

International and Regional Child Rights Mechanisms

A guide to the monitoring mechanisms of the Child Rights Committee, the UN Universal Periodic Review and the Regional Child Rights Mechanisms.

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Preface

The Child Rights Governance Global Initiative (CRGI) is one of the six global initiatives included in the Save the Children Strategy 2010-2015. The CRGI is developing a number of Child Rights Governance (CRG) Programs. It seeks to strengthen and capitalize on international and regional human rights systems supporting already existing mechanisms in order to advance the creation and strengthening of national child rights systems.

Child Rights Monitoring is one of the priorities of the CRGI. Consequently there is a need for assessing the impact of child rights monitoring within the international and regional human rights/children's rights systems. In order to be efficient and to prioritize efforts on advocacy and reporting the CRGI needs to know how these different systems function, what impact they have on child rights and how CSOs best can use them for the advancement of child rights.

The report was developed by Save the Children Sweden as part of the CRGI initiative. Staff at Save the Children Geneva Office, Save the Children Sweden Regional Offices for West Africa and Latin America & the Caribbean as well as Save the Children Sweden Head Office offered valuable advice for this report.

Abbreviations

ACERWC African Committee of Experts on the Rights and Welfare of the Child

ACHR American Convention on Human Rights

ACHPR African Charter on Human and Peoples' Rights

ACRWC African Charter on the Rights and Welfare of the Child

AU African Union

CEJIL Center for Justice and International Law

CRC (UN) Convention on the Rights of the Child

CRIN Child Rights Information Network

CSO Civil Society Organization

CSO Forum Civil Society Forum on the ACRWC

ECHR European Convention on Human Rights

HRC (UN) Human Rights Council

IACHR Inter-American Commission on Human Rights

IACtHR Inter-American Court of Human Rights

CSO Civil Society Organization

OAS Organization of American States

OHCHR Office of the High Commissioner for Human Rights

SCS Save the Children Sweden

UPR Universal Periodic Review

Overview

A primary objective of this report is to provide an overview of and compare the monitoring mechanisms of the UN Convention on the Rights of the Child (CRC) and the recent UN Universal Periodic Review (UPR) from a child rights perspective and how CSOs can best use these mechanisms. This is reflected in Part 1 of the report.

A secondary objective is to provide an overview of the regional human rights/ child rights mechanisms and how Civil Society Organizations (CSOs) can use them for advancing Children's Rights. Part 2 presents such an overview.

The report offers conclusions on the Child Rights impact of the CRC mechanisms, the UPR and the regional mechanisms.

Part 1: UN Convention on the Rights of the Child and UN Universal Periodic Review

UN Convention on the Rights of the Child

The CRC was adopted in 1989 and has been ratified by all states except the US and Somalia¹. The CRC is considered one of the core UN Human Rights Conventions and provides children with fundamental rights and freedoms and takes into account their need for special assistance and protection due to their vulnerability;

The Optional Protocol to the CRC on the Involvement of Children in Armed Conflict was adopted in 2000 and entered into force in 2002.

The Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography was adopted in 2000 and entered into force in 2002.

The UN Committee on the Rights of the Child in Geneva is a body of 18 independent experts. All states having ratified the Convention are obliged to submit regular reports to the Committee on how the Convention is implemented. Initial reports, after ratification of the CRC, are presented after 2 years and progress reports are required every five years. The Optional Protocols have similar reporting procedures. The initial reports on the OP's are due two years after ratification, but after that, information related to the implementation of the OP is to be included in the periodic CRC reports – except of course for States not having ratified the CRC, they will then report every 5 years on the OP only (USA has ratified the two OP) CSOs, and children themselves, have the possibility to submit supplementary reports to the Committee, adding to the information provided by the state.

¹ Early 2010 the transitional Somali government announced that they intended to ratify the convention. This has not yet happened.

Reporting procedure

When a state report has been received by the CRC Committee the report will be scheduled for examination at the next available session of the Committee. It may take one year up to eighteen months or more to have a state report examined. Two rapporteurs from the Committee are assigned to facilitate the examination of a state report.

