

**DRAFT OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF
THE CHILD**

Introduction

This draft protocol is a slightly modified version of a classwork assignment for the 2010 course “Populations at Risk: International Rights of the Child”. The course was offered as an elective course by the University of Oxford for the Master of Studies Program in International Human Rights Law and the course was taught by Professor Geraldine Van Bueren.

The following students participated on the work of the draft protocol on which this version has been closely based:

Margaret Zimmerman
Alex Zapesochny
Jason Wright
Ana Nacvalovaite
Jan Malekzade
Gary Koenigsberg
Rita Jardim
Rick Ifland
Magne Frostad
Rodrigo Díaz de Valdés
Deborah Cotter
Leonardo Castilho
Heather Adams

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Preamble

The States Parties to the present Protocol,

Recalling the principles proclaimed in the Charter of the United Nations which recognize the inherent dignity and worth and the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world,

Recognizing that the United Nations, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, has proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child of 1924, ‘the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection’,

Reaffirming the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms and the need for children to be guaranteed their full enjoyment without discrimination, and recognizing that the idea of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby anyone may enjoy civil, cultural, economic, political and social rights,

Concerned about the difficult conditions faced by children who are subject to multiple or aggravated forms of discrimination on the basis of gender, race, color, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, age or other status,

Recognizing the importance of the principles and policy guidelines contained in the Convention on the Rights of the Child, such as the best interests of the child and the evolving capacities of children in directing the promotion, formulation and evaluation of the policies, plans, program and actions at the national, regional and international levels to further equalize opportunities for children,

Recognizing the need to promote and protect the human rights of all children, including those who require more intensive support, and that children with disabilities should have the full enjoyment of all human rights and fundamental freedoms on an equal basis with other children, and recalling obligations to that end undertaken by States Parties to the Convention on the Rights of the Child,

Concerned that, despite these various instruments and undertakings, children continue to face barriers in their participation as equal members of society and violations of their human rights in all parts of the world,

Recognizing the valued existing and potential contributions made by children to the overall well-being and diversity of their communities, and

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that the promotion of the full enjoyment by children of their human rights and fundamental freedoms and of full participation by children will result in their enhanced sense of belonging and in significant advances in the human, social and economic development of society and the eradication of poverty,

Recognizing the importance for children of their individual autonomy and independence, including the freedom to make their own choices,

Considering that children should have the opportunity to be actively involved in decision-making processes about policies and programmes, including those directly concerning them, and that States Parties undertake steps to assure that the child is able to express her or his views “in all matters affecting” her or him.

Confirming that the child has the right to be heard either directly, or through a representative or an appropriate body in order that the child may effectively realize his or her right to be heard whenever a matter affects the child,

Recognizing the importance of accessibility to the physical, social, economic and cultural environment, to health and education and to information and communication, in enabling children to fully enjoy all human rights and fundamental freedoms,

Convinced that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State, and that children and their family members should receive the necessary protection and assistance to enable families to contribute towards the full and equal enjoyment of the rights of children,

Convinced that a comprehensive and integral international communications protocol to promote, protect and enforce the rights and dignity of children will make a significant contribution to redressing the profound social disadvantage of children and promote their participation in the civil, political, economic, social and cultural spheres with equal opportunities, in both developing and developed countries,

Considering that, in order to achieve the purposes of the Convention and the implementation of its provisions, it would be appropriate to enable the Committee of the Rights of the Child (hereinafter referred to as the Committee) to carry out functions provided for in the present protocol.

Considering that childhood is unique and important for the development of a human being and that it should therefore be afforded greater protection through new, effective and mainstreamed mechanisms for rights protection.

Commentary

The preamble largely draws upon well-known principles and instruments of relevance to the protection of children and should not as such be very controversial. A central theme throughout is the need to avert future

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violations of the Convention and for this purposes, the Protocol may provide an admittedly partial but nevertheless important tool.

Article 1 - Powers of the Committee to Receive and Consider Communications

1. In order to foster the effective implementation of the Convention, to encourage international co-operation in the field covered by the Convention, and to fulfill the object and purpose of this Protocol:
 - (a) States Parties to the Convention and this Protocol, consistent with Articles 43, 44 and 45 of the Convention, empower the Committee to receive and consider communications from or on behalf of children subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention; and
 - (b) States Parties to the Convention, consistent with Articles 43, 44 and 45 of the Convention, further empower the Committee to receive and consider communications from or on behalf of children who claim to be victims of a violation of the provisions of the Convention by a State Party that has not ratified this Protocol, if that State Party has declared under this article that it recognizes the competence of the Committee to receive and consider a communication from or on behalf of children subject to its jurisdiction who claim to be victims of a violation by that State Party. The Committee shall receive no communication if it concerns a State Party, which has not ratified this Protocol and which has not made such a declaration.

