

**Comments by the European Network of Ombudspersons for Children on the proposal for a draft Optional Protocol to the Convention on the Rights of the Child to provide a communications procedure, prepared by the Chairperson-Rapporteur of the Human Rights Council's Open-ended Working Group,
Mr. Drahoslav Štefánek
November 2010**

ENOC is a non-profit European association of independent children's rights institutions (ICRIs). Established in 1997 and originally linking 10 institutions, the network has now grown to include 37 institutions in 29 Council of Europe member states. ENOC links independent offices for children from 19 countries within the European Union.

1. ENOC broadly welcomes the draft, prepared by the Chairperson-Rapporteur, which will form the basis for negotiations of the third Optional Protocol to the CRC. ENOC has already expressed its strong support for the development of this new tool to promote effective implementation of the Convention on the Rights of the Child.
2. ENOC recognises the importance of ensuring consistency and coherence within the expanding range of international human rights instruments, as underlined by the chairperson-rapporteur. The resulting use of agreed language from the Optional Protocols and provisions which have created the existing communications procedures under the other core human rights treaties should, we hope, lead to speedy negotiations and adoption of the new Optional Protocol during 2011.
3. But we also welcome - and underline the importance of - the inclusion in the draft of certain provisions intended to ensure a child-sensitive procedure, with due regard for the best interests of children. With this perspective, we welcome Articles 1(2), 2(5), 4(d) and 8(5). We also welcome the emphasis throughout on the need for speedy consideration of communications from or on behalf of children and hope that the special importance of this, given the developmental status of children, can be explicitly asserted in the OP, perhaps through an addition to Article 1.
4. In particular, we welcome the inclusion in the draft of Article 3, enabling the Committee on the Rights of the Child to consider collective communications – that is, communications alleging violations of rights included in the Convention or its Optional Protocols without requiring the identification of particular child victims or cases. We appreciate that this is an innovation in the context of communications procedures under international instruments. But there is a well-established collective complaints procedure under the European Social Charter, which is known to ENOC and which has had a positive impact on a number of areas of children's rights.
5. The acceptance of communications from individual victims and groups of victims is common to all the existing procedures and should be accorded to children and those acting on their behalf. But there are special arguments for in addition allowing

collective communications in relation to violations of children's rights.

6. If States acknowledge that the purpose of the new Optional Protocol is to help to prevent violations and support effective implementation of the Convention, then they should accept the value of a procedure which allows the Committee to consider communications providing reliable information indicating that law, policy or practice in a State is causing or threatens to cause violations of rights guaranteed by the CRC or its existing Optional Protocols.
7. This adds a valuable preventive element: the process does not have to wait until violations have occurred and victims have been identified and come forward. It surmounts the special difficulties of identifying very young child victims including babies. It avoids potential protection issues that could arise in some cases from the identification of child victims. And – as the Committee itself argues in its comments on the draft OP - it could also avoid the need for the Committee to consider multiple similar communications on behalf of individual victims.
8. ENOC welcomes the explicit inclusion in Article 3(1) (the bodies able to submit collective communications) of national human rights institutions and ombudsman institutions “with particular competence in the matters covered by the Convention and its Optional Protocols”. However, we agree with the Committee on the Rights of the Child that it is too restrictive only to allow collective communications alleging “grave or systematic violations” and propose this should be broadened to include “serious or repeated” violations.
9. While we welcome the inclusion of a provision (Article 7) allowing the Committee to support a “friendly settlement” between the petitioner(s) and the State, we are mindful of the experience of the European Court of Human Rights and the fact that the European Convention provisions on friendly settlements enable the Court to continue or re-open consideration of an application, despite an apparent friendly settlement “if respect for human rights... so requires” (Article 37, European Convention). Such a provision should be incorporated in Article 7.