

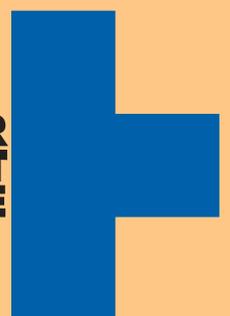
CHILDREN AS STRONG AS NATIONS

**Background, reasons
and arguments for
introducing a right
of petition.**

Urte Müller

**Individual complaints
procedure –
a campaign initiated by**

**KINDER
NOT
HILFE**



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PHOTO: AP

Under compulsion: child soldiers kill, plunder and steal. Devasted souls are left behind.

CHILDREN AS STRONG AS NATIONS

INTRODUCTION

KINDERNOTHILFE STARTS AN INITIATIVE FOR THE INTRODUCTION OF AN INDIVIDUAL COMPLAINTS PROCEDURE

March 2000, near Asunción, Paraguay. They had to come twice in order to force Pedro Antonio Centurión into military service. The first time he refused. He didn't want to go with the army officer even though his two cousins who had volunteered for service were going. The next time his mother wasn't at home. So, he went. Three days later his mother spoke to the officer in charge. She told him about her son's citizenship and age. He was an Argentinian – a foreigner in Paraguay. And, he was just

13 years old when they recruited him by force. The officer said that his age didn't make any difference since her son was in good physical health. A few weeks later he tried to flee – without success.

On September 12, 2000, Pedro was dead. The army told his mother that he had had an accident while on guard duty. She was pressurised into signing a statement to prevent an autopsy. Otherwise they would have only released his corpse without the head.

Pedro is no special exception. According to Amnesty International (ai), eight recruits died in Paraguay in the year 2000. Six of them were still children who, according to current laws, should never have been recruited. It is questionable if those responsible will ever be made to answer for this abuse. In many parts of the world no attempts have been made by countries to prosecute perpetrators of serious violations of children's rights, not to mention paying compensation to the victims. Children and adolescents are forced into military service, or with the approval of authorities, are forced into servitude to pay off debts, or sent off into forced labor. Trafficking with children is as widespread as their sexual abuse – in many cases with the knowledge and approval of state officials.

How can a child defend itself against its own unjust nation? And what can a mother do when confronted with blatant injustice there are no more avenues of complaint left and all legal options have been exhausted? Up to now, very little. But that must change. In 2001, Kindernothilfe started an initiative to strengthen the rights of the child. In consultation with representatives from non-governmental organizations, government ministries, and committees of the United Nations, we are seeking to establish an individual complaints procedure both for children and adolescents. The so-called individual complaints procedure is a monitoring instrument of the United Nations to secure respect for human rights. In four other conventions in international law this has long been the norm. In the case of human rights abuses, this makes it possible for a single person or their representative, to legally demand their rights at UN level. The pre-condition is that they first must have exhausted all avenues of legal recourse in their own country.

Kindernothilfe is insisting that the rights of the child must also be protected through this civil rights instrument. This publication includes a draft of a complaints procedure in the form of an optional protocol to the Convention on the Rights of the Child which we hope will stimulate discussions on the complaints procedure in NGO circles, government ministries and the UN and be a contribution to its realisation.

The draft of the optional protocol (Chapter 7) is based on experience gained with the complaints procedure contained in other Conventions. Its framework follows the

orientation of existing complaints procedure contained in the ICCPR (Covenant on Civil and Political Rights) (Chapter 2) and the CEDAW (Convention on the Elimination of All forms of Discrimination against Women) (Chapter 8). The Human Rights Commission has had the possibilities of introducing an individual complaints procedure for the Covenant on Economic, Social and Cultural Rights (Chapter 9) examined. In 2003 a permanent work group is to be assigned with drawing up an optional protocol. The experience gained from existing complaints procedures also gives important insights into the range and limitations of this instrument (Chapters 3 and 4). This experience, in our opinion, must be taken into consideration when introducing a complaints procedure for the Convention on the Rights of the Child.

We are aware that with the drafting of an individual complaints procedure, Kindernothilfe is venturing into new territory. That is why we are extremely grateful for the impulses and insights given to us by civil rights experts. In this context we would like to express sincere gratitude to Aloisia Wörgetter, Dr Messeleth Worku, Prof Jaap E. Doek, Dr Nils Geisler, Prof Dr Christian Tomuschat and Dr Norman Weiß for their invaluable comments and advice and we would welcome all further critical comments and advice. A special word of thanks goes to the legal expert, Urte Müller, who drafted this publication with great competence and commitment.

Kindernothilfe is convinced that an individual complaints procedure is an instrument which is necessary to translate children's rights into reality. It is also aware that this instrument alone does not guarantee the protection of children's rights. The protection of children must also be secured through domestic legislation and mechanisms such as the appointment of ombudsmen, but above all through the social, political, economic and cultural development of the society. This will give children and adolescents a chance to live self-determined and fulfilling lives.

*Barbara Dünnweller
Jörg Seifert-Granzin*

Duisburg, November 2002

1 TEN REASONS

... WHY THE UN CONVENTION ON THE RIGHTS OF THE CHILD REQUIRES AN INDIVIDUAL COMPLAINTS PROCEDURE

The Convention on the Rights of the Child was adopted by the General Assembly of the United Nations in 1989. Today, it is the most frequently ratified treaty on human rights in the world. All states, except for the USA and Somalia, have joined the Convention on the Rights of the Child. Unfortunately this well-nigh record breaking agreement is due – above all – to the lack of efficient mechanisms for monitoring compliance with the Convention.

The only monitoring instrument available so far is the states reports as prescribed in article 44 of the Convention. In these reports to a UN Committee specially set-up for the rights of the child, the member states are obliged to describe the measures they have taken to implement the Convention on the Rights of the Child in their countries. As these reports are published, they very seldom give an objective picture of the human rights situation in the country involved, but

rather tend to be deceptively rosy. This mechanism lacks sufficient monitoring capabilities and that is why so many states adopted the treaty so easily.

Who monitors the states?

A look at other human rights treaties shows that there are indeed more efficient instruments for enforcement. On the level of the United Nations alone there are five human rights treaties which are provided with a so-called individual complaints procedure: the International Covenant on Civil and Political Rights, the Convention on the Elimination of Racial Discrimination, the Convention against Torture and Cruel Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of all Forms of Discrimination against Women and the International Convention on the Protection of the Rights of all Migrant Workers and their Families. The latter has not yet entered force. This procedure allows an individual to

turn to an independent UN Committee and complain about a violation of his/her human rights by a state. However, all domestic legal measures must be exhausted beforehand. If the victim of a human rights violation is not in a position himself/herself to put forward a complaint, this can be done in his/her name. The committee specialised in the relevant human rights section then requests the state concerned to comment on the matter. If after examination of the information supplied, the committee is convinced that a violation of human rights has occurred, it then informs both parties and requests the state to compensate for the damage caused. This can involve release, compensation, reversal of sentence, or changes in administration practices. Although its decisions are not legally binding, they do carry a lot of weight, because of being published and because of the authority of the committee. No state wants to be publicly portrayed as a violator of human rights.

Ten reasons for introducing an individual complaints procedure:

1. The rights of children, who are the most vulnerable members of the society, must be protected with every means available. By introducing an individual complaints procedure, the Convention on the Rights of the Child would be put on the same level as other human rights treaties which already avail of such monitoring procedures.
2. By drawing public attention to serious irregularities in a state, the individual complaints procedure would be a suitable instrument to exert international pressure to guarantee compliance with the Convention on the Rights of the Child.
3. It would guarantee that child related human rights violations would be examined by a committee of experts who are familiar and sensitive to child specific violations.
4. It would recognise the status of the child as one with full entitlement to possess rights.
5. In the case of individual violations of human rights, the procedure would allow a decision to be taken by an international committee for a claim of compensation to be made against the state.
6. At the same time the examination of individual cases by the Committee on the Rights of the Child would lead to a more detailed analysis and a better understanding of the Convention on the Rights of the Child.
7. Furthermore, the "Concluding Observations" of the Committee on the states reports would, by analysing individual cases, provide a more realistic picture of the human rights situation in the state concerned.
8. The Committee on the Rights of the Child would be strengthened by extending its scope for action and by the increased publicity it would attract.
9. The very existence of an individual complaints procedure would be a preventative monitoring instrument to make states respect human rights.
10. The states would be forced to extend and improve their domestic legal systems to avoid international complaints, which would ultimately increase the chances of individuals to have more efficient legal protection.

2 OUTLINE: INDIVIDUAL COMPLAINTS PROCEDURE

UNDER THE OPTIONAL PROTOCOL (OP) TO THE INTERNATIONAL CONVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR).

1. Submission of the Complaint
The complaint ("communication") is submitted to the United Nations Human Rights Committee in writing. Anonymous complaints are not considered. Usually the complaint is submitted by the victim herself/himself, it may, however, be submitted on behalf of a victim in case he/she is unable to do so, *art. 2 and 3 OP*. A representation by legal counsel is possible.

2. Transmission to the State Party concerned
Unless the Committee decides on the inadmissibility of the communication without consulting the State party, it will submit the complaint to the State party concerned requesting information on admissibility and on the merits of the case.