Commentary

This article, which establishes additional powers of the Committee to receive and consider communications, is supplemental to, and consistent with, the existing functions and powers of the Committee under the Convention Articles 43, 44 and 45. Subparagraph (a) mandates that States Parties to the Protocol convey full competence to the Committee to receive and consider communications from children and from individuals on behalf of children. Subparagraph (b) operates further to empower a State Party to the Convention, but not to the Protocol, with the option of accepting the competence of the Committee to receive and consider specific communications.

Subparagraph (b) draws inspiration from Article 22 of the Convention Against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, and is intended to augment the Committee's powers to receive and review communications from those States not party to this Protocol.

Consider, for example, a situation where a young girl claims a violation of the Convention due to an arranged marriage. Her State is a party to the Convention, but not to the Protocol, and cultural traditions in the state typically allow for such marriages. In such a circumstance, this State may declare that it accepts the competence of the Committee to receive and

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consider the communication from the young girl to vindicate an accepted cultural tradition before an international human rights law body.

Article 2 - Communications

1. Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State Party. Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent. The term individuals should be read to include:
 - (a) Children under the age of 18; and
 - (b) Persons over the age of 18 who allege a violation when under the age of 18 in accordance with Article 3 paragraph 3 (a).
2. The Committee, in accordance with the best interest of the child and the evolving capacities of the child, may at its discretion decide to convene an oral hearing with respect to communications. Individuals who allege a violation may be represented before the Committee

Commentary

The Convention recognizes the special status of children and the importance of providing a right to be heard consistent with Article 12 of the Convention. The Committee will review communications at their own discretion. Through the communication process with the Committee it is intended that the child will be included to the maximum extent, unless otherwise detrimental to his or her health or safety. This right to be heard is included in both communications submitted by an individual child or on his or her behalf.

Subparagraph 1 provides that “individuals” may submit communications to the Committee. This term is meant to include the following:

- Children;
- Adults who were child victims and meet the criteria of Article 3;
- Parents, either biological or adoptive, on behalf of children;
- Guardians; and
- Individuals responsible for local custom.

Subparagraph 1 also allows for the submission of communications by groups of individuals or on behalf of groups of individuals. These communications may come from non-governmental organizations or the State in accordance with Article 11. Where the communication is submitted on behalf of an child not included within the defined meaning of “individual” the Committee may choose to appoint a guardian *ad litem* to represent and protect the rights of the child.

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Subparagraph 1 allows for children who allege a violation when under the age of 18 to submit a claim up to one year after reaching the age of majority. There are a number of factors that affect the tolling of a statute of limitations. Here, the Protocol aims to provide a mechanism for individuals who were victims of a violation committed when they were younger than 18 years old an ability to submit a communication within one year past the age of majority. Thus, in the present circumstances the breach essentially freezes the age of the victim providing them any time up until the age of majority plus one year to submit a communication. Moreover, the longstanding mental and physical effects on a child live on well beyond the age of majority thus allowing those who have reached the age of majority one year to submit a communication.

Subparagraph 2 is intended not only to provide safeguards for the child but also to assist the child through the communication process. In no way should the representation be adverse to the child's requests or submissions. This funding may come from the fund created under Article 17 of this Protocol.

The Committee itself will produce guidelines to outline by what procedure communications will be reviewed in accordance with Article 9.

