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**IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF  
THE CHILD**

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KEYNOTE SPEECH**

**TOWARDS IMPLEMENTATION OF THE UN CONVENTION ON  
THE RIGHTS OF THE CHILD  
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Your Excellency, Madame President, Mr. Sarro, Chairperson of ENOC, distinguished participants, colleagues and friends, it is indeed an honor and great pleasure for me to be invited to deliver the keynote speech at this 12<sup>th</sup> ENOC Annual Conference. Unfortunately, due to a prior commitment, I am not able to attend this very important event, in person. I am currently in Hong Kong, attending the World Congress of the International Society for the Prevention of Child Abuse and Neglect. Times like this make me wish for a method that will enable me to be at two different places concurrently, if not simultaneously. But, for the moment, I will have to be most grateful for modern technology and my university (Sungkyunkwan University) for providing logistical support for this video message.

This year marks the 60<sup>th</sup> anniversary of the Universal Declaration of the Human Rights (UDHR) which laid the foundation for the rights of every human being, covering economic, social, cultural, political, and civil rights. Two decades after the Declaration, two landmark human rights treaties were adopted: International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. These two Covenants, along with the UDHR make up what is known as the International Bill of Rights. Since then, treaties that address the rights of specific groups of people, including children, women,

migrant workers, racial minorities, persons with disabilities, and people facing torture, have also been adopted. Central to these human rights treaties are the following concepts:

- (1)Universality and inalienability: Everyone in the world possesses these rights, which cannot be taken away.
- (2)Indivisibility: All rights have equal status and cannot be ranked.
- (3)Inter-dependence and inter-relatedness: Realization of a right may depend, wholly or in part, upon the realization of others.
- (4)Equality and non-discrimination: Every human being is equal and is entitled to his/her rights without any discrimination.

Even with the adoption of many international human rights treaties and growing number of ratifications, the world is still faced with grave violations and abuses of human rights. The problem is not in the lack of legal instruments, but in the implementation of these instruments both domestically and internationally.

Next year will mark the twentieth anniversary of the adoption of the Convention on the Rights of the Child by the United Nations General Assembly. In what ways have the child become more visible, as a result of the CRC? This can be witnessed in the domestic law reforms and administrative measures that States have

taken to comply with the Convention. In a recent research conducted by the Innocenti Research Center (2007), the CRC has the same value as the constitution, or the same legal value as other legislations in some countries. The Constitution of Poland which was adopted in 1997 recognizes the right of the child to be heard (Article 72).

Of course, direct incorporation in common law countries are rare, however, parliaments of these countries can adopt laws to incorporate human rights treaties into national law. For instance United Kingdom, through its Human Rights Act of 1998 allowed the European Convention for the Protection of Human Rights and Fundamental Rights enforceable. In some of the Latin American countries (Argentina, Chile, Mexico, etc.) the Convention forms part of national law. In some countries (Central and Eastern Europe and sub-Saharan Africa) that have adopted new constitutions since 1989, included important provisions on the rights of the child.

Couple of recent developments that warrant mentioning are the following: Although the United States of America is not party to the Convention, the CRC has been cited in support for abolishing capital punishment for juveniles. May 2007 the New Zealand Parliament voted for a law banning the use of force for correction of children, becoming the first English speaking country in the world and the first country in the South East Asia and Pacific

region to accomplish this.

Most States now have some type of a coordinating mechanism that enables different sectors of the government to address children affairs in an effective manner. Monitoring mechanisms have been set up in many States. They come in various forms. Some States have established Child Commissioners as separate office or within the organ of Human Rights Institutions. Others have in place a system of 'Child Ombudsperson'.

I would like to draw your attention to the Committee's Tenth Anniversary Commemorative Meeting. The Committee on the Rights of the Child devoted two days of its September Session in 1999 to celebrate the tenth anniversary and to discuss achievements and constraints in the implementation of the Convention on the Rights of the Child. These two days focused on the cluster of General Measures of Implementation, which by the way is the first cluster in the reporting guidelines for CRC. At this juncture, the Committee identified measures necessary to implement the Convention at the national level.