At a pre-sessional working group meeting the Committee will make a preliminary review of the state report and examine complementary information and supplementary reports from CSOs. CSOs are invited to attend and may make short statements. UN bodies also attend. One result of the meeting of the pre-sessional working group is a “list of issues“ which is forwarded to the state for response. At the plenary session about 6 months later the Committee will in the presence of a state delegation representing the government examine the state report. At the end of the meeting the Committee prepares the Concluding Observations with recommendations to the state on how to improve the fulfillment of the CRC. CSOs may attend but cannot make statements during the plenary session. But CSOs can organize informal meetings with Committee members in order to influence the process.

The Committee cannot enforce its recommendations and must rely on national mechanisms to ensure that its recommendations are taken into account by the state. CSOs can play a key role in the national follow up process.

A new individual communication/ complaints procedure “OP - CRC”

This third optional protocol was accepted in June 2011 by the UN Human Rights Council and was transmitted to the UN General Assembly (Nov. 2011) for final adoption. When it has entered into force the protocol will enable the CRC Committee to examine complaints on violations of rights from children and their representatives.

General Comments

The CRC Committee publishes its interpretation of the legal provisions of the Convention in the form of General Comments that provide guidance on the legal, policy and accountability frameworks needed to implement the Convention. General Comments can also be used by CSOs as advocacy tools to explain to States and non-state actors what their obligations and responsibilities are in terms of child rights. A point could also be made that in order to fulfill their obligation to spread and increase knowledge of the child rights conventions states should translate the general comments to their national languages.

By 2011 thirteen General Comments have been issued². Although the CRC Committee is independent in deciding to draft a General Comment and in defining the content, CSOs can have an impact on the process in many ways, including through advocating for the CRC Committee to draft a General Comment, the provision of expertise to the CRC Committee if requested and the submission of background materials highlighting key areas of concern.

CSO's role

CSOs are invited to present the CRC Committee with supplementary reports on how a state has fulfilled its obligations under the CRC. The Convention gives CSOs a role in monitoring the CRC. CSO information is essential in order for the Committee to obtain a complete picture of the situation of children in a country. At national level the preparation of such a report provides

² These General Comments can be found here: <http://www2.ohchr.org/english/bodies/crc/comments.htm>

CSOs with a chance to create and/or strengthen existing coalitions of CSOs and to influence the national political agenda. Children's consultation in the preparation of the report is common and in a few countries children, supported by CSOs, have prepared their own supplementary reports which have been submitted to the Committee. The deadline for sending alternative reports is six months after the state report has been received by the UN Office of the High Commissioner for Human Rights (OHCHR) in Geneva.

CSOs can make an important contribution participating in or organizing the national follow-up process of the Concluding Observations for the state in question including annual follow-up procedures using the Concluding Observations, translating these to national languages and making child friendly versions.

The NGO Group for the Convention on the Rights of the Child based in Geneva gives support to national CSOs and coalitions in reporting on the CRC and its two Optional Protocols including assistance for attending CRC Committee meetings in Geneva. The NGO Group provides technical assistance and capacity building, including through the provision of manuals on CRC reporting, including child-friendly manuals, and trainings of national coalitions on the reporting process.³

Impact of CRC work

Almost all states report: except USA and Somalia that have not ratified the Convention, have reported, the reporting obligations of states have put children on the international, regional and national agenda. It should however be stated that at the time of writing 63 state party reports are overdue and three state parties have not submitted their initial reports⁴.

An active CSO community has submitted supplementary reports contributing to an improved monitoring process. National CSO coalitions have been formed bringing together CSOs with a common concern for child rights. The submission of CSO reports through coalitions is also encouraged by the CRC secretariat in order to limit the workload. The CSO group in Geneva was created in order to support this process.

Child Participation established: Children's voices have been heard in state and supplementary reports. Children have attended the CRC sessions. Children have with the support of CSOs submitted their own reports; a recent development is the use of modern technology.

