

# **COMPILATION OF JOINT ORAL STATEMENTS**

## **FIRST SESSION OF THE OPEN-ENDED WORKING GROUP ON THE ON AN OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD TO PROVIDE A COMMUNICATIONS PROCEDURE**

**16-18 December 2009**

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# **Open-ended Working Group to explore the possibility of elaborating an optional protocol to the Convention on the Rights of the Child**

**16-18 December 2009**

## **Opening statement, Wednesday 16 December**

Delivered by Roberta Cecchetti, International Save the Children Alliance, on behalf of:

International Save the Children Alliance\*, Kindernothilfe\*, World Organisation Against Torture (OMCT)\*, Plan International\*, SOS Children's Villages International\*, Terre des Hommes International Federation\*, the European Network of Ombudspersons for Children (ENOC)\*, World Vision International \*, and the Child Rights Information Network (CRIN), the Global Initiative to End Corporal Punishment, the NGO Group for the CRC

(\*having ECOSOC Consultative Status)

Thank you Mr Chairperson.

Mr Chairperson,

This is a joint statement on behalf of the following NGOs: International Save the Children Alliance, Kindernothilfe, Organisation Mondiale Contre la Torture (OMCT), Plan International, SOS Children's Villages International, Terre des Hommes, World Vision International, the Child Rights Information Network (CRIN), the European Network of Ombudspersons for Children, the Global Initiative to End Corporal Punishment, and the NGO Group for the CRC

Mr Chairperson,

We welcome the opportunity for discussion that the present Open-Ended Working Group is offering on the possibility of establishing a communications procedure under the Convention on the Rights of the Child. We see this as the first formal step that must pave the way for the elaboration of the third Optional Protocol to the CRC.

Establishing a communications procedure under the Convention on the Rights of the Child (CRC) is not a new idea. It was first discussed informally during the drafting process of the Convention, but it was finally dropped to facilitate the finalisation and adoption of the draft Convention. The Committee on the Rights of the Child has endorsed the idea on a number of occasions, including at the 10<sup>th</sup> anniversary of the Convention and more recently in the build-up to the 20<sup>th</sup> anniversary.

Twenty years after its adoption, the Convention enjoys near universal ratification and States Parties have demonstrated a high level of compliance with their reporting obligations. Notwithstanding these achievements, significant shortcomings in the implementation of the rights in the CRC persist in all countries. A strong and effective communications procedure would make a significant contribution to overcoming this problem and strengthening the global implementation of the CRC.

There is today a strong and growing international campaign for a third Optional Protocol to the CRC to provide a communications procedure, which is supported by the Office of the High Commissioner for Human Rights (OHCHR), the Committee on the Rights of the Child, international and national NGOs, human rights institutions, ombudspersons for children and other bodies from all regions. As of the 8 December 2009, 601 organisations have signed on to the

campaign.

Mr Chairperson,

Twenty years after the adoption of the CRC, it is critical to provide children and their representatives with an international communications procedure that will reflect and confirm the international community's commitment to recognise children as true right-holders. The Convention on the Rights of the Child is a legal instrument, bestowing legal obligations on States which must be enforceable by children and their representatives.

A communications procedure for the CRC will provide every child with an international mechanism when national systems fail to address violations of their rights. It will also strengthen the effective implementation of the CRC at national level, notably by developing a child rights jurisprudence consistent with the CRC's high standards.

We hope that by the end of its first session the Working Group will decide that it should seek a stronger mandate, namely to start the elaboration of an Optional Protocol as the most suitable forum to discuss substantive issues.

Thank you.

# **Open-ended Working Group to explore the possibility of elaborating an optional protocol to the Convention on the Rights of the Child**

**16-18 December 2009**

## **Reasons and timings for a communications procedure under the Convention on the Rights of the Child, Wednesday 16 December**

Delivered by Alan Kikuchi-White, SOS Children's Villages International, on behalf of:

International Save the Children Alliance\*, Kindernothilfe\*, World Organisation Against Torture (OMCT)\*, Plan International\*, SOS Children's Villages International\*, Terre des Hommes International Federation\*, the European Network of Ombudspersons for Children (ENOC)\*, World Vision International \*, and the Child Rights Information Network (CRIN), the Global Initiative to End Corporal Punishment, the NGO Group for the CRC

*(\*having ECOSOC Consultative Status)*

Thank you, Mr Chairperson,

We welcome the opportunity to contribute to this session on reasons for, and timing of, the elaboration of an Optional Protocol and thank the speakers and delegates for their valued contributions.

