisms. Others expressed the view that, if an Optional Protocol is adopted, it would attract most of the children related complaints.

36. It was also stressed that the existing Special Procedures are already open to children. However, given the specificity of their respective mandates, the Special Procedures may only ensure a fragmented protection of children rights. Thus, the establishment of the Optional Protocol would provide an added value to the existing system.

37. Representatives of non-governmental organisations stressed the current lack of a body with full competence to deal with children rights. Even if some treaty bodies may receive complaints from children, their respective mandates remain limited.

38. In his summary, the Chairperson noted first that the efficiency of the procedure would depend to a large extent on its accessibility by children, i.e. children, their representatives, those working on children issues and other stakeholders should be aware of the existence of the procedure. Therefore, information should be disseminated in schools and other institutions in that regard. The Chairperson further highlighted that the issues of complementarity and overlapping were often referred to. The real issue, however, was not the number of available procedures for children but rather to avoid overlapping among them. Existing treaty bodies' complaints procedures offered only fragmented protection regarding children's rights and cannot ensure protection similar to that under the Convention on the Rights of the Child. Furthermore, the current Special Rapporteurs' system did not have a mandate to deal with many of the complaints they receive regarding children's issues.

#### **V. EFFICIENCY IN PROTECTION OF THE RIGHTS OF THE CHILD UNDER MECHANISMS EXISTING AT NATIONAL AND REGIONAL LEVEL. BEST PRACTICES AND DEFICIENCIES**

39. This topic was introduced by Mr. Peter Newell, who referred to the existing gap between the high number of CRC ratifications and the actual situation regarding the protection of children rights. He focused on the unavailability of child friendly information, advice and children advocacy, poor access to independent complaints mechanisms or courts, remedies or recovery measures for children whose rights have been violated.

40. According to the expert, many States still fail to provide effective remedies, as they consider children as objects rather than subjects of rights. Attention was drawn in this respect to the particular vulnerability of children with disabilities. On the access to court, the expert emphasised that children can only act through their parents or representatives, who may however be responsible for the breach of their children rights.

41. The expert further stressed that as it was highlighted in the recent Secretary General's Study on Violence against Children, there is a lack of adequate remedies at national level. Although in its General Comment No. 2, the Committee on the Rights of the Child requests States parties to empower their respective National Human Rights Institutions to consider children individual complaints, this goal has not been generally achieved.

42. Ideally, according to the expert, remedies should be available at national level. Unfortunately, this is rarely the case in practice. The process of elaboration, adoption and coming into force of an Optional Protocol can intensify access to and better functioning of national mechanisms.

43. The expert pointed out that States have not denied access to international remedies to adults when national mechanisms fail to provide an adequate response.

Accordingly, a different approach should not exist in relation to children. Furthermore, it should be kept in mind that children have a special status.

44. As to the requirement of exhaustion of domestic remedies, the expert stressed that this requirement should refer only to remedies which are accessible to the child or his/her representative, and which are not unduly delayed. Furthermore, special measures to protect the child from threats in connection with the submission of a communication must be envisaged.

45. According to the expert, the Committee should also be able to carry out inquiries for mass violations under the Convention. A collective complaint mechanism, without identification of the specific victims, may also be envisaged. All procedures envisaged should be child-sensitive and child-friendly. In conclusion, the expert stressed the need to ensure consistency and coherence among the envisaged procedure(s) and those already existing. A new Optional Protocol could only be an addition tool to ensure better enjoyment by children of their rights.

46. Regarding the proposal to have a collective complaint mechanism, several States Parties indicated that this issue needs to be further explored. Differentiation was made, however, between collective complaints made by identifiable individuals, and complaints where no individualisation was possible.

47. A number of delegations pointed out that the Inter-American Commission/Court of Human Rights and the European Court of Human Rights have already referred in their respective jurisprudence to provisions of the Convention on the Rights of the Child, and this had helped the application of the Convention's provisions by domestic courts. Some delegations insisted on the complementary nature of the regional and international mechanisms of human rights protection. An Optional Protocol could only further develop this complementarity.

