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# COMMITTEE ON THE RIGHTS OF THE CHILD

Keeping children's rights on the government agenda in times of crisis



Photo: Steven Kim

The Committee on the Rights of the Child (the Committee) had a successful 57<sup>th</sup> Session in June under the new Chairmanship of Mr Jean Zermatten (Switzerland).<sup>1</sup> The Committee met with State representatives from Bahrain, Cambodia, Costa Rica, Cuba, the Czech Republic, Egypt and Finland.<sup>2</sup> Most notably in the current international political and socioeconomic context, the Committee had a unique opportunity to meet with representatives of the States of Bahrain and Egypt. Both States are experiencing, in quite different ways, the effects of popular uprisings that have taken place in recent months; which will, in different ways and to varying degrees, alter the experience of children growing up in these countries in the coming weeks, months and years. An unofficial but comprehensive account of each country dialogue is available on the website of the NGO Group for the Convention on the Rights of the Child.<sup>3</sup>

In the course of the pre-session week, the Committee successfully altered its working methods to accommodate two additional countries, bringing the total number of countries reviewed up from eight, to ten. Working efficiently, the Committee met with non-governmental organisations (NGOs), national human rights institutions and UN agency representatives, and later adopted Lists of Issues for each country: Azerbaijan, Democratic Republic of the Congo (DRC), Greece, Italy, Myanmar, Panama, Seychelles, Sweden, and Togo.<sup>4</sup>

Recent crisis situations in some of these countries were also addressed, most notably Greece and Madagascar. It is important to note that while the Committee had a clear interest in learning more about how the current situations in these countries were affecting children, it did not detract from the attention it gave to ongoing situations that challenge the realisation and enjoyment of children's rights, for example in the DRC and Myanmar. An example of the Committee's attention to detail was its consideration of how Italy handled its obligations relating to children's rights in the context of a sudden influx of asylum-seeking children arriving in the country, as a result of the crisis situations in North Africa.

## STATE REVIEWS

As noted in the previous *Human Rights Monitor Quarterly* article on the Committee on the Rights of the Child<sup>5</sup>, the Committee continued to systematically discuss with States the need for both internal and external monitoring of the progressive implementation of the *Convention on the Rights of the Child* (the Convention), the *Optional Protocol on Children in Armed Conflict* (OPAC) and the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography* (OPSC). In the case of Cuba, the Committee recognised the role played by the National Assembly and external organisations in monitoring; however, a discussion on the establishment of an independent monitoring mechanism in accordance with the Paris Principles was not as fruitful. Cuba encouraged the Committee to look at the Cuban Government's structure for monitoring the implementation of children's rights, not in terms of how it works in other countries but rather in the context of the Cuban reality. In the concluding observations on Cuba, the Committee reiterated its call for an independent monitoring mechanism – and thus a multi-pronged approach with internal and external oversight.<sup>6</sup>

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1 For more information see the website of the OHCHR: <http://bit.ly/9bWe40>.

2 Egypt was considered under the *Convention on the Rights of the Child* (the Convention) and the *Optional Protocol on Children in Armed Conflict* (OPAC), as well as the *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography* (OPSC), while the other States were only considered under the CRC.

3 'Publications – Country Reports' [www.childrightsnet.org](http://www.childrightsnet.org).

4 Azerbaijan (the Convention, OPAC, OPSC), Democratic Republic of the Congo (OPAC), Greece (the Convention, OPAC), Togo (the Convention, OPSC), Sweden (OPSC); Italy, Myanmar, Panama, and Seychelles (the Convention).

5 Article available at <http://bit.ly/ohRq3R>.

6 'Consideration of reports submitted by States parties under Article 44 of the Convention Concluding Observations: Cuba', page 3, para. 18.

The composition of State delegations continued to have a considerable impact on the quality and depth of the dialogue. Generally, delegations were able to respond satisfactorily to the questions posed by the Committee; however, in some cases, delegations seemed surprised at the level of detail they were being asked to provide in their answers and were unprepared for this. This highlighted that it may be useful for the Committee to prepare a guide – taking as an example the guide already used by the Human Rights Committee – to inform State representatives about what to expect of the meeting in terms of format, thus enabling delegations to better prepare for the dialogue.