Three major issues were discussed:

- 1) Translating Law into Reality: Status of the Convention in national legislation; reservations to the Convention; legislative review to ensure compatibility with the provisions of the Convention; and practice in courts (including court cases making formal references to the Convention)

- 2) Putting Child Rights on the Agenda: Dissemination and general awareness-raising; training of professional groups; resource mobilization (including budget allocation); and international cooperation and technical assistance.
- 3) Building partnerships for the realization of rights: The reporting process as a catalyst for domestic review and debate about implementation; coordination and independent monitoring structures; involvement of civil society in the implementation; and child participation.

Many conclusions were made that were endorsed by the Committee then. I will not state all the conclusions, but would like to highlight the fact that the Committee had begun to adopt General Comments during the subsequent years. The first General Comment was adopted in 2001 and there have been 10 General Comments altogether since. As all of you are very aware, General Comments are the Committee's interpretation of particular articles of the Convention or particular rights to provide guidance to States parties in the implementation of the Convention.

I would like to draw your attention to the Committee's General Comment no. 5 'General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para.6). 'General measures of implementation' is the first cluster in the reporting guidelines. There is no standard model of how to

implement the Convention, nor does the Committee impose any particular model. However, this particular General Comment was drafted in order to outline the States parties' obligations undertaken by ratifying the Convention, under the framework of article 4: which states "***States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resource and, where needed, within the framework of international cooperation.***" We are approaching twenty years into the existence of the Convention. Although in varying degrees, implementation still remains as a challenge.

The foremost obligation of the State is to ensure that all domestic legislation is fully compatible with the Convention, and that its principles and provisions can be directly applied and appropriately enforced. (This General Comment largely focuses on the first part of Article 4. Last year, the Committee devoted its Day of General Discussion focusing on the second part of Article 4.) Furthermore, in its General Comment no.2 (2002), the Committee outlined in detail the role of independent national human rights institutions in the promotion and protection of the rights of the child.

Again, I will not go into detail about General Comment no. 5,

however, I will highlight some aspects of it that I feel is an ongoing challenge.

1. **Reservations:** The Convention on the Rights of the Child Article 51, Reflects what is included in article 2 of the Vienna Convention on the Law of treaties about reservations. “ A reservation incompatible with the object and purpose of the present Convention shall not be permitted”. What deeply concerns the Committee is the fact that even after twenty years into the existence of the Convention, there are many States that maintain the reservations they had made upon ratifying the Convention. Some of the reasons given are the Constitution or legislation, including religious law in some cases.
2. **Legislative measures:** A comprehensive review of all domestic legislation and administrative guidance to ensure full compliance with the Convention is an obligation of the State. The Committee welcomes the fact that the review process has been started at the national level in most cases, but it needs to pick up momentum and become more rigorous. What seems to be the most challenging is the status of the Convention with domestic legal systems, in other words, applicability of the Convention. Incorporation by itself does not automatically avoid the need to bring all relevant domestic law into compliance

with the Convention. Over the years, the Committee asked the States parties whether the Convention has been invoked in the courts. Furthermore, the Committee often asks whether the Convention was cited, or referenced in court decisions. Recently, the Committee has begun to go even a step further. It has begun to ask about the effect the reference of the Convention in court decisions has made. Another point worth mentioning is about consolidated children's rights statutes. We are finding more countries moving towards enacting what is called "Child Act". This is good because such acts can include the principles of the Convention. However, all relevant "sectoral" laws must also reflect the principles and standards of the Convention. One very troubling point that needs to be mentioned is the fact that some States are now beginning to go backwards, in contradiction to the Convention. On the one side, we see more and more States banning corporal punishment in all 5 settings as outlined by the Secretary General's Violence Study. However, we are witnessing some States maintaining 'reasonable chastisement', introducing restraints and other methods such as 'tasers'. What is most alarming are legislations on antisocial behaviors and reintroduction of corporal punishment. The demonising and criminalizing of children continues, if not strengthened in

some States. We are witnessing some States that are increasing pretrial detention period, maintaining a low minimum age of criminal responsibility, and even lowering the age of criminal responsibility.

