

Meeting of the UN Working Group for the Communications Procedure, December 2009

Opening Session

[Geneva, December 2009] - Over one hundred governments were represented today at the opening of the UN Working Group to discuss a communications procedure to be developed under the United Nations Convention on the Rights of the Child.

The meeting was due to open on Monday but was postponed until Wednesday morning due to lack of interpretation.

A stronger mandate

The mandate of the Working Group is 'to explore the possibility of elaborating an Optional Protocol to the CRC to provide a communications procedure complementary to the reporting procedure under the Convention'. This means that they will not begin drafting, but will discuss whether there is a need for such a mechanism.

It is hoped that by the end of the week, the Working Group will agree that there is a need to begin drafting this new procedure and that the remaining questions will be tackled during the drafting process.

In order for this to happen, the Working Group would have to seek a stronger mandate to begin drafting. This would have to be done through a Resolution in the Human Rights Council at its March session.

Programme of work

The meeting was opened by **Jane Connors**, OHCHR, who was speaking on behalf the High Commissioner for Human Rights. She emphasised the support of the High Commissioner to the development of this procedure, stressing once again that the CRC was the only treaty that did not have a complaints mechanism.

Mr Drahoslav Štefánek from Slovakia was then appointed Chairperson for the Working Group. He said he aimed to be impartial and hoped for an open and frank discussion. The ultimate goal, he said, was to strengthen the implementation of the rights of the child. He then invited statements from governments and other organisations.

Following governments' statements, experts would begin discussing the issue of timing and reasons for elaborating the OP to the CRC. The afternoon session will look at existing international, regional and national mechanisms and their efficiency in protecting the rights of the child.

Governments' statements

Uruguay confirmed its support to this working group and the OP and welcomed the opportunity to secure a communications procedure for the CRC.

The representative from **Finland** said that there was a need for adequate domestic remedies for dealing with violations and international, regional mechanisms must only be used when domestic remedies have been exhausted. If adopted, the new OP would provide full implementation of the rights of the child and such a well functioning complaints mechanism would help countries with weak domestic mechanisms.

The representative from **Nigeria** spoke on behalf of the African Group. He highlighted the fact that the African Union has gone further than other regional groups by adopting a regional mechanism in Africa to deal with child rights, including a complaints mechanism. He said that the African Group believed that the complaints procedure should start at the domestic level, but should move to an international level if domestic remedies are exhausted.

Slovakia said that they were pleased to hold the chairmanship among many very supportive States. He said there was no doubt that children were full rights holders and should have every chance to have their rights respected. "Having the CRC committee investigate complaints is the only way to go to ensure all their rights are fulfilled", he said, however "the OP should not be a new obligation, but a tool to increase effective implementation".

A representative from **China** said his country will cooperate fully with this process of elaboration and welcomes the experts and NGOs participating in the meeting. He said this convention had made a great contribution to the rights of the child and his government was supportive of this discussion and but stressed that they needed to avoid overlapping with other human rights treaties and discuss the workload of the Committee of this new OP.

The representative from **Norway** said they recognised that the CRC was the only international treaty without a complaints procedure and welcomed the opportunity to discuss the possibility of elaborating one under the CRC.

Mexico expressed their full commitment to this issue. He said this meeting was an excellent opportunity to discuss the various issues at state in the construction of an OP. He said his country would like to see comparative studies of complaints mechanisms of the other treaties.

Indonesia said careful consideration should be given to children's special needs and status, and further indepth studies were needed to see whether this OP could bring improvements to the implementation of the CRC on the ground.

The representative of **Germany** said this OP would contribute to national laws and hence will help the overall productivity of the CRC. She said that it was known that other treaties have adopted a complaints procedure effectively and there existed therefore examples of best practice to look at.

Thailand explained that children do not have adequate remedies to violations due to the lack of the complaints procedure and they therefore joined the core group of States supporting this initiative.

Switzerland said Article 12 was a key article in this process. They said an

appropriate solution for children to submit individual complaints was needed and other mechanisms could serve as a guide, but could not just be copied.

Belgium highlighted the issue of children's legal capacity when submitting complaints.

The representative of the **United Kingdom** welcomed the role that child rights NGOs had played in the development of this Working Group. He said his government had an open position on the elaboration of this OP. He raised the question how minors could make use of the complaints and have complaints made on their behalves.

The issue of legal capacity was also raised by **Russia**. They also said there had to be a thorough discussion on the issue of compatibility with existing mechanisms.

Pakistan's main questions were on how to ensure domestic remedies are exhausted, and how to ensure children were not exploited in the process.

Slovenia, who had been one of the first countries in support of this new OP, said the 20th anniversary of the CRC was a good time to take stock. He expressed his concern that the we often say children should come first but the OP has come last.

Denmark, also a co-sponsor of the Working Group said they had no formal position but would play an active part in the negotiations.

Austria said they were open to the idea of this OP and were interested in discussing three issues: requirements for admissibility, special needs of the child and length of time for a complaint to be dealt with.

