

Unique rights for children in the CRC

Some articles in the CRC mirror guarantees established for “everyone” in the International Covenants or other instruments, underlining that these rights apply equally to children. But very many other provisions in the Convention, including the following, provide unique rights for children:

- Best interests of the child to be a primary consideration in all actions concerning children
- Obligation to give due weight to children’s expressed views in all matters affecting the child; also to provide opportunity for child to be heard in judicial or administrative proceedings
- Obligation to ensure maximum survival and development of the child
- Institutions and services etc. for care and protection of children to conform to established standards
- Right of the child to know and be cared for by parents
- Preservation of the child’s identity
- Right not to be separated from parents unless in best interests with judicial review
- Obligations to prevent abduction and non-return of children abroad
- Detailed aims defined for the education of the child
- Specific protection from sexual exploitation and abuse including child pornography
- Obligation to ensure the child’s access to information and material from a diversity of national and international sources
- Right to protection from “all forms of physical or mental violence”
- Prohibition of life imprisonment of children without possibility of release; arrest, detention, imprisonment of the child only as a last resort and for shortest appropriate period
- Specific limitations on recruitment and involvement of children in armed conflict
- Right of access for child to health-care services and obligations to take specific measures for health; protection from traditional practices prejudicial to health
- Distinct aims for juvenile justice systems and rights of children involved

The two existing Optional Protocols to the CRC add further unique rights and safeguards.

The campaign

The campaign for a communications procedure under the Convention on the Rights of the Child is established as a Working Group of the NGO Group for the Convention on the Rights of the Child. Founding organisations include: Child Rights Information Network (CRIN), European Network of Ombudspersons for Children (ENOC), Global Initiative to End All Corporal Punishment of Children, Kindernothilfe, Plan International, Save the Children Norway, Save the Children Sweden, Save the Children UK, SOS Kinderdorf International, World Organisation against Torture (OMCT), World Vision International.

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Petition

By January 2009, more than 450 international and national NGOs, human rights institutions and other bodies had signed a petition: “An international call to strengthen the enforcement of the UN Convention on the Rights of the Child by the drafting and adoption of an Optional Protocol to provide a communications procedure”. To sign the petition and for further information, including a draft Optional Protocol to the CRC and commentary, see

<http://www.crin.org/petitions/petition.asp?petID=1007>

A communications procedure for the Convention on the Rights of the Child

January 2009

“Children have waited nearly 20 years for this essential mechanism to reinforce full implementation of their Convention. There should be no further delay.”

There is strong and growing international pressure for the drafting and adoption of an Optional Protocol to the Convention on the Rights of the Child (CRC) to provide a communications procedure. This is supported by the Committee on the Rights of the Child, international and national NGOs, human rights institutions and other bodies from all regions (see <http://www.crin.org>).

The Convention is the only international human rights treaty with a mandatory reporting procedure which does not have, in addition, a communications/complaints procedure. This is a serious matter of discrimination against children and weakens effective implementation of the CRC.

The international protection of children’s rights is incomplete without a communications procedure, allowing children and their representatives to pursue breaches of their rights under the Convention. While the mechanisms established under other international instruments can be used to pursue some rights, they do not cover, separately or together, the full range and detail of rights for children in the CRC. The Convention guarantees

many unique and important rights (see box on back page). Furthermore, communications made on behalf of children to the other bodies are not considered by committees with special expertise on children’s rights.

The CRC is the most universally ratified of the core human rights instruments, by 193 States. Its two existing Optional Protocols, on Sale of Children, Child Prostitution and Child Pornography and on the Involvement of Children in Armed Conflict, have each achieved more than 100 ratifications. A number of States Parties to the CRC are already supportive of the proposal for an Optional Protocol to provide a communications procedure.

Children have waited nearly 20 years for this essential mechanism to reinforce full implementation of their Convention. There should be no further delay. Many standard elements of an Optional Protocol to provide a communications procedure are already established in the Protocols linked to other instruments. Drafting should not be a long drawn out process: it could be well under way by the 20th anniversary of adoption of the Convention.