Child Rights expertise and dialogue with states: Increased professionalism in the CRC Committee, more monitoring and higher quality of dialogue have been reported. The Committee's work is quite detailed using in depth discussions to gain an understanding of what is happening in a state. This provides a mutual ground for dialogue and gives long-term advice to the state. The CRC also conducts follow-up visits to state parties and is also involved in coordinating follow-up with UN bodies and CSOs on thematic issues, such as through the Interagency Panel on Juvenile Justice

³ The NGO Group, supported by Save the Children, has recently produced a manual on child participation in the CRC reporting process, including a child-friendly version. <http://www.childrightsnet.org/NGOGroup/>

⁴ These are Nauru, Tuvalu and Tonga

The long time span in-between reporting, for progress reports 5 years, may decrease its impact and the SC study “Governance Fit for Children” indicates that states tend to follow up on the implementation of the child rights convention only every fifth year when they are up for report. Many reports are also delayed which further increase the time span between reports. Here the national CSO community can play an important role in pushing for annual follow up of the concluding observations (see above)

The Universal Periodic Review (UPR)

The UPR is a unique peer-review mechanism whereby the 47 members of the UN Human Rights Council (HRC) in Geneva are mandated to review the human rights obligations of all 193 UN Member States. During the UPR’s first cycle, from 2008-2011, there was 100% participation of UN Member States with 80% of delegations including Ministerial representatives. As of the UPR’s second cycle that begins in 2012, States will be reviewed every 4.5 years and there will be 14 sessions per cycle.

The UPR is described as a political process and the UPR process is closely connected to the political climate. The human rights records of a given country will be reviewed and debated by representatives of other states.

Based on three reports the Human Rights Council assesses the human rights record of states:

1. a national report from the state under review,
2. a consolidated report with information from UN agencies, Special Procedures and Treaty Bodies
3. a consolidated report with information from CSOs, National Human rights institutions and other stakeholders

The UPR review is conducted in a Working Group composed of all 47 member states of the HRC. A group of three rapporteurs, a so-called “troika” of representatives of member states, facilitate each review, including the preparation of the outcome report.

Review session: At the review session the national report is presented by the state under review. Comments, questions and recommendations are made by members of the Working Group and by Observer States and set the framework for the discussions. The UPR second cycle will include information on implementation of accepted recommendations from the first cycle and developments in human rights in the State under review.

At the end of each review the Working Group adopts an outcome report. Before the adoption of the report the State under review can decide which proposed recommendations to accept and which recommendations to reject. The report is a summary of the proceedings of the review process and has a list of the recommendations rejected or accepted and of voluntary commitments by the state. Out of the recommendations accepted, the state may choose to specify that it considers that they are already implemented or in the process of implementation. The state’s response to recommendations may also be left pending until the adoption of the outcome report at the next session of the HRC. Many states choose this option in order to consult with government and other actors. This gives an opportunity for civil society to advocate for acceptance of key child rights recommendations.

CSOs (with appropriate accreditation and ECOSOC status) may attend the UPR Working Group session but are not allowed to speak.

Most states are reluctant to be exposed in front of their peers to a result that a majority of states feel obliged to accept at least some recommendations from other states.

Final Report: At a plenary session of the HRC, approx. 4 months after the review, the final outcome report will be adopted at the session of the HRC. The state under review begins the session by providing a response to the recommendations that were pending. The members of the HRC are then given an opportunity to make additional statements. Finally, CSOs may make a brief oral statement at the end of the process. This provides them with an opportunity to highlight key concerns relating to the UPR recommendations and in relation to follow-up. The session finishes with concluding remarks from the State under review that often uses this opportunity to reply to the comments made by other governments and CSOs.

OHCHR estimates that during the first cycle there was an average of 128 recommendations made to each country, with a total of 12'000 recommendations by the end of the cycle. 20% of the overall UPR recommendations were child rights recommendations.⁵

Follow-up process: As with the CRC the recommendations in the final report cannot be enforced internationally so the HRC must rely on national mechanisms to ensure that the recommendations are taken into account by the state. CSOs and National Human Rights Institutions can play an important role in this process. Thirteen States have also submitted voluntary mid-term reports during the first cycle.⁶

Second round of review 2012: End 2011 all UN states have been reviewed. In 2012 a second cycle of reviews will start, the first of these will start at the UPR 13th session from 21 May – 4 June 2012. During this second cycle States will be asked to report on progress since the last review. The new focus will be on the implementation of the accepted recommendations from the first cycle and on the developments in human rights in the state under review.

CSOs role

The UPR represents an important opportunity for CSOs to have children's rights included in the work of the Human Rights Council.