South Korea said a communications procedure was the only way to make the CRC more implementable, "we are fully behind it" the representative affirmed.

The speaker representing **NGOs** said this discussion was the first step in the establishment of the OP. This is not a new idea. She recalled the strong NGO campaign with over 600 organisations worldwide supporting this mechanism. "We must provide an OP which will reflect the international community's commitment to children as rights holders" she said.

[Read the full statement](#)

Poland, as other States, said there was a need to discuss complementarity with other mechanisms. The speaker also asked who would be able to lodge a complaint.

A representative from the International Committee of Jurists (ICJ) said having this remedy was "fundamental in law, and human rights law in particular", and "for rights to have meaning, effective remedies must be available and we must draw from experience gained by the OP for ICESCR, CEDAW, as well as the disability convention", he continued.

[Read the full statement](#)

Portugal reiterated the specific rights provisions under the CRC, particularly the right to be heard, and said that the working group should be re-enforced to push forward with this process.

The representative from **Argentina** said they were looking at forming a regional seminar to discuss child rights and the OP in particular. This OP was vital he said, and will afford special protection to children and will give civil society new tools to advocate for better national systems.

Bangladesh said they were open and here to learn and discuss a number of issues, including national remedies and comparative examples.

Sweden said they were looking looking forward to an engaging and active discussion.

France, which was one of the first States to publicly support this initiative, said the timing was right and that all concerns should be heard and asked.

The representative of **the Netherlands** said there are no convincing examples of principle that would prevent adoption of the OP. «We signed the OP on the ICESCR, we are also in the process of signing and ratifying the disabilities OP. So it is possible », he said. He further said that there were some controversies and uncertainties but hoped the debate would overcome this.

Brazil said they were supportive of this process and recommended a quick move to drafting.

A representative from **UNICEF** said her organisation welcomed the efforts to strengthen child rights at all levels. She urged for the effective participation of children in all processes as well as a child sensitive procedure. She said the arguments expressed were familiar and there was a need to quickly move forward. UNICEF, she said, was ready to offer its support and technical assistance in this procedure.

[Read full statetment](#)

Discussion topic One – Reasons and Timings

Yanghee Lee, Chair of the UN CRC introduced the first topic of the Working Group meeting on reasons and timing for elaborating a communications procedure.

“The timings and the reasons are so very evident”, she said. “This idea of an OP is not new and was discussed at the drafting of the CRC and the 10th anniversary in 1999. Why? Because the international community was heavily involved in the two OPs and also the hesitance over the ESC rights”.

She explained she had been on the CRC Committee for seven years now, and had seen the frustration at not being able to take complaints. In many cases, children do not have access to justice and other cases, the system is just not child friendly.

She emphasised that the Committee had given a lot of discussion to such an OP and

deemed it feasible and very necessary.

She said the [General Comment 12](#) on the right to be heard was a key introduction to pave the way for the OP. Furthermore, the justiciability of ESC rights is not an issue any more – due to OP on ICSECR.

[Read the full statement](#)

The representative from **Syria** asked what the added value was and whether the protection of the rights of the child could be guaranteed by other legal instruments. He said his government was not against the procedure, “we will participate and we do feel that children need a protection mechanism, especially within the family, or from say genocide or say military aggression, but we have a number of questions”.

Slovenia highlighted the unique rights of children that can only be guaranteed under the CRC. “The Committee has supported the elaboration of a Protocol. It is high time we move this process forward”, he said. “We must do everything in the best interests of the child. So the question shouldn’t be yes or no, it should be what options are best for the child”, he concluded.

The representative of the **Maldives** said they had four reasons for supporting this OP; children have waited long enough for their rights to be fully realised, their rights are unique and therefore require a unique procedure, children’s rights must be protected on the national, regional and international level; and it will allow us to bring in a stronger normative international framework.

Slovakia said “we must concentrate more on the reasons for this OP, as the timing is absolutely right, no questions”. “If we are discussing whether to have an OP, we should look back at the Summit of 1990 as a point of departure” he continued.

Argentina explained their reasons for supporting this initiative, including the specificity of children’s rights; the increase of State compliance to the CRC, the strengthening of democratic principles of the CRC, as well as the increase of its scope. “We believe that this communications procedure is an opportunity for countries to rectify problems and to improve policies” he said, “and there has been enough support from countries and civil society to prove that the timing is right” he ended.

In response to comments and questions received; Ms Lee explained talked about the frustration of the Committee at not being able to be involved in the court process. “Children do not even have the right to pursue problems until the next periodic report comes along and that can be a long time”.

“An OP will give the child the voice that he or she deserves, even in the national mechanism. This is key in that it will help your national systems as well”.

Mr Jean Zermatten, Vice Chair of the UN Committee on the Rights of the Child, reiterated the Committee’s frustration seeing violations against children and not being able to respond, “imagine how children feel”, he said.

“The Committee members conduct a variety of pieces of work, however the largest

part should be assessing individual cases, which we aren't able to do. We are only able to go half way in meeting the mandate", he explained.

The representative from **Thailand** said children are subject to rights of International Law, hence should be able to seek remedies on the international level. The current lack of this undermines child rights.