Answering arguments against providing a communications procedure for the CRC

“It would duplicate existing mechanisms”

It is not a question of duplication. The Optional Protocol to the CRC would fill a major and entirely unjustified gap in human rights protection, which discriminates against children. Given the universality and inter-dependence of human rights there is of course overlap among the various instruments. But the CRC provides distinctive and in many cases additional rights for children – see box on back page. Its Committee has special expertise on children’s rights. None of the other relevant mechanisms has been designed with the special status of children in mind.

“It would not be effective, its decisions would be non-binding”

This is a defeatist argument. The Optional Protocol to the CRC would establish a communications procedure with the same force as the other established ones. While some States have not complied with some decisions and recommendations on individual communications (just as some States ignore treaty bodies’ concluding observations), there are very positive examples of changes in law and practice following decisions of the relevant committees. Communications procedures are complementary to reporting procedures - they reinforce each other.

“It is better for the Committee to focus on persuading States to improve national remedies for breaches of children’s rights”

This is not an alternative; of course States need to develop effective remedies for breaches of all children’s rights. But children, like other population groups, need to be able to appeal to an international procedure when national remedies do not exist or are not effective. The existence of such a procedure under the CRC will act to encourage the development of effective national mechanisms.

“The CRC covers economic, social and cultural rights, which are not justiciable like civil and political rights”

There is considerable international, regional and national jurisprudence to demonstrate that these rights *are* justiciable, and emphasising the indivisibility and inter-dependence of human rights. In its General Comment No. 5 on general measures of implementation, the Committee emphasises, echoing other Treaty Bodies, “that economic, social and cultural rights, as well as civil and political rights, must be regarded as justiciable”. Regional complaint mechanisms already consider economic, social and cultural rights. An OP to the International Covenant on Economic, Social and Cultural Rights is at an advanced stage of drafting.

“Submitting a communication is a complex matter and most children will not have the capacity to do so”

Children are holders of human rights. As such, they have an equal right to effective remedies. Children with the capacity to pursue communications are not very different from adults (and many adults, like children, have special protection/communication needs). Most communications to the existing procedures are made by adults with the support of organisations or lawyers or both. Most children with capacity will need exactly the same sort of support. Children who lack the capacity to draft and submit a communication will need to be fully supported and represented by adults. We can be sure that in the foreseeable future, very few children will pursue communications on their own.

“Children are very vulnerable – establishing a communications system could put them unnecessarily at risk”

Existing Optional Protocols establishing communications procedures already include safeguards for vulnerable petitioners – allowing for anonymity, requiring protection from reprisals, etc. Children have the same right to effective remedies as all other rights-holders. The communications system will of course need to be designed with their safety in mind.

“The Committee on the Rights of the Child does not have the capacity to deal with communications on top of its very demanding reporting process”

The Committee and the Secretariat have risen to the challenge of the massive workload of reporting under the CRC and the two OPs, removing the backlog in recent years through the temporary two-chamber system, supported by additional resources. Similarly, with appropriate specialisation and additional resources, it could - like other Committees - process communications. This is certainly not a legitimate reason for denying children a tool for protection of their human rights available to other population groups.

“The Committee would be swamped, undermining its credibility”

Other procedures have not been swamped. The Optional Protocol to the International Covenant on Civil and Political Rights is the most used communications procedure. It has been in force for 32 years, and has received just over 1600 communications, issuing 600 decisions (the others being discontinued or declared inadmissible). Since the Convention against Torture procedure came into force 20 years ago in 1987, the Committee has received 330 communications and issued 145 decisions. Since the CERD procedure came into force in 1982, it has received 40 communications, resulting in 22 decisions. CEDAW’s OP came into force in 2000; since then the Committee has issued 10 decisions on communications and one report on an inquiry under article 8 of the OP. While we should hope for speedy ratification of the OP to the CRC once adopted, the experience with other instruments and Protocols is that ratifications happen relatively slowly. In addition, all the procedures have rigorous gate-keeping devices to filter out inadmissible communications, as will the OP to the CRC.

“It would be preferable to establish a joint procedure for considering communications/complaints under all the major instruments”

This proposal, made in the context of proposals for a single standing treaty body, has never had the support of the Committee on the Rights of the Child nor of the wider children’s rights community because of the dangerous risk of a loss of focus on *children’s* rights. It would undermine the purpose and power for children of the CRC. And if there is, in time, some centralising of response to communications, children’s position will be relatively weak if there is not an already established procedure linked to the CRC.