48. One delegation suggested that the new Optional Protocol should include guidelines on the main features of National Human Rights Institutions dealing with children issues.

49. Several delegations provided information on their respective children protection mechanisms and practices, including on the issue of representation, and provided examples of "good practices". Many insisted that children protection at national level should be strengthened. One delegation suggested that the needs of vulnerable groups of children should also be considered. Another delegation proposed to have a database containing information on good practices.

50. One delegation emphasised the need to clarify issues regarding delays and length of proceedings – i.e., for example, how to address situation when a case was submitted by a minor, who, at the time of final consideration of his/her case by the Committee would have reached the age of majority. Several delegations addressed the issue of children accessibility to the communications procedure, and one

wondered about options for a disabled child to lodge a complaint at international level.

51. Representatives of NGOs expressed the view that the new mechanism would help national courts in dealing with children issues. Several countries do not have child-specific mechanism of complaints, and children, in general, have limited access. Existing mechanisms at regional level may only ensure limited protection to children, as they cannot deal with all rights protected by the Convention. In any case, there is no conflict between the existing mechanisms and the one envisaged. When they fail to obtain redress at national or regional level, children must have the opportunity to seek remedy at international level.

52. In reaction to the different statements, Mr. Newell acknowledged that both the Inter-American system and the European Court of Human Rights had made a positive use of the CRC in interpreting the American and European Conventions on Human Rights. In addition, both systems have quoted the Committee's general comments. However, a number of judgments of the European Court of Human Rights have been criticized for not being fully consistent with the Convention on the Rights of the Child. In any event, according to the expert, regional mechanisms could only welcome the establishment of a new communications procedure.

53. The expert further pointed out that a standard limitation so that the same matter can only be considered by one mechanism at a time would solve the issue of duplication of work. The choice of forum would depend mainly on the rights and allegations invoked by the victims. He did not believe that the future Optional Protocol should include provisions regarding national Human Rights Institutions, as such provisions already exist in the Paris Principles for national human rights institutions and in the Committee's General Comment No. 2.

54. On the length of proceedings, Mr. Newell explained that treaty bodies have different rules regarding deadlines for the parties to provide observations. The new procedure should find a balance between rights and interests of complainants and States parties in this regard.

55. The expert further indicated that, in his opinion, empowering the Committee with the possibility to issue requests for interim measures of protection would be of crucial importance for its work on individual communications.

56. On the issue of representation, and with reference to the "best interest of the child" principle, the expert suggested that it could be a differentiated treatment depending on the children age and their capacity to give consent in order to have their case examined by the Committee.

57. The Chairperson-Rapporteur in his summary of this debate emphasized:

- The need for the procedure to be child friendly and that the communications are dealt with expeditiously;

- The need to ensure that children have access to courts;
- The importance of taking into account best practices at national level;
- The fact that regional and international mechanisms do not overlap but rather complement each other;
- International protection mechanisms can contribute to strengthen mechanisms at national level;
- The positive expectations at national and regional level should not be ignored;
- Exhaustion of domestic remedies is necessary but only when they are effective and available and the proceedings are not unduly prolonged;
- National institutions should be empowered to bring children related cases to court;
- The need to further discuss the issue of collective complaints in connection with the future communications procedure.

## **VI. THE UNIQUE NATURE OF THE RIGHTS OF THE CHILD/SPECIFIC RIGHTS FROM THE CONVENTION ON THE RIGHTS OF THE CHILD, INCLUDING THE RIGHT OF THE CHILD TO BE HEARD**

58. This topic was introduced by Ms. Marta Santos Pais, Special Representative of the Secretary-General on Violence Against Children and Mr. Jean Zermatten, Vice-Chairman of the Committee on the Rights of the Child. Ms. Santos Pais stated that the wealth of experience developed over 20 years, including a change towards the perception of children as rights-holders, relevant institutional and legal reform and a comprehensive evaluation of the work of regional and national mechanisms, could provide useful guidance to the discussion.