He agreed that children can already take that communication to other treaty bodies, but those do not have specific expertise in child rights. An OP would help in the interpretation and understanding of the CRC, which will strengthen the national implementation of the CRC.

The representative from **Uruguay** said the time was right. "I won't repeat what other countries have said, but I do want to stress that specific rights of the child do not appear in other treaties, hence the need for an OP for the CRC. There were cases in other treaties where rights weren't properly upheld due to the specific nature of children's rights" she said.

Italy said they were confident this debate would provide a meaningful solution. The representative said there were issues that needed to be discussed of course, but that there were concrete ways of looking at them.

The representative of **South Korea** asked whether having a domestic system would not be a good alternative to a CRC complaints mechanism.

Ms Lee responded that there are often no effective national systems for safeguarding children's rights.

"I would like to state that in situations where children do not have the capacity, they need to be represented by somebody and the Committee will be providing a criteria for this representation procedure", she said with regard to legal representation..

Ms Marta Santos Pais, Special Representative of the Secretary-General on Violence against children, said that if there was no domestic remedy, how could the Committee advise the State on how to deal with the issue? "We have found that no one national system has been found for the process of redress, so the Committee can guide States. "The Committee can advise the State on what type of remedy it could adopt, to try in the first instance to get the issue resolved domestically", she explained.

Indonesia said they wanted more information on the General Comment 12. They said it was a good comment but did not see whether the legal capacity of the child could be strengthened by the representation.

Mr Zermatten said there were many cases where children have been represented or have represented themselves. And cases where the children have chosen how to be represented or chosen against an option of representation.

Read online: <http://www.crin.org/resources/infoDetail.asp?ID=21444>

Discussion Topic Two – Existing International Mechanisms

Ms Najat M'jid Maalla, Special Rapporteur for sexual exploitation, child prostitution and child pornography, introduced the second discussion topic of the working group, that of exploring existing International Mechanisms and what we can learn from these mechanisms in the process of elaborating on a communications procedure for the CRC.

She described how her role as Special Rapporteur, which includes country visits and resulting reports to highlight violations to state governments, is highly complementary with the role of the Committee on the Rights of the Child. "The co-operation with the Committee for this role is indispensable" she states and she goes on to state that "the lodging of communications could be done in conjunction with the Committee".

The Optional Protocol must be governed by the CRC's founding principles she strongly urges, telling delegates that "the OP will contribute to children being acknowledged as rights holders, as subjects and not mere objects".

The discussion on existing international mechanisms saw **Poland** first take to the floor, asking for the expert to elaborate further on the possibilities of children (or their representatives) submitting complaints before other treaty bodies. Poland was also keen to ascertain how the communications procedures had impacted the workload of these treaty bodies. Poland expressed its concern on this latter issue, sighting the European Court of Human Rights with its backlog of currently more than 100,000 applications.

Slovenia then joined the discussion urging the working group to bare in mind the specific needs of children when looking at the various levels of remedy mechanisms. Slovenia also stated the need for "an innovative approach in order to make the communications procedure comprehensive and accessible", before highlighting the need to seek the views of children.

China joined the debate stressing its concern for the duplication of a communications procedure with existing mechanisms under other Conventions. China continued by asking about the complaints procedure for other treaty bodies. "How many complaints have they received to date? We believe the number has been low, so we need to know why this has been the case. How can we guarantee that the new mechanism can avoid the same problem of being established and underused", the representative asked.

Canada also raised the issue of duplication with other existing mechanisms. "How would this work and has any thought been given to this" they asked.

The Special Rapporteur was then invited to respond to the various questions and comments from the delegations. "The idea of complementarity is extremely important" she said. "This often comes up in my work, for example with the issue of trafficking".

On the issue of the number of complaints submitted, she stated that "this is not the question we should be looking at, but rather whether the complaints mechanisms are

accessible. We need to be careful about how we look at this”.

The Netherlands intervened on the issue of duplication stating that “There is going to be duplication, but we shouldn’t see this as a problem. They already have these varying options already with the existing treaty conventions.” The delegation goes on to state “I would be worried if there were no duplications, what we want is to avoid forum shopping, duplication of work where states are responding about the same issue to various bodies. That is what we need to avoid.”

Argentina expressed their agreement with the Special Rapporteur that the main problem would be that of accessibility. They stressed the key issue of expertise in the area of child rights which the Committee would bring to a communications procedure purely for this Convention. They stated that “we must give the Committee this tool”.

Ms M’jid Maalla, responded to some of the issues raised by the delegations. With regard to the issue of access, she said it is “not a question of numbers but of how to inform children”. She concluded that “the principle of this procedure is justified in my eyes. We need to work on the substance, the specifics of children as rights holders. Existing mechanisms must be strengthened”

The NGOs added to this debate – [See Statement](#)

The Chair rounded off the session stating that “duplication cannot be avoided but we don’t need to worry about that, we need to avoid duplication of work, that is the only issue here”. He went on to say that other treaties do cover child rights but not the full set of provisions and significantly not with a specialisation”, before concluding by saying that information on the full communications procedure has to be disseminated to all parties involved, including civil society and children themselves.