CSO reports: CSOs can prepare and submit their own reports to the OHCHR. Coalitions of national CSOs are encouraged but individual CSOs, such as Child Rights CSOs may also submit their reports to the OHCHR. The reports should focus on a few top priority children's rights issues, be action oriented and evidence-based with concrete recommendations that are clear, action-oriented and time-bound. As of the second cycle, reports from CSO coalitions may be 5630 words, while a report from a single CSO must not exceed 2815 words. Reports must be submitted to OHCHR indicatively 5 months before the UPR session according to submission deadlines. The OHCHR summarizes the CSO reports into a Stakeholders Report of maximum 10 pages to be published on the web and presented at the review session.

⁵ CRIN, "Universal Periodic Review: The Status of Children's Rights. An Analysis of Trends, Review of NGO Participation", 2010

⁶ <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRImplementation.aspx>

Lobbying

CSOs official involvement in the UPR process include: the submission of a stakeholder report at the beginning of the process and an oral statement at the end of the process. However, they also use a number of informal channels to lobby the state and peer states. The aim is to have the government to accept child rights recommendations.

States are encouraged to prepare their UPR reports through a broad consultation process at the national level with all relevant stakeholders. At the national level CSOs can therefore lobby for full involvement in the preparation of the State reports. National CSOs can also meet with the government in the state under review. CSOs may lobby embassies in the state under review to encourage them to raise key child rights concerns. International CSOs can provide information to the relevant ministries in capitals.

In Geneva CSOs can lobby the diplomatic missions. They are crucial as they attend the peer review raising concerns and suggesting recommendations to the state under review. The missions are also involved in the preparation of possible advanced written questions to the state under review.

CSOs should aim to simultaneously lobby key diplomatic missions in Geneva and embassies in the State under review at least 2 months before the review session.

Public review – a political risk: The UPR is a publicly documented review. All the sources of information will be referenced in the summary report and posted on-line. The UPR process may present a political risk for a national CSO. There are ways of mitigating such a risk using informal channels, but still the risk must be taken into account by CSOs when they engage.

CSOs at the plenary session of the HRC: CSOs may give brief 2 minute oral statements focusing on comments related to the UPR recommendations at the plenary session of the HRC, when the final State Report is adopted. In some cases States have under the right to reply responded to requests and recommendations in CSOs' oral statements.

National follow-up process: CSOs can be directly involved in the national follow-up of the recommendations from the UPR review, much in the same way as with the CRC's Concluding Observations. This involves participation in consultations with key Ministries and advocating for Parliamentarians to monitor follow-up. Embassies of the countries that have made child rights recommendations in the UPR could be approached as possible partners in supporting follow-up action.

Child Rights impact of the UPR process

Child rights increasingly addressed: Almost all states now have included child rights recommendations. Initially states tended give prominence to 'safer' issues such as education, while CSOs addressed more controversial issues such as Corporal Punishment. Corporal punishment and juvenile justice are now included in more recommendations. Corporal Punishment is now a standardized issue raised at every UPR session.

CRC references more frequent: During the UPR process states increasingly refer to CRC reports and recommendations.

Child Participation still weak: Only a few organizations, e.g. World Vision, have yet involved children. The CSO submission on Lebanon has involved children and in Albania there are plans for involvement. This is a still a weak link.

National Child Rights CSOs explore lobbying in Geneva: In the early process there was a marked difference between international and national child rights CSOs. International CSOs could take advantage of the opportunities to lobby states to make recommendations or ask questions during the review. Most of them have an office in Geneva. National CSOs did often not have the capacity, contacts or Geneva representation. With time this has changed as national CSOs have used the possibility to send reports and submissions electronically to diplomatic missions. They can now get advice for access to strategic missions and for lobbying from the CSO Group for the CRC in Geneva, from the Geneva offices of international CSOs such as Save the Children or Plan as well as from a number of websites for UPR-info. In cases where international CSOs are part of national CSO coalitions they have been able to support international advocacy on child rights in Geneva.

Limited post-review: Measures for national post-review processes undertaken by child rights organizations have so far been limited to consultations with government and involvement in follow-up planning. But as more feedback is forwarded to the national/ local level it will result in a greater sense of connection and will facilitate a more structured follow-up process. The UPR second cycle also provides an opportunity for child rights CSOs to follow-up on recommendations and ensure a greater interconnection with other processes – such as the CRC and regional child rights mechanisms.

The CRC and UPR processes, how do they compare and relate?

Two complementary processes

The UPR is described as a political process as states review other states. This allows for a more public and visible UPR process, while the CRC process has a more low-key expert focus run by a Committee of child rights experts and with focus on dialogue, advice and long term development of child rights.