Article 3 - Admissibility

1. The Committee shall not consider a communication unless it has ascertained that all effective domestic remedies have been exhausted. This shall not be the rule where:
 - (a) The domestic legislation of the State Party concerned does not afford due process of law for the protection of the right that has allegedly been violated;
 - (b) The party alleging a violation of a right has been prevented from accessing effective remedies under domestic law.
 - (c) There has been substantial or unreasonable delay in the rendering of a final judgment or the implementation thereof, in that such delay is likely to prejudice the victim or to make potential remedies ineffective; and
 - (d) A State Party concerned, whether a party to the Protocol or subject to the jurisdiction of the Committee pursuant to its declaration, agrees to waive the domestic exhaustion requirement.
2. In adjudicating whether the exhaustion of effective domestic remedies has occurred under Section 1 of this Article, in addition to applying generally recognized principles of international law, the Committee shall, where applicable, consider this principle in light of the unique context and precarious nature of childhood, as well as a child's sense of time, in that it shall accord due consideration to:

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- (a) The relative brevity of childhood;
 - (b) The particularly formative and enduring consequences the alleged violation, given its occurrence during childhood, is likely to have on the victim; and
 - (c) Whether further delay resulting from seeking or awaiting domestic remedies, given the alleged victim's current age and capacity, will be especially likely to thwart the potentially ameliorative impact of such remedies.
3. The Committee shall declare a communication inadmissible when:
- (a) It is not submitted within one year after the exhaustion of domestic remedies or, if the exhaustion of domestic remedies occurred during the alleged victim's childhood, when it is not submitted within one year of the alleged victim attaining the age of eighteen; this shall not be the rule in cases where the author can demonstrate that it had not been possible to submit the communication within that time limit;
 - (b) 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 or unless the State Party concerned agrees to waive this requirement;
 - (c) It is incompatible with the provisions of the Convention;
 - (d) It is manifestly ill-founded or not sufficiently substantiated, though the Committee shall consider the evolving capacities of the child in determining whether adequate substantiation has occurred;
 - (e) It is an abuse of the right to submit a communication; or when
 - (f) It is anonymous, in that the alleged victim is not identifiable to the Committee, or not in writing.

Commentary

Section 1 of the Article mandates that the exhaustion of domestic remedies needs to generally occur before a communication will be considered. However, this requirement has been curtailed in significant and unique ways to account for the unique challenges faced by many children in fulfilling it. For instance, subsection (a) provides an exception where the State's domestic laws do not offer due process of law in protecting the concerned right. This may occur where States have not yet effectively modified their legal systems to enable the protection of certain rights found in the Convention or which do not effectively allow children to pursue legal remedies in such cases.

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Subsection (b) deals with another unique element of childhood, in that children can often be pressured, coerced or forced by those around them, whether they be those with responsibility over raising them or representatives of the State, to refrain from pursuing their rights. Given the vulnerability of many children, especially in the many societies where obedience and unquestioning respect for elders and the State are taught, it becomes especially important to allow an exception to the usual domestic exhaustion rules to account for this inherent power imbalance between children and those around them.

Subsection (c) deals with the issue of long delays, in either receiving a domestic judgment about a remedy or in the application of such a remedy. As will be further discussed in the commentary regarding Section 2, these delays will need to be analyzed by the Committee in a manner which keeps in mind that a “reasonable” delay in obtaining a remedy during adulthood may not at all be the same as what could be viewed as a “reasonable” delay during childhood. What is most important is to keep in mind the effectiveness of the remedies being sought, and whether delay will significantly affect their effectiveness.

Subsection (d) provides additional flexibility to the Committee in choosing to take on applications that it deems worthy of its consideration, in that it enables a State to waive the domestic exhaustion requirement. While many States will not choose to do so, it may in some cases still be highly beneficial to have this mechanism in place. First, it is possible that some States may want certain issues adjudicated through the Committee, for instance in cases where it wants to proactively determine that its culturally-influenced implementation of a right under the Convention is appropriate. Second, it creates a tool to pressure States to respond to alleged abuses, even if such abuses have clearly not been adjudicated to finality domestically.

Section 2 intends to emphasize how the Committee should interpret the domestic exhaustion requirement. It should at all times be a central concern of the Committee that those who apply to hear their judgment are often in the midst of the generally brief and particularly vulnerable state of childhood. Violations of their rights, as with delays in remedying those violations, can have a profoundly lasting and injurious effect on children. So in weighing the factors of whether domestic exhaustion has occurred, the Committee should especially consider the nature of the alleged violation to the concerned child, and the harm that may come to such child if a remedy is delayed by the need to further try to exhaust domestic remedies.

Section 3 adds several novel child-centered considerations to the typical language dealing with admissibility. First, as is the case with certain domestic systems, a child essentially gets two “bites at the apple” in terms of statute of limitations requirements. A child can either file within a year of the exhaustion of domestic remedies, or the child can file within a year of turning 18 (if the domestic remedies were exhausted prior to age 18). This is based on the idea that a child should not be held fully responsible for his

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or her decisions surrounding the pursuit of legal remedies or rights, and thus an additional period of time is provided upon the attainment of legal adulthood to again consider legal actions.