View online at: <http://www.crin.org/resources/infoDetail.asp?ID=21453&flag=report>

Discussion Topic Three – Efficiency in protection

Peter Newell spoke as one of the experts during the Working Group meeting. His [written submission](#) includes analysis of use of existing complaints mechanisms. Overall, there is a substantial gap between the ratification of the CRC and the implementation of those gaps.

He said that “progress and persisting violations seem to be going hand in hand”. “Evidence suggests that many States are far from there in offering effective remedies, not surprising given the late take up of child rights worldwide”.

Mr Newell highlighted the growth in the number of ombudsmen institutions – 60 worldwide and the Committee praises this, however many institutions do need additional powers in line with the [Paris principles](#), many cannot take complaints to court.

Further he explained how one of the main ways to improve national remedies is to bring in the OP. “If national remedies and regional ones are effective enough, then the

use of the OP CRC will be less needed but it is not a case of one or the other”, he said.

“Many adults lack a capacity to represent themselves – disabled, mentally ill, elderly, those in detention etc. – so it is not just younger children that have this issue. But States still have to offer a remedy to these groups, so why not children”, he continued.

This highlights the universal expression of human rights and there can be no justification of excluding children as a group from an international remedy mechanism (a specialist one).

He said the question was not whether this OP was needed – “it is shall we continue to elaborate. That is not to say that nothing new needs to be considered in the elaboration to take into account for special needs of children”.

[Read the full statement](#)

The representative from **Mexico** said they believe their own national legal system and the Inter-American system can contribute good experience to this procedure. Both in the national and regional instances, the courts very often use interpretations from the international courts.

Liechtenstein said they welcomed the potential this new OP could have on the domestic system.

On collective complaints, he asked whether there that could be contradictory to strengthening national systems, because the collective complaint does not require the exhaustion of national remedies.

He also asked Peter Newell for further information on the representation of children in family law at the European Court and whether that experience could help in forming the OP for the CRC.

The representative from **Italy** asked about timing in dealing with cases. “On the one hand there is an urgent situation which characterises any situation where a violation on the rights of the child takes place. On the other, the length of time of any legal instrument can be very lengthy, particularly if it applies after domestic remedies have been exhausted” he explained.

Canada said they wanted to have more discussion about the collective complaints issue and that a full discussion was needed on this. Canada, the representative explained, sees a distinction between individuals having a complaint and complaints brought by individuals with no specific apparent violations.

The representative from **Belgium** said they did not want to take a position on the issue of a collective complaint at this stage, but said they wanted to look at the criteria that can be used regarding this possible provision. He also asked about accessibility – how and under which conditions they would access it, and for instance; how a child with disabilities would be using the mechanism.

Iran explained they had a children's parliament as one national system and

suggested a database on best practises be developed.

Poland also wanted to explain how things work at national level, for instance, he explained, if there is a conflict between the international treaty and the national law, the international treaty would prevail. He also mentioned they had an ombudsman who was independent to take action.

A representative from the NGOs said that national remedies are often inadequate or non existent and national systems are often not in sync with international law. Apart from the African Charter, no other regional treaties were designed with children's rights in mind, and Asia has no regional system at all.

Germany talked about their child sensitive legislation. The representative specified that all children have full legal capacity from birth.

In answering questions from States delegates, Mr Newell highlighted some examples of how the Inter-American system had made positive use of the CRC in interpreting the American Convention on Human Rights. (He referred to Paulo Pinheiro's paper on this).

In general, he explained, there was a welcome convergence of human rights standards across international and regional mechanisms. "None of this reduces the need for a communications procedure under the CRC", he said, "on the contrary, I am sure that both the Inter-American system and the European Court will welcome the jurisprudence that is likely to emanate from the Committee on the Rights of the Child when it starts to issue decisions and views on communications: both systems have already quoted Committee General Comments for example", he continued.

He then responded to Belgium's question on whether a child with disabilities would use the Disability Convention's procedure or the CRC one: again, a useful choice. The CRPD includes detailed provisions on people - including children - with disabilities, which complement and in some cases, add to the rights of children with disabilities in the CRC (for example a more explicit right to inclusive education). There are also some specific provisions for children with disabilities, reinforcing rights in the CRC. This is a question of choice, not duplication, and the choice would depend largely on which rights the victim was claiming are violated, and in the circumstances, which appears to be the more appropriate specialist Committee to consider the communication.

He reminded that the OPs to CEDAW and the Economic Rights Covenant do allow communications from both individual victims and groups of victims claiming violations.

He explained that there was no requirement to exhaust domestic remedies because the complaint concerns the existence or the absence of a law or policy necessary to achieve compliance with the Convention. "If States want to develop a communications procedure which can constructively influence national laws and policies as well as providing individual remedies, then it would be good to add the possibility of collective complaints", he said, "But I stress again, as Poland noted, it is not an alternative to allowing individual and group communications", he continued.