Another distinction is that the CRC process covers the whole spectrum of children's rights while UPR process covers all human rights and so with less space for children's rights.

In spite of the above differences it is evident that the UPR complements the CRC monitoring mechanisms, with the UPR often seen as an enforcer of advocacy work undertaken towards implementation of the CRC. The CRC reporting can provide a platform for reporting to the UPR where the UPR builds on the CRC process. It has been noted by Geneva based CSOs that the recommendations of the CRC process are now more often brought into the UPR process. The two processes increasingly refer to each other during Geneva reviews and hearings.

CSOs in the CRC and UPR processes

For CSOs the two processes can also be seen as complementary. The UPR presents an additional opportunity to lobby for certain specific issues previously raised in the CRC reports. The same factual information can be used for the UPR as for the CRC. But CSOs still need to learn how to adapt the CRC recommendations to a just a few, more precise and targeted, UPR recommendations.

CSOs have a direct and legally acknowledged access to the CRC reporting process. In the UPR process CSOs depend on peer states good will to take their recommendations into the UPR dialogue with the state under review. It is reported by Geneva based CSOs that states increasingly use the information and the recommendations submitted to them by CSOs. The lack of direct access to the UPR may be compensated by active CSOs using a wide range of informal lobbying opportunities.

CSOs have an important role to advocate for all children's rights to be addressed and for neglected issues to be put on the UPR agenda. The majority of international CSOs find that the UPR is now part of their core work. They have learnt how to use the UPR. National CSOs need more practical support and training on the UPR process. The CRC process is much more established with national CSOs, whereas the UPR is still new and requires more intensive lobbying on the part of the CSOs.

Part 2; The Regional Human Rights /Child Rights Mechanisms

The African Human Rights/Child Rights mechanisms

The African Union

The African Union (AU) is a Pan-African organization. Its head quarter is based in Addis Ababa, Ethiopia. It was established in 2002 as a successor of the Organization of African Unity (OAU). It supports political and economic integration among its 54 members. The Assembly of Heads of State and Government is the highest decision-making body of the AU. Each summit has a theme; in 2010 it was maternal, infant and child health development.

The African Commission on Human and Peoples' Rights

The African Commission on Human and Peoples' Rights, established in 1986, promotes human and peoples' rights monitoring and the implementation of the African Charter on Human and Peoples' Rights (ACHPR). The Commission meets in Banjul, the Gambia or in other countries upon invitation. It examines the obligatory state reports on the ACHPR. The Commission submits annual reports to the AU Assembly of Heads of State and Government at the AU summit. There is no Special Rapporteur on Children's Rights but complaints on children's rights may be addressed to other special rapporteurs as relevant.

Civil society organizations (CSO), now about 400 with observer status, play a vital role in the working of the African Commission. They can submit Alternative Reports on Human Rights as a complement to the State Report, bring communications and propose agenda items and present resolutions to the Commission. Ahead of each session of the Commission there is a NGO Forum, which is a strategic platform for CSOs. The outcome of the NGO Forum is publicly presented to the African Commission at its initial session. Child rights organizations have been actively attending the Forum since 2007.

The African Charter on the Rights and Welfare of the Child

The African Charter on the Rights and Welfare of the Child (ACRWC) is the only region-specific child rights instrument in the world. The Charter was adopted in 1990 and came into force in 1999. As of January 2011 all members of the African Union have signed the Charter and all save for seven have ratified.

The African Children's Charter is built on the same principles as the CRC but with a focus on the specifics of the African context. The two instruments complement and reinforce each other. A significant difference is that the Charter creates not only rights for the child but also responsibilities towards family and society, while the CRC stipulates rights only.

The African Committee of Experts on the Rights and Welfare of the Child

The African Committee of Experts on the Rights and Welfare of the Child (ACERWC) is the monitoring body of the ACRWC with a mandate to examine state and civil society reports on children's situation, to collect information on children, to make recommendations to governments and to handle complaints on child rights violations. Its most important role is to monitor how states implement the Charter by examining state reports. The Committee holds thematic discussions on key issues affecting the rights of children as for example on children and armed conflict. It decides the theme for the annual Day of the African Child (16th of June), celebrated all over the continent.