We take this opportunity to highlight four key reasons for elaborating a communications procedure to the CRC:

1. To provide a remedy when national systems fail to address child rights violations
  - When national systems fail them, when the CRC is not applied by national judges, when national law contradicts the CRC, or simply does not exist, children do not have any means to seek redress for violations of their rights under the CRC.
  - Whilst regional human rights systems and other treaty bodies may provide some means of redress, they do not adjudicate specifically on the CRC itself nor cover all the rights guaranteed by the CRC.
2. To Strengthen the effective implementation of the CRC at national level
  - In many instances, the detailed implications of the rights and principles of the CRC and – crucially - their interdependence are not clearly understood and thus not fully incorporated into national law.
  - By considering communications and issuing decisions, the Committee will be further strengthened in providing expert clarification on these complex issues and, as such, further assist States to better understand and implement their obligations.
3. To establish jurisprudence on the rights guaranteed by the CRC

- The lack of a communication procedure for the CRC leaves courts of various States to interpret the provisions of the Convention without clear jurisprudence and expert guidance from the Committee. In some cases, the wide range of interpretation may in fact limit the rights of the child.
- If the aim of the Convention is to hold duty-bearers legally accountable for meeting the obligations and to give real meaning to child rights, then a communications procedure for the Convention would ensure consistency in the interpretation of the high standards of the CRC.

#### 4. To Strengthen the status of children as right holders

- The existence of a communications procedure under the CRC will confirm and strengthen the status of children as rights holders. It will be a strong reaffirmation from the international community, that children are not “*mini human beings with mini human rights*”.

Mr Chairperson...

The elaboration of this Optional Protocol to the CRC is long overdue, and the 20<sup>th</sup> anniversary of the Convention, and these discussions, are a golden opportunity to draw a line in the sand, and to move forward in a constructive spirit and establish, once-and-for-all, the fullest possible legal status and usage of the Convention.

In closing, we maintain that the reasons to proceed - are many and compelling, and that the timing is ideal to seek to strengthen the mandate of the working group in order to begin the vital work of elaborating the 3rd Optional Protocol to the CRC.

Thank you Mr Chairperson....

# **Open-ended Working Group to explore the possibility of elaborating an optional protocol to the Convention on the Rights of the Child**

**16-18 December 2009**

## **Gaps in existing mechanisms, Thursday 17 December**

Delivered by Cécile Trochu Grasso, OMCT, on behalf of:

International Save the Children Alliance\*, Kindernothilfe\*, World Organisation Against Torture (OMCT)\*, Plan International\*, SOS Children's Villages International\*, Terre des Hommes International Federation\*, the European Network of Ombudspersons for Children (ENOC)\*, World Vision International \*, and the Child Rights Information Network (CRIN), the Global Initiative to End Corporal Punishment, the NGO Group for the CRC

(\*having ECOSOC Consultative Status)

Thank you Mr Chairperson. This is a joint statement on behalf of 11 child rights NGOs.

Mr Chairperson,

It has been interesting to hear about some of the best practices at national and regional level (especially the European and Inter-American experiences) and we would like to invite other States to share their positive examples during coming days.

For the purpose of this discussion on exploring the possibility of elaborating an optional protocol, we would like to provide some elements of response to questions on potential overlap with existing national and regional mechanisms and illustrate how a communications procedure would complement and strengthen these mechanisms.

While children should ideally have access to effective national mechanisms, there is strong evidence and recognition that **national remedies are often inadequate or non-existent**.

As the Committee has observed while examining States parties reports, domestic legislation is often not in full conformity with the provisions of the CRC nor fully implemented in practice. If the CRC is not fully incorporated in domestic legislation, victims will not be able to ground their claims on specific national rights and judges will often face difficulties if they want to apply the CRC directly. In some countries, although international law is considered superior to domestic law, judges have no incentive to refer to these cases. A communications procedure could motivate them to consider the CRC more seriously.

As mentioned in several interventions, there are serious issues of children's access to national complaints mechanisms. Indeed, many states do not have a complaints mechanism or if they do, they are limited in scope.

