

African Commission on Human and Peoples' Rights: Oral statement on the final draft Optional Protocol to the Convention on the Rights of the Child establishing a communications procedure for children's rights violations and similar mechanisms under the African human rights mechanisms

Chairperson, Commissioners,

This statement is on behalf of the **World Organisation Against Torture (OMCT)** and the **International Commission of Jurists (ICJ)**, who work in association with the NGO Group for the Convention on the Rights of the Child.

In March 2010, the Human Rights Council of the United Nations mandated an Open-ended Working Group to draft a new Optional Protocol to the Convention on the Rights of the Child establishing a communications procedure for children's rights violations, following the mechanism that already exists under the African Charter on the Rights and Welfare of the Child.

After only ten days of negotiations, on 16 February 2011, the Working Group adopted a draft optional protocol ad referendum, although several delegations, including the African Group, expressed the need for more time and discussion.

The rush to agree a draft text within ten days prevented States from examining in detail the proposed optional collective communications mechanism, which would allow recurring violations of children's rights to be challenged without the identification or involvement of specific child victims. Instead, this important provision – optional in the sense that states ratifying the Protocol could decide whether or not to accept it – was deleted.

This mechanism, designed to take children's special and vulnerable status into account and to complement individual and group communications, was supported by all the actors with direct experience of the difficulties in pursuing violations of children's rights - and by a significant number of States.

The proposed mechanism reflects the well-established standing provisions of Article 56 of the African Charter on Human and Peoples' Rights (which does not require complainants to necessarily represent identified victims), Article 5.3 of the Protocol to the African Charter on Human and Peoples' Rights (which allows NGOs to submit cases directly to the African Court on Human and Peoples' Rights) and Article 44 of the African Charter on the Rights and Welfare of the Child (which allows NGOs to submit communications relating to any matter covered by the Charter).

The African Commission has already addressed multiple claims brought to it by NGOs and other organizational entities that allege rights violations against groups of unnamed individuals and collectives, as in the case brought by the Civil Liberties Organization against Nigeria in 1995 or by the Association pour la Défense des Droits de l'Homme et des Libertés against Djibouti in 2000. These cases show the need for allowing third parties to present complaints when the individual victims cannot or should not do it themselves.

Despite our regional best practice, African delegations engaged in the negotiations of the new international instrument joined some others in opposing the inclusion of this optional mechanism, thus robbing the future complaints mechanism of one of its key components and

lowering our regional standards for the protection of the human rights of children at the international level.

There is still time before the final draft of the Optional Protocol is adopted by the UN Human Rights Council in June 2011 to make this right.

We therefore encourage the African Commission to:

- remind states parties of the provisions they have already accepted under the African Charter, which include allowing complaints to be brought to the African Commission without necessarily identifying the victims, which constitute the African standard for complaints procedures; and
- reaffirm the importance of such a provision to ensure that all child rights violations, regardless of the potential difficulties of identifying child victims can be reported and addressed

encourage states parties to accept the inclusion of a similar provision in the Optional Protocol to the Convention on the Rights of the Child establishing a communications procedure before its adoption by the Human Rights Council in June