The Committee meets for a week twice a year usually at the African Union Headquarter in Addis Ababa, Ethiopia. Committee members serve on a voluntary, part-time basis and in an independent capacity. The Committee submits an annual report to the AU Assembly.

The Civil Society Forum on the ACRWC held its first meeting in 2009. It should be noted that civil society has been involved in the Committee's work since its inception in 2002. The Forum, which is now held prior to every meeting of the Committee, provides a platform for child rights information sharing and for advocacy towards the Committee. It brings child rights CSOs together and has created channels for communication between CSOs and members of the Committee. The CSO Forum has also made recommendations to the Committee, which the Committee has acted upon.

Since 2006 CSOs can apply for Observer Status to the ACERWC. Today only a handful has obtained such status. It should be noted that an organization does not need observer status to file a communication or to prepare a civil society report.

State party reports on their implementation of the ACRWC are supposed to be presented by member states to the Charter. The reporting process was slow in the start and by November 2011 less than a third of the State Parties had submitted initial reports. Reports should cover all aspects of children's rights, much like the CRC reports, but with a special focus on the issues more explicitly dealt with in the ACRWC.

Civil Society Reports may be presented upon the invitation of Committee. Civil society reports are an essential way of ensuring a clearer picture of how policies and legislation are implemented on the ground. All submitted civil society reports have been examined in pre-sessions to the ACERWC with the authors of the reports. Children's participation is just as with the CRC, a right under the ACRWC. Children can participate in the reporting process either through adult-led civil society organizations or through their own child-led organizations. Children might also submit their own reports.

Pre Session Working Groups of the Committee meet to analyse state reports and civil society reports, to list issues for discussion and see if additional information is required. The working group meets in private, participation is by invitation only. CSOs may attend if having submitted a civil society report or actively working in the country in question. Civil society organizations present an initial oral statement at the meeting and then answer to the Committee's questions.

The plenary sessions are when the Committee and State Party meet to discuss the State Party Report. They are public meetings. It is worthwhile for CSOs to attend to obtain an overview of the dialogue.

The Concluding Observations and follow up to the report is, as with the CRC, one of the most important elements of the reporting procedure. The feedback by the Committee to State Parties by oral discussion and the making of the Concluding Observations and Recommendations are an important part of the monitoring process of a state's implementation of the Children's Charter. They can, as with the CRC, be used by CSOs for the national follow-up process. Concluding observations and recommendations have as of November 2011 been issued on Burkina Faso, Egypt, Kenya, Mali, Nigeria, Tanzania and Uganda.

The Communication procedure refers to a complaints procedure where a complaint on a violation of the Charter can be made to the Committee. Communications are confidential and a measure of last resort when the domestic justice system has failed. Decisions on communications are not legally binding but they are a platform to interpret the Charter. Anybody, including children themselves, can bring a communication. A civil society organization may complain as long as it is recognised by an AU member state, or an AU or UN body. A communication will normally concern a State Party to the Children's Charter. Decisions will be submitted to the AU Assembly and published after consideration of the AU Assembly and the State Parties involved.

The Committee has taken a long time to acknowledge and respond to the few communication so far received, by 2011 only two communications⁷. Until the UN CRC system begins to hear complaints, the ACERWC is the only child rights monitoring mechanism with a communication procedure. The Committee has started to consider communications but the results remain largely untested⁸.

The Committee can undertake **investigative missions** to gather information on the situation of the rights of the child in a State Party. Such visits allow for documentation of violations and to make recommendations to the state concerned. Civil society organisations can play a significant role by addressing particular violations and by facilitating meetings with relevant people for the Committee. A fact-finding mission was conducted to Uganda in 2005. However the report was not widely disseminated. Funding has been a major obstacle for further missions.

The African Court on Human and Peoples' Rights

The treaty establishing the African Court on Human and Peoples' Rights (to become the African Court of Justice and Human Rights) came into force in 2004 and judges were sworn in 2006. The court only recently began hearing cases. It is based in Arusha, Tanzania. The courts decisions are binding and enforceable on states and can potentially have a large impact on cases. The ACERWC is not explicitly mentioned in the protocol establishing the court as a body which is able to bring cases to the court. This situation still needs to be clarified by a judicial opinion from the court.