For instance many NHRI and Ombudspersons do not have a comprehensive mandate to consider complaints or support legal action on behalf of children.

**With the exception of the African Charter on the Rights and Welfare of the Child**, none of the other regional human rights treaties were specifically designed with children in mind and none of them cover the full range of rights in the Convention. **Another gap** is that no regional human rights

mechanism exists for Asia, thus a large proportion of the world's children have no access to such a mechanism.

With its near universal ratification, the CRC covers more countries than all the existing regional mechanisms put together, including States that are Parties to the CRC and not their regional instruments.

More importantly, through an international communications procedure, all children will be guaranteed decisions based on the same rights and standards regardless of where they come from.

Ideally, if existing mechanisms are genuinely accessible and effective, children will be able to get redress at national or regional level. However, this is not a question of having either national/regional mechanisms or an international one.

Subjects of rights should be able to appeal to an international specialist committee when national and regional mechanisms have failed them.

Thank you Mr Chairperson

# Open-ended Working Group to explore the possibility of elaborating an optional protocol to the Convention on the Rights of the Child

16-18 December 2009

Unique rights, Thursday 17 December

Delivered by Anne-Sophie Lois, Plan International, on behalf of:

International Save the Children Alliance\*, Kindernothilfe\*, World Organisation Against Torture (OMCT)\*, Plan International\*, SOS Children's Villages International\*, Terre des Hommes International Federation\*, the European Network of Ombudspersons for Children (ENOC)\*, World Vision International \*, and the Child Rights Information Network (CRIN), the Global Initiative to End Corporal Punishment, the NGO Group for the CRC

(\*having ECOSOC Consultative Status)

Thank you Mr Chairperson.

This is a joint statement on behalf of 11 NGOs.

Many rights in the Convention are unique to children. However, it is important to emphasise that whilst some of the rights enshrined in the Convention are specific to children the question of “uniqueness” requires further discussion.

The CRC is the most complete treaty, covering children's rights in all areas of their lives (civil, political and economic, social and cultural rights) and it contains a number of unique rights, a full list of them can be found in the joint NGO statement. Here we would just like to mention a few, like:

- **Article 3, the Best interests of the child** to be a primary consideration in all actions concerning children
- Article 37 specifies that “neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below 18 years of age
- Article 38 Specific limitations on recruitment and involvement of children in armed conflict
- and then **Article 12: which Oblige States to give due weight to children’s expressed views in all matters affecting them;** as well as providing **opportunities for a child to be heard in judicial or administrative proceedings**

In addition to those unique rights, as emphasised by the Committee, all the Convention rights need to be considered in light of the **four fundamental principles**,

- non-discrimination,
- best interests of the child,
- the right to life and development, and
- due consideration for the expressed views of the child.

The **indivisible** nature and interrelationship of child rights establishes that the Convention as a whole is unique to children, and the Committee on the Rights of the Child is the uniquely qualified body, to provide expert judgement on the full range of child rights.

To secure appropriate representation, States could inspire themselves from those unique rights. As Mr Newell explained, the necessary adjustments of representation provisions under existing

complaints mechanisms, with regard to the consent or the absence of consent of the complainant, will be minor.

The best interest of the child needs to be taken into consideration in such cases and should be determined by the Committee on the Rights of the Child on a case-by-case basis based on its Rules of Procedure.

In the two International Covenants, there are rights that apply to everyone including children, and certain specific provisions applying to children. But the CRC both repeats the basic rights to emphasise that children are subjects of them too, and adds many substantial specific and detailed provisions which provide additional guarantees – rights - for children, defined as everyone under 18.

For example, in the ICESCR Article 13 requires provision of compulsory and free primary education, but gives no details on aims of education, nor on schools discipline and other issues covered in CRC Article 28. Similarly, Article 12 covers health rights but includes very little of the details developed in CRC Article 24. Article 18 of the ICCPR requires States to have respect for the liberty of parents, or legal guardians, to ensure the religious and moral education of their children in conformity with their own convictions while art 14 CRC asserts the child's right to freedom of religion, with the State respecting the rights of parents, or legal guardians, to provide direction to the child in the exercise of this right "in a manner consistent with the evolving capacities of the child".

Consequently, existing communications procedures do not allow children and their representatives to complain about violations of their rights, as they are understood under the CRC.