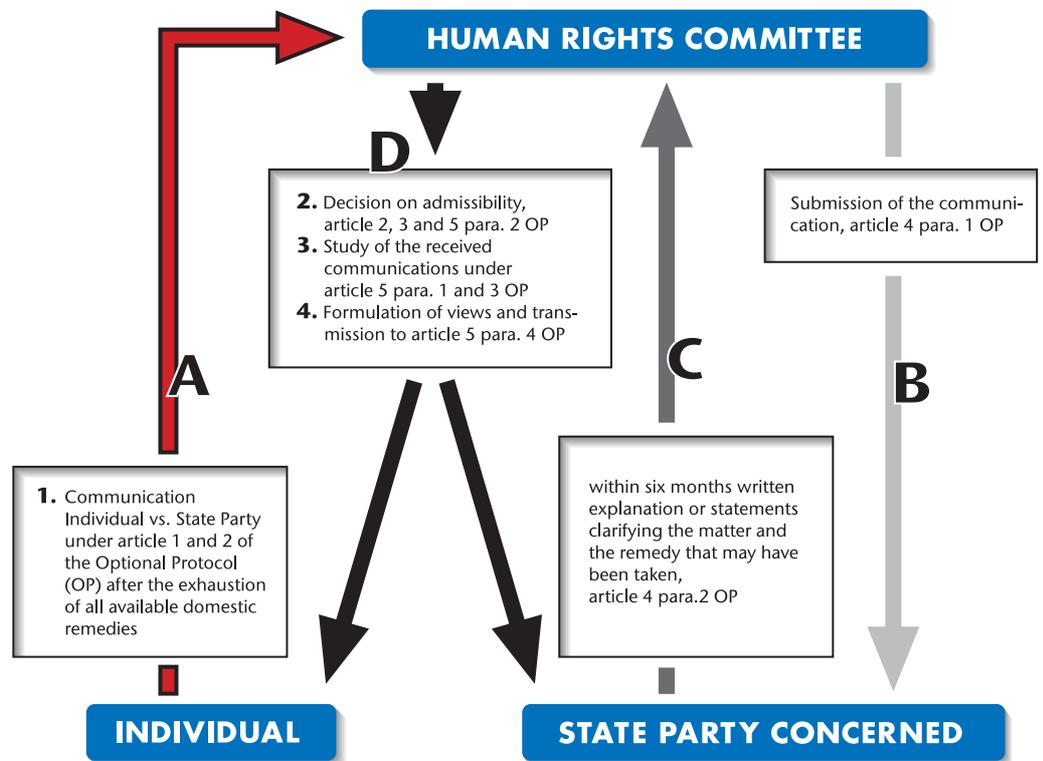
3. Admissibility Decision
The Committee considers the information received by both parties in its admissibility decision. A communication is only admissible if all available domestic remedies have been exhausted (unless they are unreasonably prolonged) and the same matter is not being examined under another international procedure. The communication must be compatible with the provisions of the ICCPR and it must not constitute an abuse of the right to submit a communication, *art. 3 and 5 OP*. Usually, the Committee conducts one combined examination on admissibility and on the merits. Only in the cases where the question of admissibility is contentious, is a separate decision made. In these cases, the decision on admissibility is transmitted to both parties. The State party concerned is then asked to submit information or written statements clarifying the matter and any remedy that may have been provided by the state within six months, *art. 4 OP*.

4. Examination on the Merits
In a closed meeting, the Committee considers the information submitted by the parties concerned. The Committee's decision ("view") is transmitted to both parties, *art. 5 paragraph 3 and 4 OP*. In case the Committee ascertains a violation of the ICCPR, it will urge the State party to provide adequate remedies. This could mean the release of the victim, an adequate compensation or the modification of a certain law.

5. Follow-up Mechanism
The follow-up-mechanism is not contained in the Optional Protocol, but it is mentioned in the Human Rights Committee's Rules of Procedure (*Rule 95*).

In practice, in any individual complaints procedure where a violation of human rights is confirmed, the State party is requested to submit information on the measures taken to implement the Committee's views within a period of six months. The Committee includes information on its follow-up activities in its annual report.

6. Interim Measures
The question of interim measures in cases where the victim is in danger of suffering irreparable damage is addressed in *Rule 86* of the Rules of Procedure. The Committee may urge the State party to take interim measures to protect the victim without implying a determination of the final decision in the case.



(Three different terms are used to express complaint in the sense of individual complaints procedure: **Complaint**, **petition** and **communication**. The treaty bodies and the four Committees dealing with individual complaints procedures use the term communication.)

3 EXAMPLES OF INDIVIDUAL COMPLAINTS PROCEDURES

Trinidad und Tobago: Daniel Pinto (Communication No. 512/1992)

1. Submission of the Complaint

On 24th July 1992 Daniel Pinto submitted a communication to the UN Committee on Human Rights alleging a violation of his rights under the International Covenant on Civil and Political Rights (ICCPR) by the state Trinidad and Tobago.

In 1985, Mr. Pinto was sentenced to death by the courts of Trinidad and Tobago. He subsequently addressed his first communication to the Human Rights Committee. The Committee ascertained a violation of the author's right to a fair trial and recommended his release (*Communication No. 232/1987*). Trinidad and Tobago reacted by commuting the death sentence to life imprisonment, but Mr. Pinto was not released.

In his second communication, Mr. Pinto complains about his conditions of detention and his treatment by the prison authorities. In particular, he claims to be the subject of harassment because of his previous complaints to the Human Rights Committee and to various human rights organizations. Above all, he requests the implementation of the Committee's recommendation in the previous case to set him free.

2. Transmission to the State Party Concerned and State Party's Reaction

After transmission of the communication to Trinidad and Tobago, the State party observes in a submission dated 4th March 1993 that Mr. Pinto has failed to lodge a formal complaint about the above events to the competent national authorities in adherence to the Prison Rules. According to the State party, domestic remedies have not been exhausted and the communication is inadmissible.

3. Decision on Admissibility

On 25th October 1994, however, the Committee declared the communication admissible. It noted that, according to the declarations of

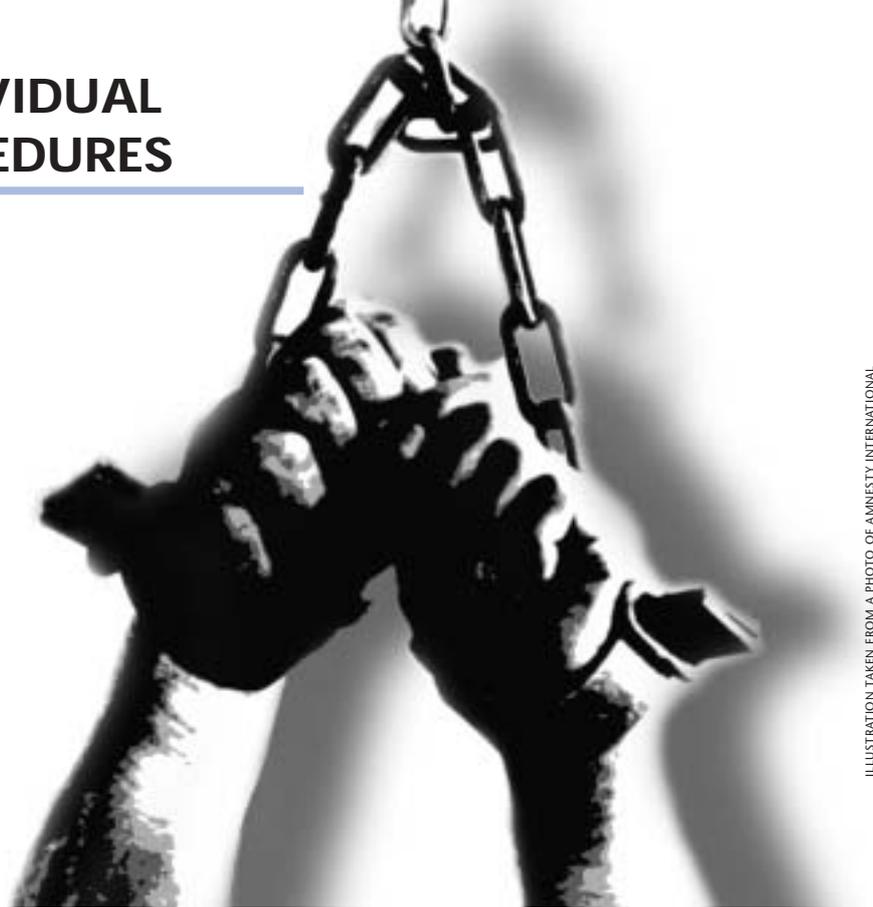


ILLUSTRATION TAKEN FROM A PHOTO OF AMNESTY INTERNATIONAL

both parties, the author certainly had brought his grievances to the attention of the prison authorities, though not in the prescribed form. Given his situation as a person serving a term of life imprisonment, it would have been up to the prison authorities to investigate his complaints ex officio and with due diligence.

The Committee thus considered that the requirement of exhaustion of domestic remedies (*article 5, para. 2 (b) ICCPR*) had been met.

4. Decision on the Merits, Views

The Human Rights Committee considers the communication in the light of all the information made available to it by the parties, *article 5 para. 1 ICCPR*.

On 16th July 1996 the Committee came to the conclusion that the prison authorities had demonstrated a lack of humanity in conveying to Mr. Pinto that his early release would be denied because of his human rights complaints. This treatment failed to respect the author's dignity, in violation of *article 10, para. 1 ICCPR*.

The Committee established that Mr. Pinto is entitled to an effective remedy which should include measures that will prevent a recurrence of such treatment.

Furthermore, the Committee reminded Trinidad and Tobago of its views in respect of Mr. Pinto's initial communication and repeated its recommendation to release him as soon as possible.

The State party was called upon to submit, within 90 days, information about the measures taken to give effect to these views.

5. Follow-Up Procedure

In July 1990 the Human Rights Committee created the mandate of a "Special Rapporteur for Follow-up on Views". This Special Rapporteur systematically requests follow-up information in all cases where a human rights violation has been ascertained.

According to the Follow-Up Progress Report to the case Pinto vs. Trinidad and Tobago, disclosed during the Human Rights Committee's seventy-first session (March/April 2001), Mr. Pinto was released from prison following a presidential pardon of 24th October 2000. Mr. Pinto, who is now engaged in prison reform work in Trinidad and Tobago, considers the Human Rights Committee's recommendations instrumental in his pardon being granted.



Parents from Peru with the photo of their "disappeared" son.



Prisoners were beaten by policemen with truncheons.

Peru: Ana Laureano

(Communication No. 540/1993)

On 16th October 1992 a communication was submitted to the UN Human Rights Committee on behalf of Ana Laureano by her grandfather. A. Laureano was arrested by the Peruvian military when she was sixteen and was held on various military bases. Allegedly, she was suspected of collaborating with the guerillas of the Shining Path Movement. After a Peruvian court ordered her release on the ground that she was a minor, A. Laureano was kidnapped from her house by the military. Her family has not seen her since.

Since all petitions the family put to the courts, the government and the military of Peru remained unsuccessful, the Human Rights Committee considered the domestic remedies exhausted and declared the communication admissible.

On transmission of the communication, Peru reacted by claiming that investigations had been carried out by the armed forces and had produced no result.

On 16th April 1996, the Committee came to the conclusion that the State party Peru had violated A. Laureano's right to life (*art. 1 ICCPR*) and personal liberty (*art.9*) and had disobeyed the

prohibition of torture (*art. 7*) and its duty to protect minors (*art. 24 para.1*).

Under *art. 2 para.3 ICCPR*, a State party is obliged to provide an effective remedy for its human rights violations. The Committee urged Peru to open an independent investigation into the disappearance of A. Laureano and her fate. Those responsible for her disappearance should be brought to justice. Furthermore, appropriate compensation should be provided to the victim and her family.

