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to the Convention on the Rights of the Child

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Revised proposal for a draft optional protocol prepared by the Chairperson-Rapporteur of the Open-ended Working Group on an optional protocol to the Convention on the Rights of the Child to provide a communications procedure*

* Late submission.

Preamble

The States parties to the present Protocol,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, the recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world, Noting that the States parties to the Convention on the Rights of the Child (hereinafter referred to as the Convention) recognize the rights set forth in it to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status,

Reaffirming the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms,

Reaffirming also the status of the child as subject of rights and as a human being with evolving capacities,

Recognizing that children's special and dependent status creates real difficulties for them in pursuing remedies for violations of their rights,

Considering that the present protocol will reinforce and complement national and regional mechanisms, allowing children to submit complaints for violations of their rights,

Encouraging States parties to develop appropriate national mechanisms to enable a child whose rights have been violated or those acting on his/her behalf and in his/her interest to have access to effective remedies at the domestic level, taking into account the need for child-sensitive procedures, where relevant,

Recalling the important role those national human rights institutions and other relevant specialized institutions, mandated to promote and safeguard the rights of the child, can play in this regard,

Considering that, in order to reinforce and complement such national mechanisms and to further enhance the implementation of the Convention as well as its Optional Protocols on sale of children, child prostitution and child pornography and on the involvement of children in armed conflict, it would be appropriate to enable the Committee on the Rights of the Child (hereinafter referred to as the Committee) to carry out the functions provided for in the present Protocol.¹

Have agreed as follows:

Part I General provisions

Article 1

Competence of the Committee on the Rights of the Child

1. A State party to the present Protocol recognizes the competence of the Committee to receive and consider communications and to conduct inquiries as provided for by the provisions of the present Protocol.

¹ The last three paragraphs of the Preamble are the result of consultations among a number of delegations.

2. The Committee shall not exercise its competence regarding a State party to the present Protocol on matters concerning violations of rights set forth in an instrument to which that State is not a party.

Article 2

General principles guiding the functions of the Committee

The Committee shall exercise the functions conferred on it by the present Protocol in a manner that respects the rights of the child and the views of the child, and ensures that the best interests of the child are a primary consideration in all actions concerning the child.

Article 3

Rules of procedure²

The Committee shall adopt rules of procedure to be followed when exercising the functions conferred on it by the present Protocol. In doing so, it shall have regard, in particular, to article 2 of the present Protocol in order to guarantee child-sensitive procedures, where relevant.

Article 4

Protection measures³

A State party shall take all appropriate steps to ensure that individuals under its jurisdiction are not subjected to any human rights violation, ill-treatment or intimidation as a consequence of communications or cooperation with the Committee pursuant to the present Protocol.

Article 5

Publicity

The identity of any individual or group of individuals submitting a communication shall not be revealed publicly without the express consent of the individual or individuals concerned.⁴

Part II Communications

Article 6

Individual communications

1. Communications may be submitted by or on behalf of an individual or group of individuals, within the jurisdiction of a State party, claiming to be victims or to have been

² As per Chair's compromise proposal distributed on 10 December 2010.

³ As per Chair's compromise proposal distributed on 10 December 2010.

⁴ The text is the result of consultations carried out by Austria and Canada.

victims while they were children, of a violation by that State party of any of the rights set forth in:

- (a) The Convention;
- (b) The Optional Protocol to the Convention on the sale of children, child prostitution and child pornography;
- (c) The Optional Protocol to the Convention on the involvement of children in armed conflict.

[2. A State party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it does not recognize the competence of the Committee provided for in subparagraph 1 (b) and/or (c) of the present article.

3. Any State party having made a declaration in accordance with paragraph 2 of the present article may, at any time, amend or withdraw this declaration by notification to the Secretary-General of the United Nations.]

4. Where a communication is submitted on behalf of an individual or group of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.

5. Where the author of a communication is acting on behalf of a child as defined in article 1 of the Convention, or a group of children, the Committee shall determine whether it is in the best interests of the child or group of children concerned to consider the communication.

6. The Committee shall include in its rules of procedure safeguards to prevent the manipulation of children by those who represent them and to protect their rights under the present Protocol.

Article 7

Collective communications

1. Each State party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it recognizes the competence of the Committee to receive and consider collective communications as provided for in the present article in respect of the rights set forth in some or all of the instruments listed in paragraph 2.

2. National human rights institutions and ombudsman institutions as well as non-governmental organizations, fulfilling the criteria established in the Committee's rules of procedure may submit collective communications alleging recurring violations affecting multiple individuals of any of the rights set forth in:

- (a) The Convention;
- (b) The Optional Protocol to the Convention on the sale of children, child prostitution and child pornography;
- (c) The Optional Protocol to the Convention on the involvement of children in armed conflict.

