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Feasibility of a communication procedure under the Convention on the Rights of the Child

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1. The Committee on the Rights of the Child, of which I was a member from 2003 to 2009, announced its strong support for the elaboration of an Optional Protocol to the Convention on the Rights of the Child to provide a communications procedure for the Convention in June 2008. The Chairperson of the Committee reiterated its support, in her presentation to the Third Committee of the General Assembly in 2008, underlining that “such a procedure would significantly contribute to the overall protection of children’s rights”, and again in October 2009.
2. My relevant experience includes my time with the Committee, my academic studies of children’s rights (I lead a master’s course in children’s rights at the UNION University Faculty of Law in Belgrade, which is a member of the European Network of Masters in Child Rights) and active advocacy of children’s rights through NGOs in my country, Serbia, the countries of the Central and Easter Europe and the Commonwealth of Independent States. I also closely cooperate with UNICEF, OHCHR and international non-governmental organizations, such as Save the Children.
3. I have been asked to address in particular the feasibility of the communications procedure. Some of the issues that have been raised include the existing workload of the Committee; the resources that will be needed, and the expertise and composition of the Committee.
4. First of all, however, I would like to share with the Working Group some general thoughts and comments with regard to the need for a communications procedure under the Convention.
5. The Convention on the Rights of the Child needs a communications procedure just as much as the other core human rights treaties that already have one. The almost universal ratification of the Convention confirms the acceptance by the international community of children as rights-holders. However, the lack of a communications procedure under the Convention limits the full recognition of this status of children, undermining efforts of States parties, civil society and other stakeholders to move from legal reforms, plans of action and institutional building to the enforcement of rights.
6. The new optional protocol certainly needs to be drafted with careful consideration of the special status and vulnerability of children. Similar issues have had to be addressed in the drafting of other optional protocols, in particular those to the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities. There may indeed be additional issues for children, but they should be addressed — and specific expert advice sought — when they arise in the drafting process. There is already research that envisages the risks and benefits of a communication procedure with the Convention. The experience with other communication procedures as well as with national litigation when child rights are violated shows that, with careful planning, risks can be minimized and benefits are many.
7. It should also be emphasized that other communications procedures and regional human rights mechanisms, including the European Court of Human Rights, have considered communications and applications in which the identified applicant was a child, or a number of children, including in some cases very young children, or a child with a parent. In many cases, the applications were in reality drafted and submitted by adults representing the child (it is also the case that very few “adult” applicants make their applications unaided by others). Children as rights-holders must be able to have violations of their rights considered. Where the child is not judged to have the capacity to consent to the communication being made on their behalf, there will need to be some consideration of whether it is in the child’s best interests for the communication to be accepted as admissible and considered. This does not raise new issues, since children already have access to existing international communications procedures and have used them, but of course it

requires special consideration in the drafting of the Optional Protocol and also ultimately in the drafting of the Committee's rules of procedure for considering communications.

8. I therefore respectfully urge States Members of the Human Rights Council to move quickly on from the current mandate of considering elaboration of the necessary Optional Protocol, to provide the open-ended Working Group with a clear mandate to proceed with drafting, so that we can all start working on the particularities of this new communications procedure.

Workload of the Committee on the Rights of the Child

9. As a member of the Committee for 18 sessions, I am well aware of the substantial workload of the Committee, stemming from the almost universal ratification of the Convention and, since 2000, of the two existing optional protocols. The speedy and almost universal ratification was the main reason for amending the Convention and moving from 10 to 18 members, as well as of expanding the length of sessions. When that was not enough, the Committee worked in two chambers, successfully coping with the workload. There is again a particular pressure on the Committee at the moment because of the need to examine States individually on their initial reports under each optional protocol, and the Committee is back to a two-chamber arrangement. The Committee's work in two chambers was possible thanks to the support of its very hardworking Secretariat, OHCHR and of States parties. Such organization of work has not impeded the Committee's work on the implementation of the Convention, since adopting the concluding observations is always done by a full committee. This has generally been regarded as an effective way of coping with pressure of reports and if there is a rush of communications, similar methods of work could be considered again. But I emphasize that none of the existing communications procedures has experienced at least any initial overload.

10. The workload will inevitably remain heavy for a while, given the large number of ratifications. But after the consideration of the initial reports under the optional protocols, periodic reports on optional protocols will (unless there are special circumstances) be considered at the same time as periodic Committee reports, which will reduce the volume of individual examinations and provide space for consideration of complaints.

11. As a member of the Committee during the period in which the proposal for a new optional protocol was carefully debated, I am aware of the strong and united view of the Committee that a communications procedure is needed to strengthen implementation and fulfil the potential of the Convention. I share the confidence of existing members that the Committee can adapt to meet the demands of this additional procedure.

12. OHCHR has established a petitions unit to coordinate the processing of communications under the various procedures. The Committee will of course need to develop and revise its working methods, in collaboration with the petitions unit, in order to devote sufficient time to the examination of communications, just as the other treaty bodies have done. Strict admissibility criteria should be adopted. Given the special status of children, the Committee should process communications as rapidly as possible. But we have to be realistic: judicial processes of this kind take time.

13. There is plenty of time between the (hopefully imminent) start of the drafting process, through the drafting, adoption and coming into force of the protocol, for the Committee together with OHCHR and with the support of States to consider and approve appropriate working methods.

Resources

14. Resources are inevitably a problem throughout the United Nations system, but it is plainly discriminatory to suggest that drafting and adoption of this instrument should be

further delayed because of worries about resource availability when it comes into force. The almost universal acceptance of the Convention must make one hopeful that the necessary resources will be made available when the time comes, just as they have been to support the extension of the Committee membership or the two-chamber system in 2005 and again in 2009.

15. I would note respectfully that States could aim to save money in the short term by limiting the number of meetings required to draft this instrument. Reviewing the texts of existing optional protocols, and particularly the most recent ones to the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Rights of Persons with Disabilities and the International Covenant on Economic, Social and Cultural Rights, it is plain that many of the provisions of the Optional Protocol to the Convention on the Rights of the Child will need to follow the same form. If States devoted one session to develop the standard “core” provisions and identify which provisions require special consideration because of the special status of children, they could then gather specific expert advice before a second session at which those issues could be debated and hopefully agreed upon.

Expertise of the Committee

16. I am aware that some States have raised questions about whether the Committee has the expertise — especially legal expertise — to take on this new role of examining communications. A number of members of the current Committee do indeed have considerable legal expertise. Of course, it is the States parties who elect members of the Committee; article 43 of the Convention already proposes that the process includes “consideration being given to equitable geographical distribution, as well as to the principal legal systems”. States parties (and also the very active civil society movement that supports the Convention) could encourage further consideration to be given to expertise relevant to the consideration and decision-making on communications.

17. The next elections to the Committee will be held in December 2010, and then every two years. So, again, there is ample time to “strengthen” the Committee in this way if this is the will of the States parties.