Uruguay: Viana Acosta

(Communication No. 110/1981)

On 12th August 1981 Viana Acosta submitted a communication to the Human Rights Committee claiming a violation of his rights under the ICCPR by the State party Uruguay. He was arrested in 1974 and subjected to severe torture with a view to making him admit an involvement in the Uruguayan MLN (Movimiento de Liberación Nacional). In 1977 Mr. Acosta was sentenced to 14 years imprisonment by the Supreme Military Tribunal in a trial in which he was forced to accept a military ex-officio counsel. In prison, he was subjected to torture and psychiatric experiments, and, for three years, he

was injected with tranquilizers against his will.

The Committee decided that the communication was admissible in relation to those events which occurred after 23rd March 1976, as this was the date the Optional Protocol entered into force for Uruguay.

Despite the Committee's repeated requests, Uruguay failed to comment on the substance of the allegations against it. Therefore, on 29th March 1984 the Committee formed its views on the basis of the information submitted by Mr. Acosta. The Committee ascertained a violation of the prohibition of inhuman treatment (*art. 7 and 10 ICCPR*) and of the right to a fair trial (*art. 14 para.3 ICCPR*) because Mr. Acosta did not have counsel of his own choosing and was not tried without undue delay. The Human Rights Committee declared Uruguay's obligation to provide effective remedies and recommended that compensation for physical and mental injuries be paid to the victim.

A follow-up reply by Uruguay received in May 2000 informed that the State party had implemented the Committee's recommendation and granted a payment of US \$ 120 000 to Mr. Acosta.

4 GUATEMALA: STEP FORWARD FOR CHILDREN'S RIGHTS

EXAMPLE OF A SUCCESSFUL CASE INVOLVING STREET CHILDREN BEFORE THE INTER-AMERICAN COURT ON HUMAN RIGHTS

In June 1990 four street youths were brutally tortured and murdered by members of the National Police of Guatemala. A few days later, a fifth youth was killed by two officers.

After unsuccessful attempts to bring the police officers to justice through the legal system in Guatemala, the non-governmental organization Casa Alianza, in conjunction with CEJIL (Center for Justice and International Law), took the case to the Inter-American Commission on Human Rights in September 1994.

Proceedings before the Inter-American Commission on Human Rights

Communications alleging a violation of the American Convention on Human Rights are submitted to the Inter-American Commission on Human Rights, based in Washington D.C. The Commission endeavours to reach a friendly settlement between the parties before the matter can be brought before the Inter-American Court on Human Rights.

The Commission accepted the case submitted by Casa Alianza and CEJIL, as all judicial recourses in Guatemala had been exhausted in a protracted legal battle which lasted four years, included the murder of two key witnesses, and ended with the policemen's acquittal. On January 30th 1997 the Commission agreed that the State of Guatemala had violated the boys' human rights. A friendly settlement proposed by the Commission was rejected by the Guatemalan authorities. The case was therefore passed to the Inter-American Court on Human Rights.

Proceedings before the Inter-American Court on Human Rights

The Inter-American Court on Human Rights is based in Costa Rica. It has legal jurisdiction over the eighteen countries which have explicitly accepted its jurisdiction. It can not be accessed directly by individuals, all cases are referred to it by the Inter-American Commission on Human Rights. The Court considers the views of the victims, the Commission and the State party involved. The procedure begins with written submissions and leads to oral sessions before the Court.

On the 28th and 29th January 1999, the case known as "Villagrán Morales" (after one of the victims) was finally heard by the Court in public hearings. It was the first ever case in the 30 year history of the Inter-American Court on Human Rights involving children.

On the 19th November 1999 the Court declared in an unanimous decision that the State of Guatemala had violated the following articles of the American Convention on Human Rights:

art. 1 (obligation to respect rights),

art. 4 (right to life),

Art. 5 para.1 and 2 (right to human treatment),

art. 7 (right to personal liberty),

art. 8 (right to a fair trial),

art. 19 (rights of the child) and

art. 25 (right to judicial protection).

The Inter-American Court on Human Rights' decisions are binding to those states who have accepted its jurisdiction.

In December 2000, the Court laid down the amount of damages to be awarded to the families of the victims. The Court ruled that the State of Guatemala was to pay over half a million dollars in damages. Furthermore, Guatemala was ordered to name a school after the five street children and to allow the pending Children's and Adolescent's Code to come into effect in order to protect homeless children.

After initially failing to keep the deadline for payment (26th November 2001), the Guatemalan Government has in the meantime complied with a part of the verdict and paid 500 000 US Dollars to the families.

For further information, turn to Casa Alianza's website: <http://www.casa-alianza.org>



Helpless: Attacks on street children are seldom punished.

5 EXPERT'S OPINIONS

... ON INDIVIDUAL COMPLAINTS PROCEDURES



On 5th April 2001, Kindernothilfe held a conference in Berlin together with the Joint Conference Church and Development (GKKE) to discuss the introduction of a right of petition for individuals within the frame work of the Convention on the Rights of the Child. Taking part in the conference were experts from the fields of politics and science as well as from non-governmental organizations. Their task was, based on answers to the

following questions, to determine whether the right of petition for individuals would be a more efficient monitoring instrument:

- To what extent can the convention's guarantee of children's rights be strengthened by the creation of a right of complaints procedure for individuals?
- What can be learned from the use of the procedure for individual complaints in other human rights treaties?
- How was the complaints procedure for individuals in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) achieved?
- How can the right of complaint for individuals in the Convention on the Rights of the Child be achieved?

The starting point in answering these questions was the study of Dr Nils Geißler which he wrote in 1999 commissioned by Kindernothilfe.

It outlines the value of a right of petition for individuals in protecting the rights of the child. He argues that the initiative for introducing a right of complaint for individuals to the Convention on the Rights of the Child must come from the non-governmental organizations. At the conference Dr Norman Weiß (University of Potsdam, Centre for Human Rights) underlined the importance of the right of petition for individuals in other human rights treaties of the United Nations. It is decisive for the Convention on the Rights of the Child that such a right of petition should apply to all rights of the child guaranteed in it. Based on the International Covenant on Civil and Political Rights, Dr Messelech Worku (University of Bochum) explained the mode of functioning and the procedure involved in an existing right of petition procedure for individuals. She underlined the fact that each of the 268 petitions dealt with up to the end of 2000 has an important announcement effect for the protection of human rights.



Dr Norman Weiß:

"Since the end of the Second World War, human rights protection has become an important factor in international co-operation. The close integration of this protection into the work of the United Nations

which is in turn complemented by the work of regional human rights systems in Africa, America and Europe, has been a key factor in achieving to prise human rights – and especially their violation – out of the shell of sovereignty.

Setting standards binding by international law and their varying and corresponding international monitoring systems have, in the second half of the twentieth century, led to a fundamental re-shaping of international law and consequently to the re-shaping of relations between countries. Opening up the possibilities for a direct complaint procedure for the individual was in the past almost inconceivable – not to mention enforcing it. Extending this possibility to the rights of the child

would put into practice the constantly proclaimed equality of all human rights (catch words: interdependence and indivisibility) in a credible manner. Hence, a monitoring system based on the same lines as an existing model for the protection of civil and political rights would not least lead to a reevaluation of the social rights.

But above all, the group protected would be given more importance: the individuality and the status of the child as a person before the law would be strengthened. Despite deficiencies in the monitoring system by such a treaty body, the protection of children's rights in individual cases would be an important gain for international human rights protection."

Dr Messeleth Worku:

"The experiences of the committee on the Convention of Civil and Political Rights show that states do not always comply with their treaty obligations to implement human rights – in some cases in fact they seriously violate them. Hence, every contractual opportunity which can be given to the individual to draw attention to his/her situation and to seek help by means of a right of petition, is an important instrument. Despite the shortcomings of the decision making process of the committee on ICCPR (International Covenant on Civil and Political Rights) – the long duration of proceedings and the fact that the decisions are not legally binding – the individual complaint procedure gives individuals whose rights have been violated the opportunity to resort to an international authority and petition them to examine the legality of national decisions and to obtain compensation where violation of rights has taken place. Even despite the fact that the decisions of the committee are not binding, the publicity generated has a great effect: states do not want to be seen as human rights violators.

Prof Jaap E. Doek, Chair of the Committee on the Rights of the Child in Geneva, on the occasion of the International Conference "Stopping the economic exploitation of children" in Hattingen/Germany on 22 – 24th February 2002:

"An Optional Protocol to the CRC (Convention on the Rights of the Child) allowing for the submissions of individual complaints is a necessary component of a strategy aiming at the effective implementation of children's rights. ... within this strategy priority should be given

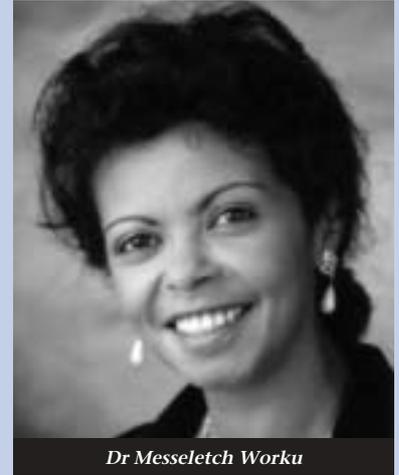
The experiences of the ICCPR committee have also shown that the elaboration of new optional protocols incorporating the right of petition should pay attention to the following points:

- precise wording which does not leave room for false interpretation,
- the question as to who is allowed to submit a complaint should be set out in detail (victim, relatives, organisations – important in the case of children),
- setting limits to the possibilities for reservations (reservations must not be incompatible with the object and purpose of a treaty as stated in the Vienna Convention on the Law of Treaties),
- follow-up programmes to monitor the implementation of decision should indeed be set forth in the optional protocol.

International, regional and national NGOs, as experience shows, play an important role both in initiating and elaborating an optional protocol and also in helping a petitioner. The latter is especially the case in developing countries. NGOs inform,

to the establishment of national monitoring bodies for children's rights (MBCR's).

If we consider the introduction of an Optional Protocol for individual complaints (or in the UN jargon: individual communications), it is my hope that this will coincide with a discussion about the necessary improvement of the existing procedures in that regard within other treaty bodies. To quote from the Bayefski study (*Anne F. Bayefski, The UN Human Rights Treaty System: Universality at the crossroads, page 24-25/ Transnational Publishers*



Dr Messeleth Worku

mobilise and give legal advice wherever necessary. In view to the serious human rights violations which take place particularly in the case of children, the elaboration of an optional protocol to the Convention on the Rights of the Child which would allow a right of petition procedure is an indispensable task so that the most vulnerable group of society, in this case children, are given the same rights as *adults*."