59. Ms Santos Pais explained how a communication procedure would be relevant for her mandate. As the Study on Violence Against Children (hereinafter “The Study”) showed, violence against children persisted, often as a hidden phenomenon largely accepted by society. As a result, children fear reporting, particularly in the absence of effective remedies at the national level. It is therefore essential that appropriate mechanisms be established at the national level, to be further complemented by a communications procedure under the Convention, as recommended in the Study. While building on existing international norms and standards, this procedure would: Contribute to the preservation of the holistic nature of Convention; take into account the general principles of the Convention in the consideration of allegations; propose measures to prevent that the child is not subjected to reprisals for having submitted complaints; apply a gender-sensitive approach; guarantee the right of the child to be heard in proceedings affecting him or her; complement the reporting function of the Committee, which would thus be

in a position to call on relevant bodies to support countries in any follow up to its recommendations, including addressing root causes of violence against children.

60. More specific reasons in favour of an Optional Protocol establishing a communication procedure include providing detailed guidance to States on specific legislative measures, as well as giving the right of the child to information a more specific content. National mechanisms should be set up to assist individuals in the use of the procedure, for instance through ombudsman offices. It is essential to ensure that all relevant actors become knowledgeable and skilful in the use of the procedure.

61. For a communications procedure to be effective and genuinely accessible to children, it needs to be understood and made easily available. For this reason, the new Protocol could include valuable guidance to States on the need to: Provide children with relevant information on existing complaint mechanisms and procedures; raise awareness of what these instruments mean and how they can be used; employ child sensitive language, materials and tools in the performance of these tasks.

62. The Protocol should also recognize important legal safeguards, including the child's entitlement to initiate a communications procedure and to be supported effectively throughout the process; the right of the child to benefit from legal counsel and representation; the right to free legal aid; the right to expeditious decisions. Moreover, the admissibility of a communication should be considered in the light of the best interest of the child, waiving the requirement for the exhaustion of all available domestic remedies when the application of such remedies would be unreasonable prolonged or unlikely to bring effective relief. Further discussions in the elaboration of the optional protocol would provide an opportunity to address these and further issues in detail, while taking into account the need to build on a firm and sound normative framework, the progressive spirit of the Convention and the experience developed at the national and regional level.

63. In his intervention, Mr. Zermatten focused on the specificity of the articles contained in the Convention and in particular the right to remedy and reparation and the right of the child to be heard. In this respect, he referred to **GA res. L.20/Rev1**, adopted by consensus. He noted that the Convention was a holistic instrument, and that almost all the rights enshrined therein were unique and specific to the child. Thus, the special status of the child required a specific communications mechanism since the other conventions did not respond adequately to the specific needs of the child, giving his evolving capacities. In addition, the establishment of a communications procedure would complete the Committee's monitoring mandate and the Committee's jurisprudence would provide guidance at the national level including by mainstreaming the general principles enshrined in the Convention. A specific communications procedure resulted of the recognition of the child as a rights-holder. Mr. Zermatten concluded by saying that almost half of the world population is under 18. Thus, it would be paradoxical if half of the world population did not have access to a communication procedure.

64. Ms. Santos Pais' and Mr Zermatten's statements were followed by a debate in which many delegations explored the links between the unique nature of the rights of the child and a communications procedure, including:

- While the child has been recognized as a rights-holder with specific, unique rights and the Committee is the Treaty Body with the most relevant expertise to deal with them, the Convention is the only core human rights treaty that lacks a communications procedure;
- The establishment of a communications procedure under the Convention would contribute to strengthening child protection by providing a specific forum in which all rights and principles enshrined in the Convention would be considered by a Committee with a unique, multisectoral expertise based on the innovative and creative manner in which the Convention was designed.
- Questions regarding the ability of the child to submit a complaint and the most appropriate body to assess the maturity of a child should be considered in light of lessons learnt from the Convention on the Rights of Persons with Disability as well as experiences developed at the national level;
- While the Convention does not specify a minimum age for the child's views to be heard, it does state that consideration of the child's views has to be assessed against criteria that are both objective (age) and subjective (level of maturity).
- In view of the vulnerable status of children, there is an objective risk that children be manipulated when submitting a complaint. An Optional Protocol should devote particular attention to this aspect and put in place specific guarantees to avoid or limit this risk to the maximum extent possible.
- The overarching principle of the evolving capacities of the child contained in art. 5 and further detailed in General Comment No. 7 should guide the interpretation of the role of the family or other person(s) legally responsible for the child. Accordingly, there is no contradiction between the child's right to be protected and the child as a rights-bearer;
- Lessons learnt and best practices relating to children's participation in drafting legislation on their fundamental rights should guide consideration of participation of children in the work of the open-ended Working Group.

