



INTERNATIONAL
COMMISSION
OF JURISTS

Statement to the Open-Ended Working Group on an Optional Protocol to the Convention on the Rights of the Child, 14-18 December 2009

Mr. Chairperson,

The International Commission of Jurists congratulates you on your election and welcomes this opportunity to participate in the important deliberations of this Working Group.

The principle that every right must be accompanied by the availability of an effective remedy is among the most fundamental and longstanding general principles of law and one existing throughout most legal systems. This principle finds expression both in the law of state responsibility and in human rights law, governing the relation between the state and individuals. The principle that all rights give rise to a corresponding remedy must hold firm no less when the rights of children are at stake.

In respect of the Convention on the Rights of the Child, the obligation to ensure an effective remedy flows necessarily from article 4, which requires States Parties to “undertake all appropriate legislative, administrative and other measures for the implementation of rights” set forth in the Convention. As the **Committee on the Rights of the Child has recognized in its General Comment 5, “For rights to have meaning, effective remedies must be available to redress violations.”** Under international standards, remedies for human rights violations must be effective, prompt, accessible, and enforceable, and available before an independent authority.

Mr. Chairperson,

The international human rights system has over time developed an impressive architecture of standards, ensuring that human rights instruments provide both normatively and procedurally for the right to a remedy. One of the few gaps, however, that remains is the absence a communication procedure in relation to the Convention of the Rights of the Child. With the adoption last year of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, alone among the principal

human rights treaties, remains devoid of a communication procedure. It is high time to plug this gap.

The ICJ recognizes that only a very small number of victims of Convention rights violations will be able to seek redress directly through an international communications procedure. But the communication procedure itself, while important, will not be the only, or even the primary, benefit to be derived from an optional protocol. Rather, the assumption of obligations by states under an Optional Protocol should prompt more effective protection of Convention rights in national law, including the right to a remedy and access to justice at the domestic level. In addition and as has been the experience with other communications mechanisms, the adjudication of individual communications by the Committee will ensure the development of expert jurisprudence which will serve to guide states on the fulfilment of their Convention obligations.

As this Working Group sets about assessing the need for an optional protocol to the Convention on the Rights of the Child over the coming week, the ICJ would urge it to dispense quickly with one argument against an optional protocol, namely that communications concerning Convention rights can already be effectively adjudicated through communications procedures existing under the other human rights treaties. This argument is plainly fallacious. There are numerous Convention rights that are simply not provided for in the other human rights treaties. Even in respect of those rights that may be linked to parallel protections in other treaties, their specific application to the unique situation of children renders them substantially distinct in scope and content. The Committee on the Rights of the Child, or a new expert body, such as a subcommittee, with similar competence and expertise in children's rights, is the appropriate authority for adjudication of communications arising out of Convention violations.

There is a wide range of conceptual issues to be tackled in elaborating a protocol, a few of which will be challenging to resolve, but many of which cover well-worn ground. The ICJ would suggest that the Working Group can best address some of these challenges by drawing on the experience gained over the course of work over the past five years on the Optional to the Covenant on Economic, Social and Cultural Rights, adopted by the GA last year, as well as on the Optional Protocol to the CEDAW and the Disabilities Convention.

The ICJ looks forward to a fruitful discussion of the issues over the remaining three days and expects that this Working Group will be able to recommend that the Council provide it with a

mandate to begin expeditiously the actual elaboration of an optional protocol to the Convention on the Rights of the Child.

Thank you, Mr. Chairperson