## CHILDREN'S RIGHTS IN TIMES OF CRISIS

The events that have been taking place in some parts of the Middle East and North Africa since early 2011, often referred to as the 'Arab Spring', have been of great interest to people all over the world and brought discussions on human rights to the fore. The world has witnessed the overt reactions of those unable to claim their rights, and watched as the responses of leaders unfolded, reflecting varied degrees of political will on the part of governments to uphold their international legal obligations and respect, protect and fulfil the human rights of all those resident in their countries.

At the 57<sup>th</sup> Session of the Committee, members acknowledged the significance of these events for children living in the countries concerned (notably here, Bahrain and Egypt), while not permitting them to overshadow or dominate the broader discussion on the implementation of children's rights in those countries. As one Committee member pointed out to the delegation of Bahrain, the responsibility to respect, protect and fulfil children's rights is constant and must remain a permanent feature of the government agenda, even during times of turmoil and crisis. Further evidence that this view is held by the Committee was that the dialogues took place as scheduled with these States and were not postponed to a later date when the political situation may have stabilised.

Of particular concern to the Committee in the dialogues with Bahrain and Egypt were issues surrounding the detention of children arrested during the demonstrations; the treatment and conditions of children in detention; the trial of children by military courts during the temporarily imposed states of emergency; and the reallocation of financial resources previously budgeted for the implementation of child policies and programmes, such as education, to military and other national security-related activities. A member of the Egyptian delegation noted that the Government will be attempting to reflect the calls made during the revolution in concrete changes to government policy; therefore, tools such as the Committee's Concluding Observations would be used to guide those plans and decisions. In this way, the dialogues with Egypt and Bahrain presented the Committee with a unique opportunity to influence the direction of the substantial policy changes taking place in these countries.

Greece and Madagascar, which were discussed during the pre-session, are countries experiencing particular difficulty in fulfilling their children's rights obligations. Information shared with the Committee again reflected that the fulfilment of children's rights should remain a government priority, regardless of the particular situation in the country. Unrest in a country, no matter what form it takes, will inevitably impact the enjoyment of rights by children; however what seemed to be of paramount importance to the Committee, was the priority accorded to these issues by the government concerned and reflected in policies that cater to the particular vulnerability of children, as well as the participation of youth in discussions around the way forward for the country.

The Committee's consideration of information received about Greece, for example, noted the difficulties being experienced by children as a result of the country's economic situation. Children are particularly vulnerable and feel the effects of the tensions permeating society, as many families face new financial challenges and public services are underfunded. Madagascar, in contrast, has not received very much international attention, yet it is a country where the political and socioeconomic situation is deteriorating quickly. According to information received by the Committee, this is creating an increasingly fragile environment for children. The Committee was also informed of an increasingly tense operating environment for civil society actors seeking to analyse the impact of the current situation on children and subsequently speak up for their rights.

## INCREASING IMPACT OF NGO CONTRIBUTIONS

Representatives of national NGOs attended all State dialogues of the 57<sup>th</sup> Session, except in the case of Cuba. At the pre-session, the Committee was pleased to meet with NGO representatives who were able to elaborate on the situation of children's rights in all countries under discussion. The objective of these meetings was for the Committee to build its knowledge about the practical realities faced by children in different contexts in a country, and to ensure its members have a range of information at their disposal that will inform them of the challenges faced by the governments concerned in the implementation of the Convention and its Optional Protocols.

There seems to be an increasing awareness among children's rights NGOs worldwide that have engaged with the Committee through the alternative reporting process, that the Committee's effectiveness in monitoring the development of State practices depends on the manner in which all stakeholders, including the NGOs, engage with it. The quality of information submitted to the Committee reflects increasing professionalism within the child rights sector, as well as the positive involvement of civil society actors at the national level who are engaging with the periodic reporting process as an integral part of their ongoing monitoring activities. The submission of quality, evidence-based reports and active participation by all stakeholders with the Committee

can contribute significantly to the adoption of Concluding Observations and Recommendations that are specific to the national context. These can, in turn, be used as a basis for activities to further improve the implementation of the Convention and the Optional Protocols at the national and local levels.