Prof Jaap E. Doek

to be continued on next page

Ardley NY, 2001): "There is substantial overlap in the kinds of cases which can go to CAT or to CERD with the jurisdiction of the Human Rights Committee (as well as an overlap in the procedures and expertise required of staff members of the OHCHR). Similarly there is substantial overlapping between CEDAW and the jurisdiction of the Human Rights Committee (...). Individuals themselves are frequently unfamiliar with all the potential fora".

Recently a "Petition Team" has been created within the OHCHR to deal with the individual communications submitted to the HRC, CAT and CERD (CEDAW has a separate secretariat for its individual communications). Shouldn't we – that is the various treaty bodies – consider a streamlining of the existing procedures in order to deal more efficiently and effectively with the individual complaints submitted under the existing optional protocols to the ICCPR, ICAT, ICERD and ICEDAW? Let me submit the following proposal to start the discussion based on the assumption that under each of the six human rights treaties individual complaints can be filed (*not yet the case for the ICESCR and the CRC*):

- A working group (*any other name is fine*) is established of six members (one representative of each of the six treaty bodies) to which all complaints are addressed. Advantage for individuals: one single address for complaints about Human Rights violations;
- This working group – supported by the "Petition Team" – reviews e.g. every three months the individual complaints filed over the past three months. This working group has the authority to decide on the admissibility of the case and that decision should be made within six months after the meeting of the group;
- If the case is admissible the working group refers the case to one of the six "chambers" one for each of the treaties composed of three members of that treaty body chaired by the member who is also a member of the working group (*the composition of these chambers can change every two years*);
- One single procedure should be developed for these chambers (*with the possibility to have some specific rules depending on the*

specific nature/content of the treaty in case?) with clear and short time limits which should be applied rigorously;

I am very much aware that this proposal needs more elaboration and that many questions – in terms of formalities and content – can be (*and should*) be raised. But if we think that it is important for all human beings to have the possibility to file a complaint about a violation of their human rights at international level (*and it is because national remedies are not always effective or even always existent*), we should make that possibility as efficient and effective as possible.

In conclusion: monitoring children's rights requires in the first place an effective MBCR (monitoring body) at national level. The filing of individual complaints at international level is a necessary component of monitoring the implementation of human rights including those of children, but improvement of the existing system is urgently needed."

The contribution of Aloisia Wörgetter who headed the working group for pushing through the optional protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) gave an insight into the difficulties involved based on the Women's Rights Convention in achieving a right of petition within the frame work of the UN Human Rights system. She pointed out that great staying power is needed to

persuade the various institutions. In the case of CEDAW it was worthwhile. The optional protocol contains a right of petition for individuals and groups of individuals. On 10th December 1999 it was released for signatures and in the meantime it has come into force.

All experts agreed on one point: An initiative for the creation of a right of petition for individuals under the UN Convention on the Rights of the Child is meaningful and merits support.



Aloisia Wörgetter

6 THE POSITION OF THE GERMAN GOVERNMENT

On 9th May, 2001, Herman Gröhe, Member of Parliament (CDU/CSU) and spokesman of the Committee on Human Rights and Humanitarian Aid submitted the following written questions on the individual complaints procedure to the German Parliament:

"What is the German Government's opinion on the possibility of strengthening the UN Convention on the Rights of the Child by using the additional monitoring instrument of a right of individual complaint procedure?"

The German Government's answer of 21st May 2001:

"The German Government approves of strengthening the rights of children. It is also of the opinion that the availability of an individual complaints procedure and other monitoring instruments to check human rights' violation are in principle suitable means for strengthening the legal position and a sense of justice of the victims, and for increasing the willingness of States Parties to fulfil their obligations.

The international Convention on the Rights of the Child formulates the rights of children as being obligations of states whereby the States Parties must implement the Convention and the rights of children accepted therein in their domestic law (see memorandum on the Convention, BT-Drs. 12/42 B.). Against this background, the introduction of an individual complaints procedure to the Convention on the Rights of the Child, however, would require a detailed legal examination."

And a further question:

"Within the framework of the 3rd Preparatory Committee (PrepCom) in New York in June 2001, is the German Government prepared to introduce or to support an initiative aiming at the improvement of the monitoring mechanisms of the UN Convention on the Rights of the Child by the introduction or at least the examination of an individual complaints procedure?"

The Government's answer:

"For a general assessment I refer to the answer to question 5/75 (see above).

The German Government would in principle be open-minded about checking an initiative aiming at examining the introduction of an individual complaints procedure in connection with the Convention on the Rights of the Child. It doubts, however, whether the United Nations Special Session is the right time to make such an approach. Their opinion is that one should first of all wait until the two pending optional protocols enter into force before thinking about taking further legislative steps. These are, on the one hand, the optional protocol on the participation of children in armed conflicts, as well as on trafficking with children, child prostitution and child pornography; on the other hand there is the preparatory work being done by experts on starting negotiations on an optional protocol on the International Covenant on Economic, Social and Cultural Rights which should give the right to making individual complaints."



7 DRAFT OPTIONAL PROTOCOL

... TO THE UN CONVENTION ON THE RIGHTS OF THE CHILD

In drafting this text, special consideration was given to the Optional Protocol to the Convention for the Elimination of All Forms of Discrimination against Women (CEDAW). This protocol, which entered into force 22nd December 2000, is the most recent case of introduction of an individual complaints mechanism under a human rights instrument. Compared to the existing complaints procedures, it brought in several innovations and expressly set down some procedural elements previously only contained in the practice of the treaty bodies. The innovations promoting the effectiveness of an individual complaints procedure have, where possible, been taken up in this

draft. However, the texts of complaints procedures developed to other international human rights instruments (International Covenant on Civil and Political Rights (ICCPR), International Convention on the Elimination of All Form of Racial Discrimination (CERD), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (CAT), International Convention on the Protection of the Rights of all Migrant Workers and the Members of their Families (MWC – not yet in force) as well as the draft optional protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR) have been taken into account, too.

- Article 1** A State Party to the Convention that becomes a Party to the present Protocol recognizes the competence of the Committee on the Rights of the Child (hereafter known as the "Committee") to receive and consider communications submitted in accordance with article 2.
- Article 2**
- (1) Communications may be submitted by individuals or groups of individuals under the jurisdiction of a State Party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State Party.
 - (2) Communications may be submitted by individuals, non-governmental organizations or groups of individuals on behalf of individuals or groups of individuals under the jurisdiction of a State Party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State Party. Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.
 - (3) Individuals under the age of fourteen will be represented by their statutory representative.
- Article 3** Communications shall be in writing and shall not be anonymous.
- Article 4**
- (1) The Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted. This shall not be the rule where the application of the remedies is unreasonably prolonged or unlikely to bring effective relief.
 - (2) The Committee shall declare a communication inadmissible where:
 - a) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;
 - b) It is incompatible with the provisions of the Convention;
 - c) It is manifestly ill-founded or not sufficiently substantiated;
 - d) It is an abuse of the right to submit a communication;
 - e) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date.

- Article 5** At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may request that a State Party take such interim measures as it deems necessary to avoid possible irreparable damage to the victim or victims of the alleged violation. In doing so, the Committee shall inform the State Party concerned that such expression of its views on interim measures does not imply a determination on admissibility or on the merits of the communication.
- Article 6**
- (1) Unless the Committee considers a communication inadmissible without reference to the State Party concerned, and provided that the individual or individuals consent to the disclosure of their identity to that State Party, the Committee shall bring any communication submitted to it under the present Protocol confidentially to the attention of the State Party concerned.
 - (2) Within three months, the receiving State Party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been provided by that State Party.
 - (3) During its examination of communication, the Committee shall place itself at the disposal of the parties concerned with a view to facilitating settlement of the matter on the basis of respect for the rights and obligations set forth in the Convention. If a settlement is reached, the Committee shall prepare a report containing a statement of the facts and of the solution reached.
- Article 7**
- (1) The Committee shall consider communications received under the present Protocol in the light of all information made available to it by or on behalf of individuals or groups of individuals and by the State Party concerned, provided that this information is transmitted to the parties concerned.
 - (2) The Committee shall hold closed meetings when examining communications under the present Protocol.
 - (3) After examining a communication, the Committee shall transmit its views on the communication, together with its recommendations, if any, to the parties concerned.
 - (4) The State Party shall give due consideration to the views of the Committee, together with its recommendations, if any, and shall submit to the Committee, within six months, a written response, including information on any action taken in the light of the views and recommendations of the Committee.
 - (5) The Committee may invite the State Party to submit further information about any measures the State Party has taken in response to its views or recommendations, if any, including as deemed appropriate by the Committee, in the State Party's subsequent reports under article 44 of the Convention.
- Article 8** A State Party shall take all appropriate steps to ensure that individuals under its jurisdiction are not subjected to ill treatment or intimidation as a consequence of communicating with the Committee pursuant to the present Protocol.
- Article 9** The Committee shall include in its reports under article 44 of the Convention a summary of its activities under the present Protocol.
- Article 10** Each State Party undertakes to make widely known and to give publicity to the Convention and the present Protocol and to facilitate access to information about the views and recommendations of the Committee, in particular, on matters involving that State Party.

- Article 11** The Committee shall develop its own rules of procedure to be followed when exercising the functions conferred on it by the present Protocol.
- Article 12** (1) The Committee shall meet for such period as is necessary to carry out its functions under this protocol.
(2) The Secretary-General of the United Nations shall provide the Committee with the necessary staff, facilities and finances for the performance of its functions under this Protocol.
- Article 13** (1) The present Protocol shall be open for signature by any State that has signed, ratified or acceded to the Convention.
(2) The present Protocol shall be subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
(3) The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.
(4) Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
- Article 14** (1) The present Protocol shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.
(2) For each State ratifying the present Protocol or acceding to it after its entry into force, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.
- Article 15** No reservations to the present Protocol shall be permitted.
- Article 16** (1) Any State Party may propose an amendment to the present Protocol and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate any proposed amendments to the States Parties for the purpose of considering and voting on the proposal. In the event that at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
(2) Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Protocol in accordance with their respective constitutional processes.
(3) When amendments come into force, they shall be binding on those States Parties that have accepted them, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments that they have accepted.
- Article 17** (1) Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. Denunciations shall take effect six months after the date of receipt of the notification by the Secretary-General.
(2) Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under article 2.

- Article 18** The Secretary-General of the United Nations shall inform all States of:
- a) Signatures, ratifications and accessions under the present Protocol;
 - b) The date of entry into force of the present Protocol and of any amendment under article 16;
 - c) Any denunciation under article 17.