“More generally”, he continued, “surely we have to accept and welcome a dual aim of communications – to achieve individual remedies where violations have occurred as speedily as possible, but also to prevent further, similar violations from occurring.”

Mr Newell explained that if a communication was submitted on behalf of a child, by a parent, NGO, a children’s ombudsperson, a lawyer, the Committee will have to determine first if the child has the capacity to consent to the communication being made and if so, if they have consented. If the child does not have capacity to consent – a baby for example, or the circumstances make it impossible for the child to submit the communication on their own behalf, then the Committee will have to determine whether consideration of the communication is in the best interests of the child.

Discussion Topic Four – Unique nature of Rights

Ms Marta Santos Pais, the UN Special Representative on violence against children, stated that she was encouraged by the rich discussions that had taken place throughout the conference so far. She said “there is a sense of a strong commitment to address remedies for children’s rights and a strong will to take on discussions in a constructive manor”.

She continued by saying that “this elaboration discussion is very timely, partly due to the 20th anniversary and also it is time to renew our commitment to child rights. The last 20 years have changed the perceptions of children and shown us how international and national mechanisms can work best. We now have strong confidence and experience with which to proceed”.

She told the delegations about some examples unearthed in a review conducted by the [UNICEF Innocenti Research Centre](#), where countries have adopted successful domestic remedies. She cited legislation in the Philippines as an example and told how in this country, courts have to give priority to children with complaints of violations. She highlighted the fact that there existed a number of examples of best practices.

Referring to the [UN Study on Violence against children](#), she talked about two recommendations: The call for an ombudsman office to receive complaints and monitor violations, and the call for effective complaints mechanisms in justice systems.

She stated how further information can be obtained from her written report and concluded with a powerful message to delegates, saying “we can’t ignore or bypass the opportunity to strengthen child rights in a normative human rights framework.”

Mr Zermatten, Vice Chair of the CRC, says that his paper is an overall consideration of the elaboration of a communications procedure under the CRC.

He further argues that the special status of children means that they are in need of an individual communications mechanism. In response to the question about unique rights, he responds, “nearly all the rights under the CRC are specific rights. It is much easier to mention the rights that are not specific to children; they are the thematic

rights such as non discrimination and so on, which apply to all treaties”

He further explained that it was appropriate that the same experts who monitor the implementation of the CRC would be the ones examining the complaints. This would develop jurisprudence.

He concluded by stressing that information is vital to the complaints mechanism if it is to be efficient. He also said that there are existing methods at a national level and ombudsmen and a complaints mechanisms would encourage States to set up courts of appeals and to generally improve the whole system for children.

Argentina opened up the discussion by saying that “with regard to children having capacity to submit a complaint. There is no doubt that this move towards making children subjects not objects has moved children further into the limelight. It is the last body not to have a complaints mechanism and this has been seen as a disadvantage. But we must look at the disabilities convention, where individuals are often seen as objects, but they have a complaints mechanism” Argentina drew upon the valuable lessons to be learned here from experience, “ we can learn from national systems, ombudsmen and so on. We are not starting from scratch, we have experience”.

South Korea agreed that there is a need for better protection of children through national institutions such as ombudsmen, before proceeding to question whether the Committee’s General Comments could be more influential.

The NGOs then delivered their statement. [Read here.](#)

Syria took to the floor and asked whether there were any distinction in the application of the convention between the different stages of the development of a child. They also asked how we can ensure then that the best interests of the child are placed. They finally asked if it was possible to have an example of best practice of how children can participate in drafting legislation that includes their basic rights.

Ireland told delegates that participation rights for children in Ireland are a priority. The delegation said “we would like to echo the comments made by Slovenia that children should be informed about the work of this working group and get their input on the drafting of a procedure, what it means and how it can be used”.

Sweden raised the issue of manipulation asking how we ensure that the child is not manipulated through the complaints procedure. Sweden also asked the working group how one could determine when national remedies have been exhausted and when they should be waived if they entail unreasonably prolonged processes. They asked whether this would be done on a case by case basis.

Uruguay took to the floor stating: “In our opinion, there is a clear need for a specific mechanism so that children can submit their complaints. We agree these are unique rights that have not been covered by existing treaties”. The delegate continued by saying “we urge that children should be allowed to participate and to be safe from manipulation and protected when making a complaint”.

Uruguay further stated that legal counsel must be available to children, outlining how in the case of Uruguay a new code on children acknowledges the right of children to have access to courts to defend their rights.

Peru asked if experts could share some examples and specific measures that show how manipulation is avoided.

China told the delegates that they have noticed the special feature of the right of the child is the right to be heard. They said they attach great importance to this right.

China stated "we also have some provisions which are specific to children. At the same time, the child or his representative can participate in the judicial proceedings. From our experience, the most important thing is that we should work according to the maturity of the child. The delegate just now said that they are growing, so to what extent should we respect their views? We need to be flexible on this according to their age".

China argued that the local institutions would be better placed to judge whether the child is old or mature enough to be heard rather than an International treaty body, like the CRC Committee.