28. The Chairperson-Rapporteur in his summary of this debate highlighted that:

- the recommendations on redress mechanisms made in the context of the UN Study on violence against children should be taken into consideration when deciding on the elaboration of an Optional Protocol;
- there is an implicit recognition in the Convention of remedy procedures for communications

- there is a need for a child-friendly procedure
- most of the rights in the Convention are unique and child's rights have to be considered under the four principles of non-discrimination – best interest – right to life, survival and development, and right to be heard.

## **VII. IMPLICATIONS OF A COMMUNICATIONS PROCEDURE UNDER THE CONVENTION ON THE RIGHTS OF THE CHILD/FEASIBILITY OF THE PROCEDURE**

29. The Chairperson of the Committee on the Rights of the Child, Ms. Lee, made a presentation on the “Feasibility of a Communications Procedure under the Convention on the Rights of the Child”. A paper on the same topic was also submitted by Ms. Nevena Vuckovic Sahovic, former member of the Committee on the Rights of the Child (A/HRC/WG.7/1/CRP.1).

30. Ms. Lee first referred to the workload of the Committee on the Rights of the Child. On two occasions, when confronted with extensive backlog of reports, in 2005 and now in 2010, the Committee had to work in two parallel chambers. To avoid the backlog problem in the future, the Committee is asking states parties to combine periodic reports. Currently, it is also reviewing its methods of work with a view to providing a more durable long-term solution.

31. On resources, with relation to the Committee, Ms. Lee mentioned that the details will be decided in the Rules of Procedure to be adopted once the mechanism is set up. The Committee will look at how other communications mechanisms operate. At Secretariat level, it is estimated that, to begin with, one additional Professional and one General Service staff would be required after the entry into force.

32. Ms. Lee also stated that, regarding the expertise, the Committee is currently comprised of seven experts with legal background. On how to deal with communications, the Committee will look at experiences in other Treaty Bodies. Possible options may include setting up a small working group of experts or designate case Rapporteurs. However, in order to address the violations to the rights of the child in a most appropriate holistic-comprehensive manner, a multi-disciplinary composition of the group of experts would be indispensable.

33. Finally, with respect to international assistance for training programmes, as raised by some delegations, it was mentioned that the Optional Protocol on the Convention on Economic, Social and Cultural Rights has such a provision. Ms. Lee confirmed that it would be important to have the same in this Optional Protocol as well.

34. Ms. Lee's statement was followed by a discussion in which some delegations raised a number of questions pertaining to procedural and resource issues about the possible future work of the Committee on individual complaints. Among other issues, the following points were raised:

- Question of delay in the submission of a communication to the Committee, and the consequence that the complainant will no longer be a “minor” within the meaning of the Convention;
- Procedural attribution of the examination of complaints to the Committee to either one of its two Chambers, or to a Working Group created for that purpose;
- Human and financial resources: Should resources be allocated progressively to the Committee’s communications activities, knowing from the experience of other Treaty-based Committees that the number of complaints grows gradually?
- The need to make fast progress in the current process and not to spend resources unnecessarily;
- How to ensure that there is adequate legal expertise within the Committee.

35. This topic was then pursued by a presentation by an OHCHR Secretariat representative. His intervention was made to address a number of questions raised by delegations seeking clarification and statistics on procedural aspects of the work of the treaty bodies currently examining individual complaints.