Yet child rights are human rights and violations of child rights must be addressed and redressed just like any other violation of human rights.

Mr. Chairman

We would like to close this address with the following words from a statement prepared by children, young people and child-led organisations on the communication procedure:

*"We believe that the ability to make your voice heard when your rights are ignored – and to highlight key issues and areas of concern – is of fundamental importance in the fight to ensure that the rights of young people are respected".*

Thank

you.

# **Open-ended Working Group to explore the possibility of elaborating an optional protocol to the Convention on the Rights of the Child**

**16-18 December 2009**

## **Concluding statement, Friday 18 December**

Delivered by Anita Goh, NGO Group for the CRC, on behalf of:

International Save the Children Alliance\*, Kindernothilfe\*, World Organisation Against Torture (OMCT)\*, Plan International\*, SOS Children's Villages International\*, Terre des Hommes International Federation\*, the European Network of Ombudspersons for Children (ENOC)\*, World Vision International \*, and the Child Rights Information Network (CRIN), the Global Initiative to End Corporal Punishment, the NGO Group for the CRC

(\*having ECOSOC Consultative Status)

Mr Chairperson,

We welcome the progress made during the present session and the positive and constructive spirit in which it has taken place. The existence of this Working Group and the high number of States that have assisted in the present session (we have counted over 100 States present throughout the discussion), as well as the important participation of representatives from capitals show that a communications procedure under the CRC is both timely and necessary to recognise fully the status of children as rights-holders.

We note the strong and unanimous support for moving on to the elaboration of the necessary Optional Protocol from the invited experts, the Committee on the Rights of the Child, UNICEF, the Office of the High Commissioner, the European Network of Children's Ombudspersons and civil society, including a submission from children. Many States indicated their commitment to this goal. We heard no State voicing opposition to the proposal for a communications procedure for the CRC.

We believe that the mandate of this Working Group has been fulfilled. We strongly hope that the Human Rights Council at its next session will provide a mandate for an Open Ended Working Group to elaborate an appropriate Optional Protocol. We recognise that remaining technical issues will be debated and resolved in the normal way during elaboration. In fact delegations have already made constructive and detailed suggestions for achieving an appropriate procedure for children.

This session provided clear answers to many of the issues raised by States. We hope that any States which have remaining questions will identify them and that any further necessary technical advice and information can be provided well in advance of the March session of the Human Rights Council, perhaps in the form of an expert roundtable organised by the Chair.

As stressed by many delegations as well as by the experts, a communications procedure for the CRC will provide every child with an international remedy making their rights justiciable when national systems fail to address violations of their rights. It will also strengthen the effective implementation of the CRC at national level, notably by developing a child rights jurisprudence consistent with the CRC's high standards and providing an international model for a child-friendly mechanism. It will furthermore reinforce the status of children as right-holders, complement the Committee's current mandate and put child rights at the same level as other human rights.

We welcome the fruitful discussions about the issue of unique and specific rights under the CRC. The explanations given by experts on that topic consistently stressed the interdependence and indivisibility of the rights in the CRC and the need for a holistic interpretation of it. A communications procedure established under the CRC should therefore enable communications from all children and their representatives concerning violations of any of their rights, in accordance with the international practice regarding communications procedures.

We also noted with interest the numerous examples of national and regional best practices provided by States, notably on matters of children's access to justice and representation. We believe that these examples constitute valuable avenues for reflection for the Working Group once it will start the drafting process.

As explained by Ms Santos Pais and Mr Schmidt, the OHCHR Head of the Petitions Unit, the elaboration of a new Protocol to the CRC can rely on 20 years of solid experience in implementing the Convention and on the established practices and lessons learned from other communications procedures.

We note also the reassurance provided that the new communications procedure will not require unreasonable additional resources and that based on the experience of other procedures the additional workload will be manageable.

Mr Chair,

In view of the scarcity of UN resources, we urge States to avoid prolonging general discussions that would divert additional resources from the elaboration phase of the Protocol and to move swiftly to the drafting stage.

As the UN High Commissioner for Human Rights stressed at the Annual full-day Meeting on the Rights of the Child on 11 March 2009: "We need to translate our commitment, engagement and work on children's rights into a tangible reality for each and every one of them".

Thank you.