In terms of the specific rights of the child, China stated "there are so many rights in the CRC, we should really analyse in future discussions which rights we should cover". China continued their address by saying "we should consider the child as a rights holder and at the same time, the Convention has other principles, for example Article 5 points out that the state parties shall respect the parent or members of extended family. We don't deny that the child is a rights holder but he is still a child after all. He should recognise the guidance of his family. We want to hear the views of the expert."

Ms Pais responded to a number of issues raised by the delegations. She started by saying, "I want to echo South Korea's point that we have a great opportunity to strengthen existing mechanisms for child rights. What is missing, why do we want an effective remedy?"

"The Convention says we must have a remedy and it doesn't do it explicitly so we need an OP. Secondly children can make use of other existing mechanisms, so yes they can have access, however we don't have the opportunity yet of using all the provisions of the CRC because of the lack of an OP. Finally, there is no way other treaty bodies can assess child violations with the same expertise that the CRC Committee can assess", she continued.

In answering the question as to whether such a mechanism should address all rights of the CRC, or new ones or just some of the rights, Ms Pais responded "children are equal to all human beings and so should receive access to all rights and indeed there is no legal argument or any other to limit the number of provisions".

Responding to the point by China on Article 5, she responds "we know that children are evolving in their capacities, hence Article 5 is important as it implies the family can assist the child. But the wording of that article was discussed at length as it clearly says that the child can assert his right to get help from the family or not".

In response to Sweden's question on how we should secure the protection of children from manipulation in the process, she replied "we find this provision in all other treaties so let's apply that precedent".

Mr Zermatten joined the discussion on the specific nature of rights, stating that "all the rights in the Convention are specific because of the interpretation given to them". On the age of the child, he continues "the Convention doesn't give a minimum age to hear from a child, but the convention states that once we hear from a child and once specific attention has been given to the child's complaint, we will then need to look at his age and then make a decision, based on the situation in which the complaint is made, the age of the child and so on. It depends on the subject in hand", he said.

In response to China's comment on Article 5, he says "the child comes from a family, a community and a state. He is equal in rights and dignity to other persons and this equality means there are obligations".

Mr Zermatten stated that to ensure protection of the child during the complaints procedure, it is important to limit the number of questions, use all of the avenues that exist in hearings and avoid confrontations when they are not useful.

Ms Lee, responded to Sweden's question about the prolonged response to complaints, telling delegates that this must be discussed in the drafting stage of this working group.

In response to China's point as to how the Committee would determine the mental capacity of the child, she stated "I want to reflect on the CRPD and persons with mental impairment. This has passed the complaints procedure, so this is a strong source of support for the CRC process"

Ms Lee did raise the point about General Comments stating that "they are not binding but we have noticed over the years that they get taken on board at a high level but often it doesn't filter down to a lower level and we constantly push governments to do this. Governments do set up local mechanisms but when governments change over, this gets stopped sometimes".

The Chair rounded off the session highlighting the importance of the issue of violence towards children and the significant impact a future complaints mechanism would have on this issue.

Read online: <http://www.crin.org/resources/infoDetail.asp?ID=21458>

Discussion Topic Five: Implications of a communications procedure

Ms Lee, Chair of the CRC, proceeded with her address by responding to a number of concerns raised by delegates during the course of the working group discussions. She firstly said that the reporting process of the CRC will not be jeopardized in any way by the addition of a communications procedure.

Secondly, she addressed the workload issue on two levels. She said that in terms of the Committee's workload, the Committee would look at how other mechanisms carry out their work, considering in particular the unique needs of children. In terms of the Secretariat's workload, Ms Lee stated that there would need to be a consideration of additional resources which will be looked at.

The third issue Ms Lee drew upon was the expertise of the Committee. She told the floor how currently seven experts in the Committee of the Rights of the Child have a legal background and raised that point that only the Human Rights Committee has a high level of legal expertise.

Italy opened the discussions in this session addressing two concrete and practical questions. Firstly the delegation raised the issue of time constraints, asking what happens in the instance of a violation that occurred when the individual was a child, but the complaint is presented when that child is older than 18.

Italy also asked how the Committee would envisage organising the treatment of a complaint within the Committee. Should there be an ad hoc Committee set up for complaints, Italy asked.

The NGOs made a statement on unique rights of the CRC – [See statement](#)

Slovenia then stated that "there are different types of implications. We have heard lots of positive implications and they have been discussed in depth, including strengthening of the national remedy systems. There is a strong and united view that the communications procedure is needed. We are confident that the way should not be too complicated. If the Committee, with their expertise and knowledge, believe that it would be in the best interests, then we should support this process," the representative said.

Slovenia continued by saying that "states should continue to seek advice of the Committee and experts in this field. We must make sure that the communications procedure is accessible, easily understandable and child sensitive. It is crucial to have child views and perspectives in mind when constructing the complaints mechanism. In our view, there is no doubt that the elaboration of an Optional Protocol is needed. There is no need to spend additional financial resources on this process of discussion," he continued.