- Article 19** (1) The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
- (2) The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in article 46 of the Convention.

COMMENTS

Justiciability of the Convention on the Rights of the Child:

First of all, the question needs to be asked whether a petition procedure can be applicable to all of the rights contained in the Convention on the Rights of the Child (CRC). The Convention encloses both traditional civic and political rights on the one hand (e.g. art. 6 right to life, art. 13 freedom of expression) and economic, social and cultural rights on the other (e.g. art. 24 right to health, art. 28 right to education). According to the traditional view, the second group of rights is not fully justiciable, i.e. can not be legally monitored because of the margin of discretion accorded to the States parties in implementing these rights. However, the debate in recent years has been changing the conception of these so-called soft rights. As a result, in adopting the Optional Protocol to CEDAW as well as in drafting an optional protocol to the International Covenant on Economic, Social and Cultural Rights, an inclusive approach was chosen, applying the complaints procedure to all substantive rights of these treaties. (Other precedents exist within the International Labour Organization, United Nations Education, Scientific and Cultural Organization, the resolution 1503 procedure of the Economic and Social Council and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (*the Protocol of San Salvador, of 1988*)).

This inclusive approach should also be aimed for in setting up a complaints mechanism to the CRC. Article 4 CRC decrees that with regard to implementing economic, social and cultural rights, "States Parties shall undertake such measures to the maximum extent of their available resources". Despite the wide scope of interpretation of

these rights, in ratifying the Convention, the States parties have unquestionably entered into a legal obligation to fulfill them. Following the principle "pacta sunt servanda", the States parties are obliged to comply with all substantive provisions of an international treaty in good faith. Even those rights formulated only as duties to take appropriate measures to achieve a general goal contain minimum core obligations. The identification of these core obligations should be placed in the hands of the Committee for the Rights of the Child. The treaty body can determine in each case, in a reasonable and objective way, whether a State party has fulfilled its treaty obligations. In respect of provisions that accord a State party a margin of discretion, external review would be restricted to the question of whether the State had taken reasonable steps within a range of options. It would therefore be possible for the Committee to assess whether a State had taken the minimum steps necessary for carrying out its obligations in good faith. The Committee's General Comments interpreting the Convention's provisions have gone a long way toward identifying such core obligations. Moreover, the Committee for Economic, Social and Cultural Rights' General Comments, which have established a detailed investigation of core obligations of the ICESCR's rights, can be consulted. Finally, an approach that differentiates between justiciable and non-justiciable rights would impair the integrity and unity of the Convention and establish a hierarchy of more and less important rights. This would be contrary to the principles of the indivisibility and interdependence of all human rights.

Regarding article 2 [Standing]:

1. The question of standing was one of the most controversially discussed issues during the drafting of the Optional Protocol (OP) to CEDAW. The optional protocol to ICCPR, CAT and MWC only contain a right of petition for individuals. CERD, on the other hand, includes groups of individuals.

In this context, "groups of individuals" does not signify organized groups, but rather unorganized sets of people pursuing a common goal. For each member of such a group, the same admissibility criteria apply as for an individual.

In the discussions surrounding the OP to CEDAW, it was suggested to establish the express right for NGOs to submit a communication (hitherto acknowledged only in the framework of the European Convention of Human Rights). However, due to the opposition of several delegations, the States parties settled for the formulation "Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, ...". It seems reasonable not to afford NGOs the right to submit a communication claiming a violation of its own rights, as the CRC's function is to set down specific child rights, not NGO rights. On the other hand, the possibility for NGOs to submit communications in the name of victimized children is highly important.

2. Both CAT and MWC explicitly state the possibility of communications being submitted in the victim's name. In other instruments, rules of procedure and treaty body practice allow this option subject to certain conditions: according to the rules of procedure of CAT (*rule 107 (1) b*) and CERD (*rule 91 b*), a justification must be brought for acting in the victim's name. The Human Rights Committee's rules of procedure (*rule 90 b*) require that the victim be unable to submit the communication him- or herself. In the present draft, the possibility to submit a communication is extended to explicitly encompass non-state organizations acting in the name of a victim. In relation to the CRC, this is indispensable to make the procedure accessible to a great number of children. Hereby the various hindrances preventing children from using such a control mechanism, such as poverty, illiteracy, missing knowledge of legal proceedings and fear of reprisals, can be overcome. The NGOs' competence will be held in check by the condition of their acting with the victim's consent.

3. As the victims figuring in an individual complaints procedure to the CRC will necessarily be children, the

question of their representation is of the greatest importance. In most national legal systems, the age of majority must be reached to be able represent oneself in court. However, an individual complaints procedure is not comparable to formal judicial procedures in that it constitutes a quasi-judicial proceeding before an expert committee rather than before a court. Above all, it must be considered that the CRC aims to guarantee specific rights to children and that a complaints procedure aims to enable children to demand the implementation of their rights. It would therefore be absurd to exclude children from submitting communications per se. On the other hand, to protect children it must be safeguarded that they use the procedure in an effective and successful manner. A compromise must be reached between the child's fundamental right to be heard and the necessity of possessing the maturity to understand the proceedings. For practical reasons and for the sake of clarity, an age barrier seems the best solution. The present draft suggests the ability to submit communications in person from the age of 14. This choice reflects the age limit in the German "Gesetz für religiöse Kindererziehung" (law for the religious education of the child) which is based on similar considerations.

Younger children can be represented by their parents or other statutory representatives. In these cases, the communication is not submitted in the name of the child as described under article 2 (2) of the draft. In fact, technically the child uses its right to submit a communication, but in practice the communication is filed by its representative, who thus speaks as the victim. This right to representation, e.g. by legal counsel, is part of the rules of procedure and practice of all treaty bodies though it is not explicitly set down in any other human rights instrument. Consequently, the right of the complainant to be represented by an NGO is essentially recognized in all procedures.

Another interesting idea is the representation of the child by an ombudsperson specializing in the implementation and development of children's rights in his or her country. About 30 countries have already instigated ombudspersons, offices or commissioners for children, promoting, among other things, awareness and implementation of the CRC. The European offices have formed the "European Network of Ombudsmen for Children" (ENOC), (*see <http://www.ombudsnet.org>*). Having such an expert represent the victim before the Committee on the Rights of the Child would doubtlessly have great advantages. All the same, it must be acknowledged that the existing offices' primary functions are to raise public awareness and to conduct

investigations concerning child rights. Even where they deal with individual cases or are exceptionally allowed to appear in court (as the future British "Children's Rights Commissioner", see <http://www.kinderpolitik.de>), it must be remembered that most of these offices emerged from and are funded by the family or children's ministry. While all of the offices are independent of government and not subject to directions, the idea of their appearing in an international procedure against their own state is, at this point, somewhat unfeasible.

Regarding articles 3 and 4 [Admissibility]:

1. Article 3 sets down the formal conditions for the Committee to receive a communication.
2. Article 4 contains the admissibility criteria *strictu sensu*.

Regarding article 5 [Interim Measures]:

Although the recommendation of interim measures is usual in the practice of comparable procedures, the first time they were explicitly mentioned was in article 5 OP to CEDAW. Their regulation in the text of the human rights instrument itself rather than just in the rules of procedure promotes transparency and contributes to a progressive development of international law.

Regarding article 6 [Transmission of Communications]:

1. Both article 14 (6) a) CERD and article 6 (1) OP CEDAW state the need for the complainant's consent prior to revealing his or her identity to the State party. Bearing in mind the vulnerability of children, often helpless at the mercy of their state's authorities, it seems particularly important to assume this form of protection.
2. Though most of the existing complaints procedures specify a six month time limit for the State party concerned to transmit its first reaction, the present protocol follows the example of article 14 (6) b) CERD in laying down a three month period. This still allows enough time for an appropriate statement while furthering a shortening of the procedure.
3. None of the existing complaints procedures under UN human rights conventions have opted for a procedure of friendly settlement. Such a procedure was, in the end, not adopted in the OP to CEDAW, because it was

feared that the Committee's potential role as mediator might prevent it from playing its proper role under a communications procedure. However, it must not be overlooked that the Committee's constructive action towards reaching a settlement between the parties can lead to a quicker close of the procedure while solving the matter to the satisfaction of both sides. If the State party is prepared to end its human rights violation before the Committee issues its final views, this will often be in the interest of the victim. Care must be taken to ensure obedience to the rights guaranteed in the CRC and that the complainant is not put under pressure to enter into a settlement.

Regarding article 7 [Examination Procedure and Follow-up]:

1. In article 7 (1) of the present protocol, the permissibility of other sources of information is not expressly mentioned. These are, however, encompassed by the provision, as long as they are submitted in the name of one of the parties.
2. The follow-up procedure in article 7 (4) and (5) takes up the provisions of the OP to CEDAW. Although not referred to in the other human rights instruments, all of the competent committees have developed a practice of controlling the implementation of their views and recommendations. According to the practice taken up in this protocol, the State party is initially requested to describe the steps taken to carry out the Committee's recommendations after six months. Additionally, the Committee may later request further information about implementation, which may be included in the State party's reports under article 44 CRC.

Regarding article 8 [Protection of the Complainant]:

This provision introduced in the OP to CEDAW stresses the States parties' important obligation to ensure unhindered access to the complaints procedure. Children, just as women, are under a particular risk of mistreatment or intimidation. A provision of this gist is also to be found in the draft optional protocol to ICESCR.

Regarding article 11 [Rules of Procedure]:

The Committee's competence to create its own rules of procedure already ensues from article 43 (8) CRC. All the same, a reference to rules of procedure governing the complaints procedure seems advisable for the sake of clarity.

Regarding article 12 [Staff and Finances]:

This provision takes up the formulation in article 43 (11) CRC which concerns the Committee's facilities for the execution of its current functions. One of the main arguments against introducing an individual complaints procedure is the claim that the Committee for the Rights of the Child, at the present moment encompassing only ten members as opposed to the eighteen members of most other UN Committees, would be hopelessly overtaxed by this new workload. It seems eminently important, therefore, to point out to the State parties indicating their will to strengthen children's rights by introducing an effective monitoring system, their duty to furnish the Committee with the necessary means.

Regarding article 15 [Reservations]:

The prohibition of all reservations set down in article 20 OP to CEDAW so far is unique to UN complaints procedures. Only a complete exclusion of reservations is guaranteed to secure the effectiveness of the individual complaints procedure. The interrelationship among the protocol's provisions must be considered, making reservations to any of its provisions result in damage to the effective functioning of the procedure. A large number of reservations have been declared to the CRC itself. If reservations to an optional protocol were possible too, this would undermine its aim of securing children the implementation of their rights under the Convention.