- 3. Comprehensive national strategy:** The Committee has found that there are many countries that have developed a comprehensive national strategy or nation plan of action. However, in some cases, these strategies have not been updated and sometimes are mere lists of good intentions. It must go beyond to set real and achievable targets for the full range of economic, social and cultural and civil and political rights for all children, with priorities set and adequately resourced, both financially and human. This strategy must be disseminated and be evaluated by all stakeholders. The Committee also suggests that the comprehensive national strategy be elaborated in sectoral strategies. At this point, the provisions and the rights enshrined in the two optional protocols of the Convention also need to be incorporated into either the comprehensive strategy, and or into sectoral strategies.
- 4. Monitoring implementation:** Over the years, the Committee has been emphasizing the need for child impact assessment and evaluation. However, this still remains a challenge. Of course this needs to include the

impact of laws, policies and programmes, as well as allocation of budget to carry out these policies and programmes, ensuring that the best interests of the children are at the core of all such actions.

## **ROLE OF NATIONAL HUMAN RIGHTS INSTITUTIONS**

In 1993, a World Conference on Human Rights was held in Vienna and the outcome document was the Vienna Declaration and Programme of Action. The importance of the role of national institutions for the promotion and protection of human rights was reaffirmed. Establishment of NHRIs, which was repeatedly emphasized by the General Assembly and the Commission on Human Rights (no longer in existence), should be in compliance with the “Paris Principles” (adopted by the General Assembly in 1993).

Three treaty bodies have issued General Comments on the role of national human rights institutions. General Comments are interpretations of the content of human rights provisions on thematic issues. Currently there are three treaty bodies with a General Comment on this issue: In 1993, CERD issued General Comment no. 17; in 1998, CESCR issued General Comment no.10; and CRC issued General Comment no. 2 in 2002.

In its General Comment no. 2, the Committee on the Rights of the Child depicts NHRIs as an important mechanism to promote

and ensure the implementation of the Convention. Moreover, the Committee views the establishment of such bodies falls within the commitment made by States parties when they ratified the Convention. This General Comment makes suggestions on the nature of such bodies, including its mandate, composition, responsibility, and independence. In short, it emphasizes the importance of having the power to consider individual complaints and petitions; carry out investigations; be able to seek to ensure that children have effective remedies for any breaches of their rights; have the power to support children taking cases to court; and be physically accessible to children. NHRIs are urged to contribute independently to the reporting process and engage in a dialogue with the Committee at its pre-sessional working group.

Conclusions of the International Roundtable on the Role of National Human Rights Institutions and Treaty Bodies, held in Berlin 23 and 24 November 2006, were discussed at the Nineteenth meeting of chairpersons of the human rights treaty bodies. It was recognized that the NHRIs and the UN human rights treaty bodies are partners in the pursuit of the promotion and protection of human rights. The outcome document of the International Roundtable spelled out the role of NHRIs in terms of reporting to the treaty bodies, petitions and enquiry procedures, follow-up procedures, international human rights instruments, thematic engagement, and training. This Roundtable helped clarify and specify the role of

NHRIs. NHRIs have an added role in cases where the international human rights instrument does not have an individual complaints mechanism, notably the CRC.

I would like to delve a little into some specific conclusions of the Berlin Round Table.

### 1. Treaty Body Reporting

#### (1) Drafting of List of Issues:

CRC conducts a private pre-sessional working group three months prior to the dialogue with the State party. UN agencies, international NGOs, and NHRIs submit written reports to the Committee and also participate orally with the Committee. It is at this occasion the NHRIs, or Ombudspersons, are invited to participate. At the conclusion of this meeting, the Committee drafts a List of Issues that are sent to the State party to reply within a period of two months. Participation of the NHRI is crucial in aiding the Committee to draft accurate List of Issues, conduct of the Dialogue, and to the Concluding Observations.