He further explained that in the second phase, they should discuss the specific provisions of an Optional Protocol and these should be drawn up prior to the next session.

Switzerland commented on the future function of the Committee to develop jurisprudence. "How can we ensure that the necessary legal know how is represented on the Committee," the delegation asked.

They also said they were looking forward to hearing the implications on the Petitions Unit.

Marcus Schmidt, from the Petitions Unit at the OHCHR, joined the discussion

and provided a number of very useful insights into the workings of the other international human rights treaties with existing complaints mechanisms.

He started by saying “I want to provide a few statistics of complaints before the bodies. There is sometimes a perception that the unit is swamped. The number of cases before the UN treaty bodies is very moderate, 432 cases pending on the Human Rights Committee, CAT has just over 80 and under CEDAW and CERD, a very small number of complaints. CRPD has not yet formally registered complaints but a limited number have been received.”

He continued “When you look at the overall picture of complaints across the UN treaty bodies, about two per cent are for minors or children”

Schmidt then broke down the various categories in terms of type of complaints registered, including the rights of children in the disavowal of marriages of their parents, personal security of minors in detention, sexual abuse of minors and issues relating to religious education of children in some countries, to name a few categories.

Regarding the Standing issue, Schmidt said “this is by no means an easy issue to solve and was a high issue during CEDAW discussions. They are technical issues best left for the drafting stage”.

Likewise he said that the issue of collective and individual complaints is best left to the drafting stage. He said “other treaty bodies do though have experience of group complaints. However it was always a requirement that each individual made the case for being a victim or having been violated (See ICCPR)”

On exhaustion of domestic remedies, he states “the Human Rights Committee is the best jurisprudence for this. The means of redress is the most important characteristic to look at”.

Schmidt responded to the issue of the deadline for submissions and said it should be flexible and not too long. The Human Rights Committee has had some experiences with minors where the complaints had gone back and forth. And the case of when the violation happened when the person was a minor but the claim was issued once s/he was older and no longer deemed a child needed to be avoided.

He had a clear message on the backlog issue, “I also want to dispel the idea that as soon as an Optional Protocol is formed, the Petition Unit is swamped. This is certainly not the case as it actually usually takes a year or two to get the first complaints as you have to go through the exhaustion of domestic remedies”.

“On the additional resources issue, this will be monitored as the process moves forward. Experience shows that resources are gradually needed to increase but only gradually over time. CEDAW has only had 23 cases and only one person is allocated to this. This gives you an idea of what might be expected if an Optional Protocol is entered into force for the CRC” Schmidt says.

Ms Lee then responded to some of the questions and issues raised during the session, “I want to respond to how the current chamber may be reviewing the

communications, the idea of say an ad hoc committee. I want to reiterate that we will build on best practices of other treaty bodies.”

Responding to Switzerland’s legal expertise question Ms Lee says, “If you look at CRPD with 12 committee members, they only have 5 legal people, so I don’t see this as a problem. The Committee is not responsible for its own composition; the multi-disciplinary nature of the CRC will enhance the decision process on complaints”.

Mr Zermatten joined this area of discussion saying, “It is important to have lawyers but also to have other professions represented. The full disciplinary range is appropriate. This does add a lot if you have non lawyers”.

Schmidt then stated “I want to just supplement what Ms Lee said. Other Conventions do have working groups who work on the complaints issues in order to save time, by looking into certain cases. This has worked well in the Human Rights Committee and is beginning to work quite well with CEDAW. CAT works with case rapporteurs as they find this way more useful”.

He continues, “Regarding the composition of treaty bodies, it is useful to have plenty of legal bodies but it is not a necessity and those without a legal background have made some very big contributions. Members of the Committee under CAT have made real contributions and are not all lawyers”.

The Netherlands said it was good to hear from Marcus Schmidt about the workload and stated they were happy the number of complaints is quite low. The delegation asked if Mr Schmidt could provide statistics on admissibility.

China then took to the floor saying they had some specific issues. The delegation stated, “Under the existing mechanisms, the child complaints are very low (2% as you say). We want to know then how valuable this Optional Protocol could be, considering that at the moment this percentage is so low. Why is it so low? Maybe the awareness raising effort is lacking or maybe there are other reasons. Is this mechanism efficient enough in protecting the rights of the child? We need to explore why this percentage is so low?”

Poland asked if it was possible to provide an estimation of the highest possible number of cases that the Petitions Unit could deal with.

Schmidt explained that there are statistics on inadmissibility both prior to registration and after. Prior, the Secretariat does pre-screening of complaints. To take away screening activities, out of incoming complaints, 80 to 90 per cent are screened out, shown to be inadmissible.

For instance, they have not exhausted domestic remedies, or rights that are not protected under UN instruments. Often, alleged violations are not substantiated. Often, they are not in a position to further substantiate.

Regarding backlog, he explained that treaty bodies that experience a little bit of backlog include the CAT and ICCPR bodies. Working methods are being reviewed to try to reduce this, for instance clustering cases that are almost identical. CAT has a

smaller backlog and is also looking at options to resolve that. The average time is one year, he said, was 21 to 14 months.