36. Concerning the Human Rights Committee, the Secretariat representative reported that approximately 430 cases are currently pending, and that around 100 cases are registered per year, and an equal number of final decisions are adopted per year. The Committee against Torture has currently 85 cases pending before it, and a total of approximately 400 cases have been registered under this Committee’s procedure since the early 1990s. The Committee on the Elimination of Racial Discrimination and the Committee on the Elimination of All Forms of Discrimination against Women have a very few number of cases registered. The newly created Committee on the Rights of Persons with Disabilities does not have any registered individual communication yet.

37. The OHCHR representative indicated that only 2 to 2.5 percent of the complaints considered by the existing treaty-based mechanisms relate to situations involving children. Regarding the concern expressed by a number of delegations fearful of possible “forum shopping” by complainants, the representative referred to existing practice of treaty bodies examining individual communications, such as the Human Rights Committee, noting that most States parties to the European Convention of Human Rights made a reservation to article 5 (2) (a) of the Optional Protocol to the ICCPR, which limits the Human Rights Committee’s competence to examine complaints which have already been examined by the European Court of Human Rights.

38. With regard to the question of standing of children and the question of collective complaints, which were also raised by delegations in their discussions, these should be dealt with at the drafting stage. He added that plausible and pragmatic rules should be elaborated concerning representation of children.

39. On exhaustion of domestic remedies, which had been raised by delegations on a number of occasions, he noted that, as far as existing treaty-bodies practice examining individual communications is concerned, the prolonged nature of domestic remedies must be examined on a case-by-case basis. Addressing the concern expressed by a number of delegations that the Committee may become another instance in proceedings initiated at the domestic level, the OHCHR representative noted that treaty bodies do not act as a “fourth instance” and does not normally examine facts and evidence dealt with by national courts.

40. Concerning the additional workload of the Committee if it were to examine individual complaints, and relying on the practice of existing treaty-bodies, the OHCHR representative observed that, because of the requirement for exhaustion of domestic remedies, the Committees would not receive many communications immediately after the entry into force of the procedure.

41. As for Secretariat resources, it was noted that a “*Programme budgetary Information*” (“PBI”) statement should be tabled in due course in order to ensure additional resources which would allow the Committee to carry out its activities under the Optional Protocol.

42. In her replies to the questions raised by delegations, Ms. Lee reiterated that the Committee would build on best practices of other Treaty Bodies. On the legal expertise of Committee members, she mentioned that the composition of the Committee is the responsibility of States parties. Both Ms. Lee and Mr. Zermatten reiterated the importance of a multi-disciplinary approach in dealing with communications, as also done by some Courts at national level. The OHCHR representative observed that members with no legal expertise also make significant contributions to the Committees which examine individual communications.

43. Following the presentation by the OHCHR representative, delegations asked more questions concerning statistics and reasons for inadmissibility of communications before and after being registered; reasons for the low percentage of communications involving children; time for dealing with communications since their registration and estimation of the percentage of additional communications with which the OHCHR Secretariat could deal with in its current status.

44. The OHCHR representative mentioned that 85 to 90 percent of communications received by the OHCHR Secretariat are rejected prior to registration. After the case is registered, an additional 40 to 50 percent of communications are declared inadmissible. The main reasons for inadmissibility of a communication include non exhaustion of domestic remedies, incompatibility with the provisions of the relevant Treaty, insufficient substantiation or lack of standing as a victim of the alleged violation. In the case of the Human Rights Committee, the average time for a communication to be processed, since its registration, is three and half to four years.

45. Mr. Newell concluded this discussion by providing a few examples of child representation in the European Court of Human Rights. He suggested that the Rules of Procedure to be elaborated by the Committee could be inspired by the European Court practice.

46. In his final summing –up of this debate on feasibility, the Chairperson-Rapporteur stated that now was the peak in reporting which necessitated the Committee to meet in two chambers. However, the number of reports was getting progressively smaller. On resources, the Committee had seven members with legal background. The Chairperson highlighted that it was the responsibility of State parties to decide the composition of the Committee. The issue of international assistance was included in the Optional Protocol of the Convention on Economic, Social and Cultural Rights and an appeal for more resources would be done in the future when the Optional Protocol is in force.

## **IX. ADOPTION OF THE REPORT**

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