Subsection (d) deals with the fact that substantiation of an alleged rights violation may be more challenging for children, who may not have the capacities of adults in describing factual events or their legal relevance. Thus, the Committee is to take this into account when reviewing such applications, paying special attention to the evolving capacities of such child party.

Article 4 - Consideration of Communications

The Committee should receive and consider all communications.

Commentary

The Article is intended to place the burden of linking the violation claimed to the rights in the Convention on the Committee and not on the child. This acknowledges the expertise of members of the Committee as well as creating a more child friendly approach by removing formal hurdles for children seeking redress under the Protocol. To the extent necessary, it should nevertheless be left to the Committee itself to regulate the reach of the obligation to consider communications. Such a system may include the possibility of dismissing communications as e.g. manifestly ill-founded.

Article 5 - Interim Measures

1. To ensure that the child's best interests are protected, keeping in mind issues with respect to the child's sense of time, at any time after the receipt of a communication and before a determination on the merits has been reached, the State Party will be urged to take such interim measures as may be necessary in exceptional circumstances 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.

Commentary

The essence of interim protection is to protect from damage and avoid harm. It is an exceptional procedure and the intention is to keep the best interests of the child at the forefront when considering whether to invoke this article. As regards what constitutes exceptional in child rights cases, this concept could be broader here than in other treaties, e.g. timeliness may be considered more pressing in many child rights issues. This interim measure provision is similar to the Optional Protocol on the Convention on the Elimination of All Forms of Discrimination against Women and constitutes an improvement on the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment, and the Convention on the Elimination of All Forms of Racial Discrimination where interim measures went through rules of procedure.

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Article 6 - Transmission of the Communication and Written Explanations

1. Unless the Committee considers a communication inadmissible pursuant to Article 3 paragraph 3, the Committee shall bring any communication submitted to it under the present Protocol confidentially to the attention of the State Party concerned.

2. The receiving State Party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been provided by that State Party. This shall be submitted by the State within six months from receipt of the transmission, unless the case has been assigned fast track status pursuant to Article 7, in which case it must comply with the provisions of that article.

Article 7 - Fast Track Proceedings

A procedure will be established by the Committee to allow communications to be designated as Fast Track where such urgent action is compelled by the best in interests of the child or children keeping in mind the child's sense of time.

Commentary

Whereas Article 5 merely provides interim measures, Article 7 seeks to provide in certain cases a more expeditious handling of the communication than would normally be possible. The intention of a fast track procedure is to recognize the importance of a timely settlement of child rights complaints which considers the uniqueness of childhood. Childhood is time bound and rights violations could have a cumulative impact on children that is not the same for adults.

All files set forth as Fast Track files shall follow the time schedule set forth pursuant to the "Fast Track" expedited schedule to be established.

Article 8 - Friendly Settlement

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. Further, alternative methods of resolution should be encouraged where they are in the child's welfare and best interests.

2. An agreement on a friendly settlement is subject to a final review of the Committee in order to assess its compliance with the rights under the Convention. Once reviewed and accepted by the Committee, a friendly settlement closes consideration of the communication under the present Protocol.

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Commentary

The intention of subjecting a friendly settlement to the review of the Committee is to act as a counterweight in the power imbalance that exists between children and the State.

Article 9 - Examination of communications

1. The Committee shall examine communications received under Article 2 of the present Protocol in the light of all information submitted to it, provided that this information is appropriately transmitted to the parties concerned.
2. When examining a communication under the present Protocol, the Committee may receive and consult, as appropriate, relevant documentation or other information emanating from specialized agencies, other United Nations bodies, funds, programs and mechanisms, other international organizations, including from regional human rights systems, non-governmental organizations, any observations or comments by the State Party concerned and, where applicable, its national body.
3. The petitioner, a representative of the national body, and a representative of the State Party, may address the Committee orally, either in presence before the Committee or via appropriate technology, safeguarding the privacy of the child, if necessary, as well as the security of the child.
4. The Committee may hold closed meetings when examining communications under the present Protocol, taking into consideration the privacy of the child.