Ms Lee said that “we cannot at this moment foresee how many cases will come into the Committee”.

The President then summarised the session’s discussion, saying that the CRC Committee will most likely operate in two chambers, that resources have been analysed. On the expertise of the Committee, he concluded that it is up to states to decide which members they want on the Committee, they can choose the composition in terms of lawyers. Finally, on the issue of resources, he said that as soon as they finish the elaboration of the Optional Protocol, more resources will be given.

Peter Newell, expert, then made some final points referring to the European Court and applications made to this mechanism. He said that the European Court is the mechanism that has received the most applications from children. In describing one application, Newell said “one application was lodged on behalf of a 9 year old boy and his father. The initial application was filled in by a legal representative, authorised in signature by the boy and father. The Court found the boy’s case admissible, not the father’s”.

In terms of protection, Peter Newell stated that “the court guarantees the individuals’ anonymity. They don’t have to attend in Strasbourg as their legal advisor can attend in their place, so this protects them” He also stated that “these hearings are against a state, not individuals which is worth bearing in mind. I am confident that the Committee’s procedures will safeguard protection.”

Read online: <http://www.crin.org/resources/infoDetail.asp?ID=21460>

Closing session: Mixed feelings as meeting closes

[GENEVA, 18 December] - The Working Group meeting ended on Friday with the adoption of the Chair's report. Mr Stefanek concluded that it was clear from the two days that children lack remedies when their rights are violated and that 'many considered a communications procedure would constitute added value'.

It was hoped that by the end of the meeting there would be consensus that the mandate of the Working Group should be changed. Mr Stefanek had initially planned to propose a recommendations in his report, but changed his mind and decided to leave this decision to the Human Rights Council at its March session.

The representative of **Argentina** said they would have preferred discussing whether or not it was appropriate to elaborate a communications procedure with governments and civil society present.

He said "it would have been important to express our opinions on the mandate of the Working Group. We would have liked to have findings and recommendations so that the Human Rights Council can take a decision".

A number of **African States** spoke to highlight the existing complaints mechanism under the African Charter on the Rights and Welfare of the Child. The representative of Nigeria who spoke on behalf of the African Group said they were open to continue to engage in the current process.

Senegal reiterated the comment made by Nigeria and said that "African political will has been expressed through the creation of this mechanism".

The **NGO representative** referred to the strong and unanimous support for moving on to the elaboration of the necessary Optional Protocol from the invited experts, the Committee on the Rights of the Child, UNICEF, the Office of the High Commissioner, the European Network of Children's Ombudspersons and civil society, including a submission from children.

"Many States indicated their commitment to this goal. We heard no State voicing opposition to the proposal for a communications procedure for the CRC", she said.

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

Read the [full statement](#)

The representative of the [International Commission of Jurists](#) said the Working Group had been able to achieve its mandate in time, at least in terms of what can be discussed without drafting. He said: "it seems clear that most participants concur that the establishment of a communications procedure is both necessary and practicable".

He quoted [General Assembly Resolution 60/147](#) which defines States' obligations to "Provide those who claim to be victims of a human rights or humanitarian law violation with equal and effective access to justice".

He referred to Mr Schmidt's presentation and the fact that there was no serious resource issue. He said "it was difficult to conceive what could be achieved through continued abstract discussions".

Ms Yanghee Lee, Chair of the UN Committee on the Rights of the Child, said the Committee firmly believed that this procedure would add to the Convention and assist States at national level to better promote and protect children's rights. She ended by saying that when the drafting mandate is granted, the Committee would assist States in the entire process.

The Chair explained that he was "guided by the spirit of consensus" when deciding not

to include recommendations in his final report. He said he had the deep conviction that the Working Group would continue its work but that it was now up to the Human Rights Council to decide on the future mandate. He said he would continue informal discussions between now and the HRC session in March, as suggested by the NGOs.

Government delegates have 15 days to comment on the draft report before it can be published.

Further information

Read statements: [View Experts' Submissions](#) (OHCHR website)

- [15 Dec: New Programme of work](#)
- [NGO Submission](#)
- [Submission by Children's Ombudspersons](#)
- [Submission by Marta Santos Pais](#)
- [Submission made by expert Ms. Nevena Vučković](#)
- [Submission made by expert Mr. Peter Newell](#)
- [Submission made by expert Yanghee Lee](#)
- [Submission made by expert Ms. Najat Maalla M'jid](#)
- [Submission made by expert Mr. Paulo Sérgio Pinheiro](#)
- [Submission made by expert Jean Zermatten](#)

Each update is available online here:

- 16 December: [Opening](#)
- 16 December: Topic 1: [Reasons and timing](#)
- 16 December: Topic 2: [Existing mechanisms](#)
- 16 December: Topic 3: [Efficiency in protection](#)
- 17 December: Topic 4: [Unique rights](#)
- 17 December: Topic 5: [Implications of a procedure](#)

Pages with information on the NGO Campaign:

- CRIN events page: <http://www.crin.org/resources/infodetail.asp?id=21261>