3. Any State party having made a declaration in accordance with paragraph 1 of the present article may, at any time, withdraw this declaration by notification to the Secretary-General of the United Nations.

Article 8

Interim measures

1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State party concerned for its urgent consideration a request that the State party take such interim measures as may be necessary to avoid possible irreparable damage to the victim or victims of the alleged violations.
2. Where the Committee exercises its discretion under paragraph 1 of the present article, this does not imply a determination on admissibility or on the merits of the communication.

Article 9

Admissibility

The Committee shall consider a communication inadmissible when:

- (a) The communication is anonymous;
- (b) The communication is not in writing. This is without prejudice to non written materials that could be submitted in support of the allegations contained in the communication;
- (c) The communication constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of the Convention and/or the Optional Protocols thereto;
- (d) 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;
- (e) All available domestic remedies have not been exhausted. This shall not be the rule where the application of the remedies is unreasonably prolonged or unlikely to provide effective reparation. The Committee shall interpret the application of the remedies in a manner sensitive to the impact that delays may cause to a child's well-being and development;
- (f) The communication is manifestly ill-founded or not sufficiently substantiated;
- (g) 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.
- (h) The communication is not submitted within one year after the exhaustion of domestic remedies, except in cases where the author can demonstrate that it had not been possible to submit the communication within that time limit.

[Article 10

The Committee may, if necessary, decline to consider a communication where it does not reveal that the author has suffered a clear disadvantage, unless the Committee considers that the communication raises a serious issue of general importance.]

Article 11

Transmission of the communication⁵

1. Unless the Committee considers a communication inadmissible without reference to the State party concerned, the Committee shall bring any communication submitted to it under the present Protocol confidentially to the attention of the State party concerned as soon as possible.
2. The State party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that it may have provided. The State party shall endeavour to submit its response as soon as possible within six months.

Article 12

Friendly settlement⁶

1. The Committee shall make available its good offices to the parties concerned with a view to reaching a friendly settlement of the matter on the basis of respect for the obligations set forth in the Convention and/or the Optional Protocols thereto.
2. An agreement on a friendly settlement closes consideration of the communication under the present Protocol. However, the Committee may, within twelve months after a friendly settlement has been reached, follow-up its implementation.

Article 13

Consideration of communications

1. The Committee shall hold closed meetings when examining communications received under the present Protocol.
2. The Committee shall consider communications received under the present Protocol as quickly as possible, in the light of all documentation submitted to it, provided that this documentation is transmitted to the parties concerned.
3. When examining a communication under the present Protocol, the Committee may consult, as appropriate, relevant documentation emanating from other United Nations bodies, specialized agencies, funds, programmes and mechanisms, and other bodies, including from regional human rights systems, and any observations or comments by the State party concerned.
4. After examining a communication, the Committee shall, without delay, transmit its views on the communication, together with its recommendations, if any, to the parties concerned.

⁵ As per Chair's compromise proposal distributed on 10 December 2010.

⁶ As per Chair's compromise proposal distributed on 10 December 2010.

Article 14

Follow-up to the views of the Committee⁷

1. 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 a written response, including information on any action taken and envisaged in the light of the views and recommendations of the Committee. The State party shall endeavour to submit its response as soon as possible within six months.
2. 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 12 of the Optional Protocol on the sale of children, child prostitution and child pornography or article 8 of the Optional Protocol on the involvement of children in armed conflict.

Article 15

Inter-State communications⁸

1. A State party to the present Protocol may, at any time, declare that it recognizes the competence of the Committee to receive and consider communications in which a State party claims that another State party is not fulfilling its obligations under:
 - (a) The Convention;
 - (b) The Optional Protocol to the Convention on the sale of children, child prostitution and child pornography;
 - (c) The Optional Protocol to the Convention on the involvement of children in armed conflict.
2. The Committee shall not receive communications concerning a State party that has not made such a declaration, nor communications from a State party that has not made such a declaration.
3. The Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of the respect for the obligations set forth in the Convention and its Optional Protocols.
4. A declaration under paragraph 1 of the present article shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communications by any State Party shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

⁷ As per Chair's compromise proposal distributed on 10 December 2010.

⁸ Amended as per Chair's compromise proposal of 7 December 2010.