## OTHER DEVELOPMENTS AND NEXT STEPS

No General Comments were adopted at the 57<sup>th</sup> Session. Work continues on General Comments on the best interests of the child, the right to health and the right to play, as well as the Joint General Comment with the Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) on harmful traditional practices. Preliminary work also began on a fourth General Comment by the Committee on children's rights and business, which looks at the responsibility of private sector actors to respect the rights of the child.

The Day of General Discussion on children of incarcerated parents will take place on 30 September and a dedicated webpage is now available on the OHCHR website.<sup>7</sup> The webpage contains registration and programme information, and guidance on how to make a written submission.

At its 58<sup>th</sup> Session, which will take place between 19 September and 7 October 2011, the Committee will conduct a dialogue with State representatives from the Syrian Arab Republic, Greece and Myanmar, among others.

### New complaints mechanism for children's rights violations

On 17 June 2011, after just two years of discussions and negotiations, the Human Rights Council (the Council) adopted the final draft Optional Protocol (OP) to the *Convention on the Rights of the Child* (CRC) on a communications procedure for children's rights violations. The OP was crafted by an Open-ended Working Group<sup>8</sup> (Working Group) over ten days in December 2010 and February 2011.

The Committee on the Rights of the Child is the only United Nations treaty body that does not yet have the competence to receive and examine allegations of violations under the instruments it is tasked to monitor; the Convention, the OPSC and the OPAC.

The new OP will fill this gap by ensuring children have an international remedy available to redress violations when domestic complaints mechanisms fail. However, the rush to reach an agreement within ten working days, has led States to mainly use existing language. The OP to the Convention therefore relies heavily on the latest international communications procedure, the OP to the *International Covenant*

*on Economic, Social and Cultural Rights*, rather than exploring ways to ensure the new mechanism itself is genuinely child-friendly and child-sensitive.<sup>9</sup>

The final draft OP does nonetheless provide the core elements of a communications procedure, including a friendly settlement mechanism, an optional inquiry procedure, and innovative provisions intended to address the specific status of children. Article 2, for example, refers to the best interests and the right to be heard of the child as guiding principles for the Committee. Article 3 requests the Committee to ensure that its new rules of procedures are 'child-sensitive' and prevent manipulation of the child victim. The absence of a provision referring to national legal capacity requirements and setting legal representation requirements for child victims to access the communications procedure, despite such requests by a number of States, is an important victory. The notion of 'legal capacity' is strictly a national standard and does not exist in any regional or international human rights instrument. Similarly, legal representation requirements would have unduly restricted children's access to the procedure.

Despite these adjustments, the draft OP fails to fully account for the particular obstacles children face when seeking a remedy. In particular, the collective communications mechanism was deleted in the last day of the negotiations. It sought to allow national human rights institutions, child ombudspersons and specialised NGOs to submit communications alleging recurring violations affecting multiple victims without identifying individual victims. This loss is regrettable, as collective communications would be a key complementary tool to the individual communications procedure for unidentifiable children or particular groups of child victims. It is understood however that such allegations could be brought through the inquiry procedure.

The final draft OP has been transmitted to the UN General Assembly, which will consider it for adoption at its 66<sup>th</sup> session. Once adopted, the OP will be open for ratification by States and will enter into force after the tenth ratification. ■

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<sup>7</sup> The Committee Day of General Discussion <http://bit.ly/mSJ2Jd>.

<sup>8</sup> <http://bit.ly/85QUea>.

<sup>9</sup> To be child-friendly and child-sensitive, a complaint mechanism needs to take into account the specific status of children. It therefore needs to be understandable and accessible by all children, including young children, provide opportunities for the children to be heard, be speedy and diligent to avoid unnecessary delay and further distress, and be safe, by protecting the privacy and identity of the victims, if needed. For further information, visit the Child Rights Information Network's webpage on child-friendly justice and children's rights at <http://bit.ly/oP9AJD>.