**EVERY CHILD
HAS THE RIGHT TO BE
PROTECTED
FROM EXPLOITATION**

8 INNOVATIONS OF THE OPTIONAL PROTOCOL

TO THE CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (CEDAW)

The Optional Protocol (OP) to CEDAW, which entered into force 22nd December 2000, is the newest codification of an individual complaints procedure. While the Protocol adopts the basic procedure as it is contained in other international human rights instruments, it also contains some innovative provisions thereby contributing to a progressive development of international law in the field of human rights. Several elements of the individual complaints procedure which had only existed in the practice or rules of procedure of the various Treaty Bodies were expressly set down in the OP, affording greater clarity and legal certainty.

In drafting an optional protocol to the Convention on the Rights of the Child, these innovations should, where possible, be taken up.

1. Art. 5 OP: Interim Measures

All Treaty Bodies of international human rights instruments actually make use of their competence to request a State Party to take interim measures. However, the OP to CEDAW is the first case where this competence is settled in the procedural instrument itself.

2. Art. 7 OP: Follow-up Procedure

For the first time, article 7 (5) OP codifies the control mechanism developed in the practice of the Human Rights Committee (Treaty Body of the International Covenant on Civil and Political Rights). A State Party deemed by the Committee to have violated the Convention, is asked to submit, within six months, a response citing any action taken to endorse the Committee's recommendations.

Moreover, instigating a long-term control, the Committee may invite the State Party to submit further information and to include this in the State Party's subsequent reports under article 18 CEDAW.

3. Art. 11 OP: Protection of the Victim

In article 11 OP, the State Party's obligation to ensure that individuals under its jurisdiction are not subjected to ill treatment or intimidation as a consequence of exercising their right to lodge a communication is expressly set down for the first time. This provision is particularly important in cases concerning women and children as vulnerable groups in society.

4. Art. 13 OP: Publication

The State Parties' duty to make widely known and to publicize in particular the views and recommendations of the Committee on communication procedures involving themselves is also a novelty.

5. Art. 17 OP: Exclusion of Reservations

According to article 17 OP no reservations to the Protocol are permitted. None of the other human rights instruments contain a reference to reservations.

NOT achieved in the OP to CEDAW:

1. Explicit right of non-governmental organizations to submit a communication
2. Group communications and actio popularis
3. Reducing the reaction period for the State Parties to three months
4. Procedure of friendly settlement

Education: Women who are discriminated against can complain to the United Nations.



PHOTO: CHRISTOPH ENGEL

9 OPTIONAL PROTOCOL

... TO THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS – STATUS OF THE INITIATIVE

The initiative concerning the International Covenant on Economic, Social and Cultural Rights (ICESCR) is likely to influence the question of a complaints procedure to the UN Convention on the Rights of the Child (CRC). The CRC contains both "classical" civil and political rights as well as economic, social and cultural rights. Should the discussion relating to the ICESCR come to the conclusion that the latter group of rights is fully justiciable, which was the view adopted in the optional protocol to the Convention on the Elimination of Discrimination Against Women, this would be a positive signal for the introduction of an individual complaints procedure to the Convention on the Rights of the Child.

The preparation of an optional protocol introducing an individual complaints procedure to the ICESCR was first discussed in the Committee on Economic, Social and Cultural Rights in 1990 and has been formally under consideration by the Committee since its sixth session in 1991.

In the following year, the Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on the realization of economic, social and cultural rights, Mr. Danilo Türk, expressly recommended the adoption of such a protocol. The Committee subsequently requested the preparation of four separate reports which provided the basis for extensive discussions within the Committee. During the World Conference on Human Rights in Vienna in June 1993, the Committee was again encouraged to continue its examination.

Accordingly, in-depth debates were conducted by the Committee on the basis of a set of draft proposals from

its eleventh to fifteenth session. In the course of those deliberations, oral and written submissions by the International Labour Organization, the United Nations Division for the Advancement of Women and various non-governmental organizations were considered, as well as the report of an expert meeting convened in Utrecht by the Netherlands Institute for Human Rights in January 1995. At its fifteenth session in November/December 1996, the Committee finally decided on a draft protocol which reflects a consensus position on most issues, although some divergent viewpoints remain.

The Committee on Economic, Social and Cultural Rights had submitted a brief progress report to the UN Commission on Human Rights at its fifty-second session in 1996. On the request of the Human Rights Committee, a report including the draft protocol adopted at the Committee's fifteenth session was submitted at the Commission's fifty-third session in March/April 1997.

The Human Rights Commission is to establish an open-ended working group in 2003 to elaborate a final version of the optional protocol.



PHOTO: VASILIKI DEMIRTZI



PHOTO: VASILIKI DEMIRTZI

**EVERY CHILD
HAS THE RIGHT TO BE
PROTECTED
FROM VIOLENCE**

10 COMPLAINTS MECHANISMS IN HUMAN RIGHTS TREATIES

... USEFUL TO CHILDREN.

The United Nations Convention on the Rights of the Child (CRC), ratified on 20th November 1989, is specially dedicated to the protection of children. Although it is the human rights treaty with the highest number of ratifications (every state in the world except the USA and Somalia), its efficiency is limited by the lack of a control mechanism allowing children to claim violations of their rights by a State Party. However, the CRC is not the only instrument to protect child rights. It is in fact a part of the complex system of universal and regional human rights legislation inspired by the Universal Declaration of Human Rights

(adopted on 10th December 1948). The following human rights treaties contain rights which were later taken up by the CRC. These treaties already provide an individual complaints procedure as an enforcement mechanism. Article 41 CRC expressly declares that national or international regulations more conducive to the realization of the rights of the child are not affected by the CRC. As long as the CRC does not allow for any control mechanism next to the periodic State Party reports, the most should be made of the mechanisms provided in other conventions to enforce child rights.

THE CONTENT OF UNIVERSAL HUMAN RIGHTS TREATIES

1. The International Covenant on Civil and Political Rights (ICCPR)

The ICCPR and the International Covenant on Economic, Social and Cultural Rights form the core of human rights legislation in the United Nations. Both Covenants entered into force in 1976. Only the ICCPR, however, allows for an individual complaints procedure. This is contained in an Optional Protocol and therefore only binds states who have ratified both the ICCPR and this Optional Protocol (148 states to this date¹). The complaints (so-called communications) are examined by the UN Committee on Human Rights.

This article obliges the State Parties to special measures of protection for children and juveniles. A general obligation to protect the rights of its citizens, whether minor or adult, is imposed on the State Parties by art. 2 ICCPR. Art. 24 ICCPR stresses the particular vulnerability of minors and the special measures required to ensure children's full enjoyment of the rights enunciated in the Covenant. This may, according to the UN Human Rights Committee, include economic, social and cultural measures².

Rights contained both in the CCPR and the CRC:

Art. 6 para.1	Right to life (<i>art.6 CRC</i>)	Art. 21	Freedom of assembly (<i>art. 15 CRC</i>)
Art. 6 para.5	Prohibition of death penalty for children under 18 yrs. (<i>art. 37 (a) CRC</i>)	Art. 22	Freedom of association (<i>art. 15 CRC</i>)
Art. 7	Prohibition of torture (<i>art. 37 (a) CRC</i>)	Art. 23 para.1	Rights of the family (<i>art. 5 CRC</i>)
Art. 9	Right to personal liberty and security (<i>art. 37 (b) CRC</i>)	Art. 23 para.3	Right to consensual marriage (<i>art. 12 CRC (right of the child to be heard)</i>)
Art. 10	Humane detention conditions, special protection of juveniles (<i>art. 37 (c) CRC</i>)	Art. 23 para.4	Protection at parents' separation (<i>art. 3 CRC (best interests of the child)</i>)
Art. 14	Right to a fair trial, special protection of juveniles (<i>art. 12 para.2; art. 40 CRC</i>)	Art. 24 para.2	Registration of every child (<i>art. 7 CRC</i>)
Art. 17	Right to privacy (<i>art. 16 CRC</i>)	Art. 24 para.3	Right to nationality (<i>art. 7 CRC</i>)
Art. 18	Freedom of conscience and religion (<i>art. 14 CRC</i>)	Art. 25	Right to participate in public life (<i>art. 12 CRC</i>)
Art. 19	Freedom of expression and information (<i>art. 13 CRC</i>)	Art. 27	Protection of minorities' culture, religion and language (<i>art. 30 CRC</i>)

Further important rights contained in the CCPR:

Art. 8	Prohibition of slavery	Art. 24	Special measures to protect children
Art. 16	Recognition of legal capacity		

¹ Status: 21.08.2002. The updated statistics are available at: <http://www.unhchr.ch/pdf/report.pdf>

² CCPR General Comment 17. The Human Rights Committee's General Comments concerning the individual provisions of the ICCPR are available at: <http://www.unhchr.ch/tbs/doc.nsf>

2. Convention on the Elimination of All Forms of Discrimination Against Women

The UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) entered into force in 1981. Next to the CRC (191 State Parties³), CEDAW has the second-highest number of member states (170 State Parties⁴). This is the last of the human rights treaties to introduce an individual complaints procedure in the Optional Protocol (OP), which entered into force in September 2000. The Committee on the Elimination of Discrimination Against Women will be responsible for examining the complaints.

As the aim of this Convention is the elimination of discrimination against women, the complaints mechanism only deals with the right to equal treatment of females and males.

³ See footnote No. 1, page 25

⁴ See footnote No. 1, page 25

3. Convention on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

The UN Convention on Torture (CAT) entered into force in 1987. It allows for the examination of individual complaints by the Committee against Torture in its article 22. The procedure applies only to those State Parties who have explicitly agreed to it.