Commentary

Paragraph 1 uses the term “information” instead of “documentation” as found in Article 8 of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. This is done so as to better cater for developments in communication technology, and also because it might be in the child’s best interest to approach the Committee through non-traditional means e.g. a recorded multimedia message. The Article also includes references to the national body regulated by Article 16. The term “appropriately” is chosen to safeguard the child’s right to privacy.

Some of these paragraphs were inspired by Article 8 of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights and have been rearranged in order to better reflect the presumed intra-Committee procedure for the handling of cases, whereas paragraph 3 has been included so as to enable especially the child to participate in a more direct capacity before the Committee than would have been the case if the deliberations of the Committee were only based upon written

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documentation. This reflects the principles of the best interest of the child and its right to have its opinion heard and considered.

Article 9 also enables the child to participate in a more direct capacity before the Committee than would have been the case if the deliberations of the Committee were only based upon written documentation. For a child, the ability to formulate its views directly and orally before the Committee may be of even greater importance to it than would be the case with an adult petitioner under other instruments, as the child will generally have less experience with expressing its view in a written manner than the average adult.

Considering the costs incurred by traveling to the seat of the Committee, it would seem advisable to allow for such participation through the use of communication technology. This might also be the most child-friendly way of achieving such participation, but issues of time-difference and the need for technical infrastructure also where the child is located, must be taken into account. To the extent that the Committee members know in advance which questions they want to ask the child, it might occasionally be acceptable to let the child record its answer in advance of the Committee meeting. In the use of such communication technology, there might on a case-by-case basis become necessary to hide the identity of the child through the use of masking and distortion of his/her voice. The Committee must nevertheless know the real identity of the child, as well as being able to confirm that they are speaking with the same child. In deciding whether it shall hold a closed or open meeting, the Committee must take into consideration the best interest of the child, hereunder the child's right to privacy.

Moreover, it would be necessary for the Committee to issue guidelines providing in more detail how the examination will be carried out.

In addition to Article 17, some economic support may be provided by UN general funds for partial coverage of the costs incurred by developing states in connection with, among other, travel to the seat of the Committee, but it is expected that the state party will largely have to cover its own expenses in connection with the use of the right to individual petitioning by children within the jurisdiction of that state.

Article 10 - Follow-up to the views of the Committee

1. After examining a communication, the Committee shall transmit its views on the communication, together with its recommendations, if any, to the parties concerned, including a summary of its views and recommendations in a manner comprehensible to both the concerned child as well as children more broadly.
2. 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 and the national body, within three months, a written response, including information on any action taken in the light of the

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views and recommendations of the Committee, together with a summarized response that is comprehensible to the child, taking into consideration the child's age and maturity.

3. Where applicable, a national body shall inform the Committee of its assessment of the way in which the State Party has implemented the views and recommendations of the Committee.
4. 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 to the Committee.
5. The Committee will include in its annual report information regarding both the compliance and non-compliance by the State Party with its views and recommendations. Due regard being had to the need of confidentiality after the conclusion of the proceedings.

Commentary

The purpose of the follow up communication process of the Committee is to both provide recommendations to the specific child who has brought the action, as well as to more broadly publicize and educate other children who may be similarly situated or which face similar violations so that they can become aware of their rights under the Convention. To meet this objective, it is key that the Committee utilizes language that is understandable to a young child, as well as to all children that may be victims of similar violations. The Committee should also, consistent with the Universal Declaration's statement that "childhood is entitled to special care and attention" develop practices and means of public dissemination of its recommendations that makes such recommendations most accessible to children.

It is the responsibility of the Committee to have advisors who have not only legal and child rights backgrounds, but also experience in interaction with children and youth. Also of importance is the need to write reports in a prompt manner, as a backlog would have serious implications on a child's wellbeing. It is also important that a child's sense of time must be taken into consideration and given priority, especially to prevent situations where a long delay may be particularly prejudicial to the concerned child. If the whole report can not be written in a manner comprehensible to a young child, then a summary of the main points and objectives should be available in a child friendly version highlighting the main relevant points.

The Committee encourages United Nations agencies, non-governmental organizations, national human rights institutions and other competent bodies to provide their views and recommendations to the Committee.

The publication of case reports in the annual report, which should have summaries of follow-up responses and recommendations, should be accomplished. Summaries in child friendly wording would highlight the

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importance of the Committee working closely with children and being accessible and child friendly. Publication would also allow other participants access to information on follow-up. Anonymity of the children concerned should be guaranteed as disclosure might be detrimental to a child's best interests.