Conclusions:

State reporting process is now functioning

After a slow start, about a third of the State parties have now submitted their initial reports. State sessions on the ACRWC have been held on nearly all reports submitted and Concluding

⁷ On Commuting children in Northern Uganda and Nubian children in Kenya

⁸ The ACERWC has finalized and recently published their decision of one of the two Communications, on behalf of children of Nubian decent in Kenya. Please see www.acerwc.org for more information

Observations have been submitted on seven countries verifying a good progress on State's child rights reporting.

Civil society reporting complements State reporting

Civil Society reports have been presented as an enriching and important complement to almost all the initial State reports presented to the ACERWC; namely by civil society coalitions/networks in Burkina Faso, Cameroon, Kenya, Mali, Niger, Nigeria, Senegal, Tanzania, Togo and Uganda.

Child Participation – a regular issue

Child Participation is a regular issue at the CSO Forum. As a contribution to the Forum a study on meaningful child participation at regional and national platforms has been commissioned by SCS regional office in ECAF.

Lack of funding – a problem

The ACERWC presently needs more staff and better funding in order to carry out its important work. A related problem is that documents are not always translated into the AU working languages which seriously limit their reach⁹.

The Inter-American Human Rights/ Children's Rights mechanisms.

The Inter-American Human Rights system was established within the framework of the Organisation of American States (OAS). The OAS has 35 member States including the USA. The two main bodies that hold member states to account for human rights violations are The Inter-American Commission on Human Rights (IACHR) and the Inter-American Court of Human Rights (IACtHR).

The foundation for the Inter-American system is the Charter of the OAS and the American Declaration on Human Rights (adopted in 1948). The declaration reflected the State's intention to prioritize human rights. Article 19 provides for the protection of every minor child.

With the adoption 1969 and entry into force (1978) of the American Convention on Human Rights (ACHR) the hemisphere had its first human rights treaty. It gave new powers to the Commission and created the Inter-American Court on Human Rights. The Convention is legally binding for the state parties. USA and Cuba are the only member states who have not ratified.

There is no single American instrument dealing specifically with children's rights. According to the American Convention Article 19 children have the right to special protection from the state, but the article does not specify what rights children are entitled to. The Additional Protocol to the American Convention provides every child with the right to parental protection and primary education.

⁹ Its working languages are Arabic, English, French and Portuguese, and African languages "if possible". A protocol amending the Constitutive Act, adopted in 2003 but as of 2007 not yet in force, added Spanish, Swahili and "any other African language" and termed all six "official" (rather than "working") languages of the African Union.

The Inter-American Commission on Human Rights

The Inter-American Commission on Human Rights is an organ of the OAS. Its present mandate is found in the OAS Charter and the American Convention on Human Rights of 1978. The Commission represents all member states of the OAS. The Commission, based in Washington D.C., meets in ordinary and special sessions several times a year. The sessions of the Commission are an important forum for human rights organizations for highlighting human rights violations and for requesting the intervention of the Commission.

The main function of the Commission is to monitor the ACHR and to defend the human rights of the ACHR and the American Declaration on Human Rights.

The mandate of the IACHR is:

The processing of individual complaints (petitions) by the Commission: The Commission receives, analyzes and investigates individual petitions alleging human rights violations. This is its most important function and the initial step to for a case to be taken before the Inter-American Court of Human rights by a party. The Commission has proven its efficiency with respect to the protection of and prevention of human rights violations as it has received thousands of individual complaints resulting in an impressive number of cases processed.

Observation of the general human rights situation in member States publishing special reports on those situations

On-Site visits: Such visits may be conducted by the Commission with the objective to monitor the human rights situation of the population in general or of a specific group in a specific country. Such visits require the consent or the request of the state. The Commission meets government officials but also CSOs during such visits and publishes a report afterwards.

Stimulation of public consciousness regarding human rights: Publishing studies on thematic subjects such as the human rights of women and children and studies on specific countries.

Meetings, conferences and seminars to increase knowledge of Inter-American Human Rights-system.

Recommendations to the Member States to adopt measures which would contribute to human rights protection.

Precautionary measures is an option for the Commission to act on urgent situations to protect persons at risk. It is especially important in the case of children and youth who may become easy targets of violations. Any person, group of persons or CSO can ask for precautionary measures.