Rights contained both in CEDAW and the CRC:

Art. 2	Prohibition of discrimination on the basis of gender (<i>art. 2 para.1 CRC</i>)	Art. 11	Equal rights concerning employment (<i>art. 26, 32 CRC</i>)
Art. 6	Prohibition of traffic in women and exploitation of prostitution (<i>art. 34, 35 CRC</i>)	Art. 12	Equal rights concerning health care (<i>art. 24 CRC</i>)
Art. 7	Equal rights concerning participation in public life (<i>art. 12 CRC</i>)	Art. 13	Equal rights in economic and social life (<i>art. 31 CRC</i>)
Art. 9	Equal rights concerning nationality (<i>art. 7 CRC</i>)	Art. 15	Equality before the law (<i>art. 12 para.2 CRC</i>)
Art. 10	Equal rights concerning education (<i>art. 28 CRC</i>)	Art. 16 para.1	Right to consensual marriage (<i>art. 12 CRC (right of the child to be heard)</i>)

Further important rights contained in CEDAW:

Art. 5	Measures to modify stereotypes roles for men and women
Art. 14	Special support for women in rural areas
Art. 16 para.2	Prohibition of marriage of a child, obligation to specify a minimum age for marriage (however, the term "child" is not defined in this Convention and therefore subject to the definition of each State Party)

Rights contained both in the CAT and the CRC:

Art. 2	Prohibition of torture by state officials (<i>art. 37 (a) CRC</i>)
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Further important rights contained in the CAT:

Art. 3	Prohibition of extradition to states where there is danger of torture
Art. 14	Right for victims of torture to obtain adequate compensation

4. **International Convention on the Elimination of All Forms of Racial Discrimination**

The UN Convention on the Elimination of Racial Discrimination (CERD), which entered into force in 1969, provides for an individual complaints procedure in article 14. The Committee for the Elimination of Racial Discrimination is responsible for examining the communications.

Rights contained both in the CERD and the CRC:

Art. 2 and 5 Prohibition of and protection against discrimination (*art. 2 CRC*)

BASIC STEPS IN THE COMPLAINTS PROCEDURE

An outline of the procedure according to the Optional Protocol to the ICCPR can be found on page 7. The complaints procedure of other UN human rights treaties follows the same basic structure.

FURTHER COMPLAINTS PROCEDURES AT THE UNIVERSAL LEVEL

1. **Petitions to the United Nations**

The Petition Procedure to the Human Rights Commission is based on the Economic and Social Council's (ECOSOC) Resolutions 728, 1235 and 1503. Hereby, individuals, groups of individuals and non-governmental organizations are permitted, subject to certain admissibility criteria, to claim severe human rights violations. The procedure is, however, limited to a confidential examination of the human rights situation in the relevant state and a subsequent report to the Economic and Social Council. An inquiry into the individual case is not carried out⁵.

2. **Complaints Procedure in UNESCO's Fields of Competence**

UNESCO is the United Nations

Educational, Scientific and Cultural Organization. In 1978, UNESCO's Executive Board laid down a confidential procedure for the examination of complaints concerning alleged violations of human rights in its field of competence (*104 EX/Decision 3.3*)⁶. Complaints may again be submitted by individuals, groups of individuals and non-governmental organizations to the Committee on Conventions and Recommendations. The Committee contrives to solve the problem in a spirit of dialogue and mutual understanding. It does not express verdict-like views as other treaty bodies do. As the Committee works in the strictest confidentiality so as not to jeopardize the adoption of an amicable solution and the results are not publicized, this procedure adopts a different

approach to the complaints procedures of the human rights treaties discussed above.

3. **Complaints Procedure in ILO's Fields of Competence**

The Constitution of the International Labour Organization (ILO) allows workers' or employers' organizations to make a so-called representation (*art. 24*) or another member State or any delegate of the International Labour Conference to submit a complaint (*art. 26*) against a member State who has failed to apply an ILO Convention he has ratified. Additionally, the ILO has established a special machinery for the enforcement of the freedom of association principles⁷. Individuals, however, have no opportunity to declare violations in relation to ILO conventions.

⁵ Christian Tomuschat, *Handbuch Vereinte Nationen*, Munich 1991, page 556.

⁶ <http://www.unesco.org/general/eng/legal/hrights>

⁷ <http://www.ilo.org/public/english/standards/norm>



**EVERY CHILD
HAS THE RIGHT
TO EDUCATION**



PHOTO: VASILIKI DEMIRTZI

10 REGIONAL LEVEL

At the regional level, control mechanisms of human rights conventions are considerably more developed and potent than at the universal level. This is due to the smaller number of State parties to regional conventions and in particular to a greater accordance in their moral concepts⁸. Next to non-judicial complaints procedures, some regional conventions institute formal court procedures to control implementation. Whilst individual complaints procedures result in views and recommendations which are not formally binding, international

courts can pronounce judgements with legally binding effect. However, a State party which voluntarily subjects itself to an individual complaints procedure can be said to have an obligation under international law to execute all decisions made in this procedure in good faith⁹. In any case, due to the political pressure resulting from the publication of the UN treaty bodies' recommendations and these bodies' great authority, the effectiveness of their recommendations is comparable to that of an international court's verdict¹⁰.

⁸ Otto Kimminich, *Einführung in das Völkerrecht*, Berlin 2000, page 355.

⁹ Christoph Pappa, "Das Individualbeschwerdeverfahren des Fakultativprotokolls zum Internationalen Pakt über bürgerliche und politische Rechte", Vienna 1996, page 333.

¹⁰ Friederike Brinkmeier, "Bericht über die Arbeit des Menschenrechtsausschusses der Vereinten Nationen im Jahr 1999" in: *MenschenRechtsMagazin Online*, issue 2/2000, <http://www.uni-potsdam.de>

THE EUROPEAN CONVENTION ON HUMAN RIGHTS

The European Convention on Human Rights, which entered into force in 1953, embodies one of the most effective human rights systems and acted as a role model for other regional conventions.

The Convention guarantees the classical civic and political rights and freedoms, but does not include economic, social and cultural rights.

The enforcement mechanism was restructured in 1994 by the Protocol No. 11, whereby the powers of the European Commission of Human Rights were transferred to the European Court of Human Rights. This Court in Strasbourg is now the sole controlling organ of the Convention. According to art. 34 of the Convention,

complaints alleging a violation of the Convention may be submitted to the Court by individuals, groups of individuals and non-governmental organizations. This is the only international procedure in which a human rights court can be directly accessed by individuals instead of undergoing the usual preliminary admissibility examination by a body of state representatives (such as the former European Commission of Human Rights)¹¹.

In case the Court affirms a violation of the Convention, it can grant the victim an adequate compensation. The implementation of the Court's legally binding verdicts is monitored by the Council of Europe's Committee of Ministers (*art. 46 para.2 of the Convention*).

THE AMERICAN CONVENTION ON HUMAN RIGHTS

The American Convention on Human Rights was adopted by the Organization of American States and entered into force in 1978. Its monitoring mechanism is implemented by two bodies: the Inter-American Commission on Human Rights in Washington D.C. and the Inter-American Court on Human Rights in Costa Rica. The Court's jurisdiction is limited to those State parties who have formally declared its jurisdiction as binding (22 of the 25 State parties to the ACHR¹²).

The Content of the American Convention on Human Rights

Rights contained both in the American Convention on Human Rights and the CRC:

Art. 4 para 1	Right to life (<i>art. 6 CRC</i>)	Art. 12	Freedom of conscience and religion (<i>art. 14 CRC</i>)
Art. 4 para 5	Prohibition of death penalty for children under 18 yrs. (<i>art. 37 (a) CRC</i>)	Art. 13	Freedom of expression (<i>art. 13 CRC</i>)
Art. 5 para 2	Prohibition of torture (<i>art. 37 (a) CRC</i>)	Art. 15	Freedom of assembly (<i>art. 15 CRC</i>)
Art. 5 para 4,5	Humane conditions of detention, special protection of juveniles (<i>art. 37 (c) CRC</i>)	Art. 16	Freedom of association (<i>art. 15 CRC</i>)
Art. 6	Freedom from slavery and slave traffic (<i>art. 35 CRC</i>)	Art. 17 para 1	Rights of the family (<i>art. 5 CRC</i>)
Art. 7	Right to personal liberty and security (<i>art. 37 (b) CRC</i>)	Art. 17 para 3	Right to consensual marriage (<i>art. 12 CRC (right to be heard)</i>)
Art. 8, 9	Right to a fair trial (<i>art. 12 para.2; art. 40 CRC</i>)	Art. 18	Right to a name (<i>art. 7 CRC</i>)
Art. 11	Right to privacy (<i>art. 16 CRC</i>)	Art. 20	Right to nationality (<i>art. 7 CRC</i>)
		Art. 23	Right to participate in public life (<i>art. 12 CRC</i>)

Further important rights contained in the American Convention on Human Rights:

Art. 10	Right to compensation in case of miscarriage of justice	Art. 19	Special protection of children
		Art. 25	Right to judicial protection

¹¹ See footnote No. 12

¹² Status 20/12/2001. Information on regional human rights instruments and their status of ratification are available at the University of Minnesota's Human Rights Library Website: <http://www.umn.edu/humanrts>

The Control Mechanism of the American Convention on Human Rights

The monitoring system is divided into two phases:

■ An individual, group of individuals or non-governmental organization can lodge a petition with the Inter-American Commission on Human Rights containing a complaint of violation of the Convention. The Commission will primarily examine the admissibility, which is determined along the same criteria as the procedures at the UN level (*art. 46 of the Convention*). If the admissibility requirements are fulfilled, the Commission will place itself at the disposal of the parties with a view to reaching a friendly settlement of the matter. It can make recommendations to the State party concerned and prescribe a period within which the State is to take the measures proposed by the Commission (*art. 50*).

■ Only in cases where one or both of the parties are unwilling to enter into a friendly settlement or to follow the Commissions proposals, the Commission may submit the complaint to the European Court on Human Rights. It is hence not possible for an individual to apply directly to the Court. Should the Court's examination result in an affirmation of a human rights violation, it shall rule that the consequences be remedied and that fair compensation be paid to the injured party (*art. 63*). Thus, in the recent verdict "Villagrán Morales"¹³, which concerned the brutal murder of five street children by the Guatemalan police, the State party was ordered to pay compensation to the victims' families, to effect the entry into force of the pending Children's and Adolescents' Code and to name a school after the murdered children in commemoration.

THE AFRICAN SYSTEM OF HUMAN RIGHTS

In 1986 the Organization of African Unity (OAU) adopted the African Charter on Human and Peoples' Rights, the so-called Banjul Charter. As an expression of the moral values governing the African continent, this Charter contains some features not found in other human rights treaties. For one, it not only recognizes the individual's rights and freedoms, but also includes collective rights, such as the peoples' right to self-determination and development, peace and a satisfactory environment (*art. 20, 22, 23 and 24 Banjul Charter*). Secondly, this Charter is the only human rights convention to set down duties of the individual towards his family, society and state (*art. 27 Banjul Charter*) rather than just guaranteeing the individual's rights. Following the adoption of the UN Convention on the Rights of the Child, the OAU adopted the African Charter on the Rights and Welfare of the Child, which entered into force in 1999. Unlike the UN CRC, the African Charter on the Rights of the Child provides an individual complaints procedure.