Article 11 - Inter-State communications

1. A State Party to the present Protocol may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the Convention. Communications under this article may be received and considered largely if submitted by a State Party that has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:
 - (a) If a State Party to the present Protocol considers that another State Party is not fulfilling its obligations under the Convention, it may, by written communication, bring the matter to the attention of that State Party. The State Party may also inform the Committee of the matter. Within three months after the receipt of the communication the receiving State shall afford the State that sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;
 - (b) If the matter is not settled to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;
 - (c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter. This shall not be the rule where the application of the remedies is unreasonably prolonged;
 - (d) Subject to the provisions of subparagraph (c) of the present paragraph 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;
 - (e) The Committee shall hold closed meetings when examining communications under the present article;

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- (f) In any matter referred to it in accordance with subparagraph (b) of the present paragraph, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;
 - (g) The States Parties concerned, referred to in subparagraph (b) of the present paragraph, shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;
 - (h) The Committee shall, with all due expediency after the date of receipt of notice under subparagraph (b) of the present paragraph, submit a report, as follows:
 - i. If a solution within the terms of subparagraph (d) of the present paragraph is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;
 - ii. If a solution within the terms of subparagraph (d) is not reached, the Committee shall, in its report, set forth the relevant facts concerning the issue between the States Parties concerned. The written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report. The Committee may also communicate only to the States Parties concerned any views that it may consider relevant to the issue between them. In every matter, the report shall be communicated to the States Parties concerned and the national body.
2. 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 communication 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.

Commentary

This provision diverges from the standard provisions on inter-state communications largely in its more restrictive time limits.

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Article 12 - Advisory Opinion

The States Parties to this Protocol may consult the Committee regarding the interpretation of the Convention. The Committee, at the request of the State Party, may provide that State Party with opinions regarding the compatibility of any of its domestic laws with the Convention.

Commentary

This article has been inspired by the Inter-American Court of Human Rights' capacity to render advisory opinions, as determined by the Inter-American Convention Article 64.

Article 13 - Inquiry procedure

1. A State Party may, at the time of signature or ratification of this Protocol or accession thereto, declare that it does not recognize the competence of the Committee provided for under this article.
2. If the Committee receives reliable information indicating grave or systematic violations by a State Party of any of the rights set forth in the Convention, the Committee shall invite that State Party and its national body to cooperate in the examination of the information and to this end to submit observations with regard to the information concerned.
3. 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.
4. Such an inquiry shall be conducted confidentially and in an expeditious manner, and the cooperation of the State Party shall be sought at all stages of the proceedings. The view of the child or children concerned should also be sought provided their safety is duly safeguarded.
5. After examining the findings of such an inquiry, the Committee shall transmit these findings to the State Party concerned and to its national body together with any comments and recommendations. The Committee shall make available a summary of its findings, comments and recommendations in a manner comprehensible to the children.
6. The State Party concerned shall, within three months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee. The State shall provide a summary of its observations in a manner comprehensible to the children.
7. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after

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consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report .

8. 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.

Commentary

Inquiries may only be undertaken with respect to States parties who have recognized the competence of the Committee in this regard. However, instead of requiring the State to expressly declare that it accepts such competence, the present Protocol should impose upon the State the onus of having to expressly exclude such competence. The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights Article 11(1) requires the State to declare that it accepts inquiries. However, the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment Article 28, and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women Article 10, follow the solution proposed here.

Article 14 - Follow-up to the inquiry procedure

1. The Committee may invite the State Party concerned to include in its report details of any measures taken in response to an inquiry conducted under Article 13 of the present Protocol.
2. The Committee may, if necessary, after the end of the period of three months referred to in Article 13 paragraph 6, invite the State Party concerned to inform it of the measures taken in response to such an inquiry.

Commentary

As part of the follow-up procedure the Committee may also assess whether the State Party has complied with its obligation under Article 15.

Article 15 - Child protection measures

A State Party shall take all appropriate measures to ensure that children under its jurisdiction are not subjected to any form of manipulation, ill-treatment, intimidation or any other coercive forms of intimidation in submitting a communication to the Committee pursuant to the present Protocol.

Commentary

This provision covers only manipulation etc which occurs after a communication has been submitted. As the bone fide implementation by State Parties of their obligations is a general principle of international law, it should not be necessary to mention it in the provision itself. However, the manipulation etc may be carried out by groups or individuals not representing the State and especially for these situations, the provision is necessary. In order to avoid a too far reaching responsibility for the State Party, the responsibility has been limited to that which is appropriate.