#### (2) Assisting Government in understanding of the new treaty-body reporting guidelines:

Passage of time and post initial reports necessitates revisions to the reporting guidelines. The CRC has issued

revised reporting guidelines to the periodic reports, and to the two Optional Protocols (OPAC in 2007, and OPSC in 2006). Also worth noting is that within the UN Human Rights reporting guidelines, there is a new guideline for a harmonized core-document that encompasses all the treaty bodies.

- (3) In addition to submitting its own report to the Treaty Bodies, the NHRI should contribute to the preparation of State party reports. This must also be in accordance with the Paris Principles.

#### 2. Petitions and enquiry procedures:

In Cases where the Treaty Body has an individual complaints mechanism, NHRIs must consider facilitating or assisting victim's petitions to the respective treaty bodies. In addition, NHRIs should engage with treaty body enquiry procedures in a cooperative manner.

#### 3. Follow-up procedures:

- (1) NHRIs must take the role of informing all relevant actors on the concluding observations and recommendations of Treaty Bodies. At the same time, the NHRIs must also take the responsibility of monitoring State's dissemination of the concluding observations.
- (2) NHRIs should support and host follow-up meeting to

the Concluding observations and recommendations, including with Parliamentarians, relevant ministries, public authorities, NGOS, and other relevant actors.

(3) The monitoring of effectiveness of implementation of the Concluding observations is another role that the NHRIs must take.

#### 4. Sensitization of the International Human Rights

##### Instruments:

In accordance with the Paris Principles, the NHRIs must encourage ratification and accession to international Human Rights instruments. Prior to ratification of international human rights instruments, the Government, Parliament, and relevant stakeholders must be made aware about the treaty. In doing so, the Parliament must also be informed about the State's obligation to the relevant instrument. In cases where a reservation has been made upon ratification, NHRIs should encourage the removal of the reservations including through public awareness campaigns. Up to now, this work has been conducted primarily by NGOs in our country.

##### 5. Training:

The quality of State Party reports depends on the adherence to the reporting guidelines, collection of data, and other relevant issues. In order to accomplish this, the NHRIs should support the capacity-building of State officials. For

example, the Optional Protocol on the sale of children, child prostitution, and child pornography, the State party report lacks necessary data. However, the alternative report, submitted by the NGO coalition was able to provide necessary data. Unfortunately, our National Human Rights Commission had certain misunderstanding as to its role and function. It had wrongly assumed that it should issue concluding observations and recommendations to the State party report. It is correct that the role of NHRIs is to monitor the State's implementation of the treaty as well as the concluding observations issued by the respective treaty body. However, during the State party reporting process, the role of NHRIs is different. It must take a consultative role and assist the State to closely adhere to the reporting guidelines. And in addition, the NHRIs must submit their own report to the relevant treaty body.

## **ROLE OF ENOC**

- 1. Reporting process:** Suggest to do something like the NGO Group for CRC
- 2. Monitoring:** Both domestically and regionally
- 3. Follow-up:**
- 4. International Cooperation:**
  - Suggest to reach out globally, and form a Global network

- Ensure that ODA reaches acceptable international standard, with a focus on Children
- Assist other States for capacity building

## **COMMITTEE'S IMMEDIATE PLAN**

- 1. Adoption of General Comment on Article 12**
- 2. Adoption of General Comment on the rights of indigenous children**
- 3. Drafting General Comment on Best Interest of the Child**
- 4. Drafting General Comment on Article 19**
- 5. Individual complaints**

Again, let me convey my deepest regret for not being in Dublin in person. I do hope that I will have the opportunity to attend future ENOC meetings. I would like to wish all of you the very best in your endeavors to promote, uphold, and protect the rights of all children.

I thank you for your attention!

## BACKGROUND NOTES

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Lee, Y. (2008). Annual Lecture at the Belfast Law Center, Belfast.

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