Part III Inquiry procedure

Article 16

Inquiry procedure for grave or systematic violations

1. If the Committee receives reliable information indicating grave or systematic violations by a State party of rights set forth in the Convention, the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography or the Optional Protocol to the Convention on the involvement of children in armed conflict, the Committee shall invite the State party to cooperate in the examination of the information and, to this end, to submit observations without delay with regard to the information concerned.
2. Taking into account any observations that may have been submitted by the State party concerned, as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State party, the inquiry may include a visit to its territory.
3. Such an inquiry shall be conducted confidentially and the cooperation of the State party shall be sought at all stages of the proceedings.
4. After examining the findings of such an inquiry, the Committee shall transmit without delay these findings to the State party concerned together with any comments and recommendations.
5. The State party concerned shall, as soon as possible within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.
6. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2 of the present article, the Committee may, after consultations with the State party concerned, decide to include a summary account of the results of the proceedings in its report provided for in article 19 of the present Protocol.
7. Each State party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it does not recognize the competence of the Committee provided for in the present article in respect of the rights set forth in some or all of the instruments listed in paragraph 1.
8. Any State party having made a declaration in accordance with paragraph 7 of the present article may, at any time, withdraw this declaration by notification to the Secretary-General of the United Nations.]

Article 17

Follow-up to the inquiry procedure

1. The Committee may invite the State party concerned to include in its reports under article 44 of the Convention, article 12 of the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography or article 8 of the Optional Protocol to the Convention on the involvement of children in armed conflict, as appropriate, details of any measures taken in response to an inquiry conducted under article 16 of the present Protocol.

2. The Committee may, if necessary, after the end of the period of six months referred to in article 16, paragraph 5, invite the State party concerned to inform it of the measures taken and envisaged in response to such an inquiry.

Part IV Final provisions

Article 18

International assistance and cooperation

1. The Committee may transmit, with the consent of the State party concerned, to United Nations specialized agencies, funds and programmes and other competent bodies its views or recommendations concerning communications and inquiries that indicate a need for technical advice or assistance, together with the State party's observations and suggestions, if any, on these views or recommendations.

2. The Committee may also bring to the attention of such bodies, with the consent of the State party concerned, any matter arising out of communications considered under the present Protocol that may assist them in deciding, each within its field of competence, on the advisability of international measures likely to contribute to assisting States parties in achieving progress in the implementation of the rights recognized in the Convention and/or the Optional Protocols thereto.

Article 19

Report to the General Assembly⁹

The Committee shall include in its report submitted every two years to the General Assembly, in accordance with article 44 (5) of the Convention, a summary of its activities under the present Protocol.

Article 20

Dissemination and information on the Optional Protocol

Each State party undertakes to make widely known and to disseminate the present Protocol and to facilitate access to information about the views and recommendations of the Committee, in particular with regard to matters involving the State party, by appropriate, accessible and active means to adults and children alike, including those with disabilities.

Article 21

Signature, ratification and accession¹⁰

1. The present Protocol is open for signature to any State that has signed, ratified or acceded to the Convention or either of its first two Optional Protocols.

⁹ As per Chair's compromise proposal distributed on 10 December 2010.

¹⁰ As per Chair's compromise proposal distributed on 10 December 2010 and subsequently edited.

2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Convention or either of its first two Optional Protocols. 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 or either of its first two Optional Protocols.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 22

Entry into force¹¹

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or instrument of accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.

[Article 23

1. The Committee shall have competence solely in respect of violations by the State party of any of the rights set forth in the Convention and/or its first two Optional Protocols, which occurred after the entry into force of this optional protocol.

2. If a State becomes a party to this optional protocol after its entry into force, the obligations of that State vis-a-vis the Committee shall relate only to violations of the rights set forth in the Convention and/or its first two Optional Protocols, which occurred after the entry into force of this optional protocol for the State concerned.]

Article 24

Reservations

No reservations to the present Protocol shall be permitted.

Article 25

Amendments¹²

1. Any State party may propose an amendment to the present Protocol and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States parties with a request to be notified whether they favour a meeting of States parties for the purpose of considering and deciding upon the proposals. In the event that, within four months of the date of such communication, at least one third of the States parties favour such a meeting, the Secretary-General shall convene the meeting under the auspices of the United Nations. Any amendment adopted by a majority of two

¹¹ As per Chair's compromise proposal distributed on 10 December 2010.

¹² As per Chair's compromise proposal distributed on 10 December 2010.

thirds of the States parties present and voting shall be submitted by the Secretary-General to the General Assembly for approval, and thereafter to all States parties for acceptance.

2. An amendment adopted and approved in accordance with paragraph 1 of the present article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States parties that have accepted it.

Article 26

Denunciation¹³

1. Any State party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations. The denunciation shall take effect one year 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 articles 6, 7 or 15 or any inquiry initiated under article 16 before the effective date of denunciation.

Article 27

Depositary and notification by the Secretary-General¹⁴

1. The Secretary-General of the United Nations shall be the depositary of the present Protocol.

2. 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 25;
- (c) Any denunciation under article 26.

Article 28

Languages¹⁵

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.

¹³ As per Chair's compromise proposal distributed on 10 December 2010.

¹⁴ As per Chair's compromise proposal distributed on 10 December 2010.

¹⁵ As per Chair's compromise proposal distributed on 10 December 2010.