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Article 16 - National body

The State Party is encouraged to establish a national human rights institution, ombudsperson or similar independent body for the promotion and monitoring of the implementation of the Convention, this Protocol and other Protocols as applicable.

Commentary

The establishment of a relevant national body would be in accordance with Article 4 of the Convention and the Committee's General Comment No. 2 (2002). It would thus fall within the commitment made by States Parties upon ratification to ensure the implementation of the Convention and advance the universal realization of children's rights. It is important that such a body would be able independently and effectively to monitor, promote and protect children's rights. For this purpose, the State Party should give preference to the national human rights institution option. Such an institution would then have to be established in compliance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the "Paris Principles"). Where resources are limited, the state party might find it preferable to establish a broad-based national human rights institution covering the obligations under multiple human rights instruments. This will be acceptable, as long as this institution includes a specific focus on children.

This body should have as its main functions, among others, dissemination of information on the Convention and its Protocols, provision of support to victims in relation to the exhaustion of domestic remedies, and monitoring of the implementation of views, recommendations and comments from the Committee.

Article 17 - International assistance and cooperation

1. The Committee shall transmit, as it may consider appropriate, and with the consent of the State Party concerned, to United Nations specialized agencies, funds, including but not limited to UNICEF and programs and other competent bodies, its views or recommendations concerning communications and inquiries that indicate a need for resources, technical advice or assistance, along 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 which 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 implementation of the rights recognized in the Convention.

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3. A trust fund administered by UNICEF shall be established in accordance with the relevant procedures of the General Assembly, to be administered in accordance with the financial regulations and rules of the United Nations, with a view to providing expert and technical assistance to States Parties, with the consent of the State Party concerned, for the enhanced implementation of the rights contained in the Convention, thus contributing to building national capacities in the area of child rights in the context of the present Protocol.
4. The provisions of this article are without prejudice to the obligations of each State Party to fulfill its obligations under the Convention.

Article 18 - Annual Report

The Committee shall include in its annual report a summary of its activities under the present Protocol. The Committee can specify, in particular, cases in which a State has not complied with its recommendations.

Article 19 - Dissemination and information

Each State Party undertakes to make widely known and to disseminate the Convention and the present Protocol and to facilitate access to information about the views and recommendations of the Committee, in particular, on matters involving that State Party, and to do so in a way which considers children's ability to understand available information.

Commentary

An effective way of attuning national societies to the rights of the child may be through the use of well-resourced national bodies (Article 16). The obligation for the dissemination and information nevertheless remains with the State Party itself.

Article 20 - Signature, ratification and accession

1. The present Protocol is open for signature by any State that has signed, ratified or acceded to the Convention.
2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Convention. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

Article 21 - Entry into force

1. The present Protocol shall enter into force on the thirtieth day following the date of the deposit with the Secretary-General of the United Nations of the tenth instrument of ratification or accession.

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2. For each State ratifying or acceding to the present Protocol, after the deposit of the tenth instrument of ratification or accession, the protocol shall enter into force on the thirtieth day following the date of the deposit of its instrument of ratification or accession.

Commentary

This provision mirrors similar provisions in the Convention itself and its two current Protocols and constitutes a mix of how this issue has been regulated in these provisions. It thus takes the thirty day period from the Convention, whereas the amount of ratifications or accession necessary corresponds to the regulation of the Protocols. The mix chosen facilitates the early activation of e.g. the new powers of the Committee.

Article 22 - Amendments

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 favor a meeting of States Parties for the purpose of considering and deciding upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favor 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 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 this 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 which have accepted it.

Article 23 - Denunciation

1. Any State Party may denounce the present Protocol at any time by written notification addressed to the Secretary-General of the United Nations. 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 2 and 11 or to any procedure initiated under Article 13 before the effective date of denunciation.

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Article 24 - Notification by the Secretary-General

The Secretary-General of the United Nations shall notify all States referred to in Articles 46 to 48 of the Convention of the following particulars:

- (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 21;
- (c) Any denunciation under Article 23.

Article 25 - No Reservation

A State Party of the Convention and the present Protocol accepts without reservations the Protocol.

Article 26 - Official languages

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States referred to in Article 26 of the Convention.