A. The African Charter on Human and Peoples' Rights (Banjul Charter) Content of the Banjul Charter

Rights contained both in the Banjul Charter and the CRC:

Art. 4	Right to life (<i>art. 6 CRC</i>)	Art. 10	Freedom of association (<i>art. 15 CRC</i>)
Art. 5	Prohibition of torture (<i>art. 37 (a) CRC</i>)	Art. 11	Freedom of assembly (<i>art. 15 CRC</i>)
Art. 6	Right to personal liberty and security (<i>art. 37 (b) CRC</i>)	Art. 13	Right to participate in public life (<i>art. 12 CRC</i>)
Art. 7	Right to a fair trial (<i>art. 12 para.2; art. 40 CRC</i>)	Art. 15	Right to satisfactory working conditions (<i>art. 32 CRC</i>)
Art. 8	Freedom of conscience and religion (<i>art. 14 CRC</i>)	Art. 16	Right to health care (<i>art. 24 CRC</i>)
Art. 9	Freedom of expression and information (<i>art. 13 CRC</i>)	Art. 17	Right to education (<i>art. 28 CRC</i>)
		Art. 18	Rights of the family (<i>art. 5 CRC</i>)

Further important rights contained in the Banjul Charter:

Art. 18 para 3 Protection of the rights of the woman and the child as stipulated in international declarations and conventions.

¹³ <http://www.casa-alianza.org>. A link to this verdict can also be found at the website in footnote No.16.

Individual Complaints Procedure according to the Banjul Charter

Complaints may be submitted by State parties, individuals and non-governmental organizations to the African Commission on Human and Peoples' Rights. If the admissibility conditions are met, the Commission will strive to reach an amicable solution. The Commission will prepare a report stating the facts and its findings which will be transmitted to the concerned parties and to the Assembly of Heads of State and Government (Supreme Organ of the OAU). Since the Commission's reports may only be published with the agreement of this Assembly (*art. 59 para.2*), their value as an instrument of enforcement is not comparable to that of the UN bodies¹⁴.

To improve the effectiveness of this monitoring system, an optional protocol was adopted in 1998 to establish an African Court on Human and Peoples' Rights in Addis Ababa. Similar to the Inter-American system, the Court would constitute a second control body which only examines communications brought before it by the Commission. Individuals would only have access to the Court via the Commission. All the same, an independent Human Rights Court with the capacity to pronounce binding judgements would be an important step forward for human rights development in Africa. So far, however, only Burkina Faso, Gambia and Senegal have ratified the protocol, which will only enter into force when eleven states have ratified¹⁵.

B. The African Charter on the Rights and Welfare of the Child The Content of the African Charter on the Rights and Welfare of the Child

This Charter takes up almost all of the guarantees contained in the UN CRC, partly in identical form. The right to social security and the protection of minorities are the only major features which were not adopted in the African Charter.

Additionally, this African Charter recognizes several rights evolving from the particularities of the region:

Art. 21 para 1 Prohibition of cultural practices harmful to the health of the child or discriminatory to the child on the grounds of sex or other status.

Art. 21 para 2 Prohibition of child marriage (under the age of 18)

Art. 26 Special protection against apartheid and discrimination
Art. 30 Special protection of children of imprisoned mothers

Like the Banjul Charter, the African Charter on the Rights of the Child not only grants rights and freedoms but also lays down responsibilities of the child towards the family and the national community (*art. 31*).

The Individual Complaints Procedure according to the African Charter on the Rights and Welfare of the Child

The African Committee of Experts on the Rights and Welfare of the Child was established to receive and examine communications submitted by member States, individuals, groups, non-governmental organizations

or the United Nations. Just as in the procedure laid down in the Banjul Charter, however, the Committee's reports are only published if the Assembly of Heads of State and Government agrees (*art. 45 para.3*).

¹⁴ See footnote No. 12, page 360.

¹⁵ See footnote No.16..

THE ARAB CHARTER ON HUMAN RIGHTS

The Arab Charter on Human Rights was adopted in 1994 by the League of Arab States but has not yet entered into force. It mirrors the rights set down in other human rights treaties and its article 2 stipulates that all individuals shall enjoy the rights recognized in the Charter without

distinction on grounds of race or religion and without discrimination between men and women. The monitoring mechanism consists of a complaints procedure for State parties, though not for individuals.

THE INTERNATIONAL CRIMINAL COURT

In July 1998, 120 states adopted the so-called Rome Statute of the International Criminal Court (ICC). The Court is to try individuals for the most serious offences of global concern. The recent ad hoc tribunals for Former Yugoslavia and Rwanda demonstrated the need for a permanent mechanism to prosecute war criminals¹⁶. The Court will be located in The Hague.

The statute entered into force on the 1st July, 2002. 84 states to date (August 2002) have ratified it. The court is to become operative by the middle of 2003. It is regrettable that not only the USA and Israel have withdrawn their signatures from the statute. The German Government regret these obstructions. They consider the entering into force of this statute to be a decisive break-through in the development of humanitarian civil rights.

The Crimes tried by the ICC

Crimes within the jurisdiction of the Court will be genocide, war crimes and crimes against humanity. The latter may consist of systematic extermination of civilians, torture, rape, forced pregnancy or persecution on political, racial, ethnic or religious grounds. A war crime may entail the conscription or enlistment of children

under 15 years of age in international armed conflicts. The crime of aggression is to be included when the State parties at a review conference agree on a precise definition, elements and conditions under which the Court will prosecute this crime.

The Procedure before the ICC

Under the principle of "complementarity", the ICC will act only when national courts are unable or unwilling to exercise their jurisdiction.

Cases can be referred to the Court by states, the Court's Prosecutor or, exceptionally, by the UN Security Council

acting under Chapter VII of the UN Charter. The Court's Statute establishes the highest international standards and guarantees of due process and fair trial. The hearing is conducted in the presence of the suspect. The ICC can impose fines and limited or lifelong prison sentences.

¹⁶ <http://www.un.org/News/facts/iccfact.htm>

11 STATUS OF THE INITIATIVE

... IN FAVOUR OF AN INDIVIDUAL COMPLAINTS PROCEDURE TO THE CONVENTION ON RIGHTS OF THE CHILD

In April 2001, Kindernothilfe began its initiative for the introduction of an individual complaints procedure to UN Convention on the Rights of the Child. As a prelude, a conference on the subject was held on 6th April 2001 in cooperation with the Joint Conference Church and Development (*see page 11-13 and documentation at www.kindernothilfe.de*) It was clear to all participants of the conference that the introduction of an optional protocol would require a great deal of persuasive power

and, above all, strong alliances. So far, the initiative is being supported by the German National Coalition for the Implementation of the UN Convention on the Rights of the Child, ECPAT Germany and the Forum for Human Rights (Forum Menschenrechte). Terre des hommes Germany is also backing the initiative. On the international level, World Vision Canada and amnesty international are involved.

What has been reached so far?

Since April 2001, various steps have been taken and progress – though modest – has been made:

- Member of German Parliament **Hermann Gröhe** (CDU/CSU) puts a **written query to the German government**. The answers confirm that the German government is in principle open to the examination of introducing an individual complaints procedure. (*see page 14*).
- **Anke Fuchs**, former Vice President of the German Parliament and the German government's personal representative for the UN Special Session on Children (postponed from September 2001 to May 2002) is supporting the initiative. In her speech during the preparatory conference to the Special Session "Children in Europe and Central Asia" in Berlin in May 2001, she

emphasizes the significance of an individual complaints procedure as an important instrument for the future. (*see box*)

"I will most gladly support Kindernothilfe in their efforts to introduce a transparent procedure to help children in hopeless situations. After studying this subject, I am appalled by the desperate and hopeless situations children can find themselves in. I find that an individual complaints procedure is an excellent option because children then know that they have a chance and that they are not defenceless."

Source: Kindernothilfe Magazine February 2001

Former Vice President of the German Parliament Anke Fuchs supports the individuals complaints procedure.



- **Bill Bell** (Save the Children, Great Britain) takes up the claim for a complaints procedure in his statement on the occasion of the same preparatory conference in Berlin (*see box*).

"As signatories to the UN Convention, governments need to renew and strengthen their efforts to fully implement the Convention. ... There are some outstanding – but all too frequently isolated – examples in the region of what this might involve:

- The appointment of an independent mechanism – such as an Ombudsman or Commissioner.
- At international level this might be complemented by giving consideration to the establishment of an individual petitions procedure for the Convention.
- Carrying out *child impact assessments* – the scrutiny of all legislation and policies to ensure that they promote the best interests of children and do not infringe their rights.
- The withdrawal of all reservations made at the time of ratification of the UN Convention ..."

- The **alternative outcome document to the Special Session on Children** dated June 2001 ("A world fit for

children"), Alternative NGO Text prepared by the Child Rights Caucus) contains a wording worked out by legal experts on Kindernothilfe's conference: "**We will build on the monitoring system for the Convention on the Rights of the Child which is already in place, at national and international levels – including the elaboration of elements for a petition procedure under the CRC by the Commission on Human Rights**". This document has been signed by over 100 NGOs and will constitute an important reference base in the work for children's rights.

- The German UN Ambassador in New York, **Dr. Hanns Schumacher**, refers to the individual complaints procedure in his statement during the 3rd preparatory conference to the Special Session in New York on 11th June 2001: "... **the forward looking suggestion of the German delegation to examine the introduction of an individual complaints procedure.**"
- On occasion of the International Conference "Stopping the economic exploitation of children" in Hattingen/ Germany in February 2002 the chair of the Committee on the Rights of the Child, Prof Jaap E. Doek, refers to the necessity of an individual complaints procedure (*see page 12*)
- 15th March 2002: The Forum for Human Rights adopts a **catalogue of demands** to be put to the German Parliament. It includes the call for the elaboration of an optional protocol under the UN Convention on the Rights of the Child.

What action should be taken?

- It is necessary to persuade further organisations both national and international of the necessity of an individual complaints procedure.
- Further talks should be carried out with relevant government ministries as well as with members of parliament.
- The subject should be introduced at international conferences and UN conferences, such as the Human Rights Commission, for example, by presenting concrete children's rights violations and putting them into the context of the obligations of states.
- Use should be made of experiences gained from initiatives to create an individual complaints procedure for the International Covenant on Economic, Social and Cultural Rights.
- The Committee on the Rights of the Child in Geneva should be kept informed on each individual step and involved in it.
- The media and politicians should be regularly informed of violations of children's rights and asked to focus on these cases of children's rights violations and call for more effective monitoring procedures.

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- Aims to give young people a chance to a good start in life by
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- Working together with partner organizations located abroad that are familiar with the social realities
- Informing people in Germany
- Doing lobbying and campaigning for children's rights

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