Hearings before the Commission: The Commission can hold public hearings during its sessions. The focus may be the general conditions in a given country, or on a specific topic, an individual case, adoption of precautionary measures. The participation of civil society at such hearings has been essential for advancing children's rights. One example is a request from civil society in 1997 to create a special Rapporteur for Children, which was as a result established in 1998

Annual Reports: The Commission publishes an Annual Report. Children's issues have been included as for example on the prosecution, detention and recruitment of children;

malnutrition; children of the disappeared under the Argentinean dictatorship, Economic, Cultural and Social Rights; a First report on Children in the Hemisphere.

The Annual report is sent to the General Assembly of the OAS. It is an important tool for human rights monitoring as states mentioned in the report may come under pressure from other states to comply with the recommendations from the Commission.

Submission of cases to the Inter-American Court, see processing etc..

Advisory opinions: The Commission may request advisory opinions from the Inter-American Court for the interpretation of the American Convention, see Appendices.

The processing of individual cases before the Commission

The Commission is processing an important number of individual cases. According to the ACHR any person, group of person or CSO legally recognised in one or more of the OAS member states may lodge a complaint alleging a violation of the ACHR or the American Declaration on Human Rights. The complaint may be submitted on behalf of the victim. The victim must have exhausted all legal means of remedying the situation domestically.

When a case has been opened the Commission will send relevant parts of the petition to the state, who will have two months to present a response. Each party will be asked to comment on the responses from the other party. The Commission may carry out its own investigations. Hearings with the parties may be held. In most cases the Commission will assist the parties to negotiate for a friendly settlement.

When sufficient information is available the Commission will decide that the process is completed. The Commission then prepares a report with conclusions and recommendations to the state. The report is confidential. The state is granted a period to resolve the situation and comply with the recommendations. When the granted time period has expired the Commission has two options:

The Commission may prepare a second report, similar to the first. The state is given a new time period to comply. At the end of this second period the Commission will normally publish its report. The Commission will follow up with the state on its compliance. As with the CRC and the UPR compliance is not legally ensured but depends on dialogue and peer pressure

Alternatively the Commission may decide to take the case to the Inter-American Court. The Commission will appear in all proceedings before the Court. The children's rights cases submitted to the Inter-American Court relate to extrajudicial executions; illegal detention of street children; incarceration in adult detention centres; rape; denial of right to education.

The Commission has since it started processed an increasing number of child rights related individual cases. The Commission has achieved good results as states have complied to its recommendations in various cases of violations of children's rights mostly in the field of civil and political rights. The decisions have been critical as they have increased protection for children in many countries through law reform, eradication of practices violating rights etc.

The Inter-American Court of Human Rights

The court is based in San José, Costa Rica. It was established in 1979. It interprets and enforces the American Convention on Human Rights.

It has two functions: adjudicatory and advisory.

As adjudicatory it hears and rules cases of Human Rights violations.

Cases can be referred to the court by either the Inter-American Commission on Human Rights or a State Party. Individuals cannot bring cases directly to the court but must go through the Commission.

As advisory it issues opinions on legal interpretation of the Convention. In 2002 the Court emitted a first advisory opinion on a wider interpretation of children's rights "the reach of special measures of protection for children (Art 19 of the Convention) in relation to the legal and judicial guarantees of the Convention." Upon a request from SCS and Andean Commission of Jurists to the Commission the Court in 2009 issued the opinion that the Human Rights obligations of Member States of the OAS State Parties must prohibit and eliminate all forms of corporal punishment of children, see also Appendices.

The first child rights case before the Court was a case of five street children murdered by police officers in 1990. This case was presented to the Commission by Casa Alianza and CEJIL, two CSOs. In 2001 the court ordered the Government of Guatemala to pay financial reparations and to change its domestic law.

The Special Rapporteur on Children

The Inter-American Commission has established various rapporteurships on specific issues.

In 1998 a Special Rapporteurship on Children's Rights was created.

The rapporteur undertakes studies on important issues regarding the rights of the child in the region, makes On-Site visits to states, requests precautionary measures in serious cases violating the rights of the child, provides advice to the Commission on individual cases and prepares the Child Rights sections of the Annual report of the Commission as well as of country reports. He/she also carries out a number of promotional child rights activities

Paulo Pinheiro is the current rapporteur, his mandate ending in 2012. Pinheiro has been a very active rapporteur with a clear focus on violence against children including on corporal punishment.

Conclusions:

An efficient Mechanism

This is maybe the most efficient of the regional mechanisms and with the highest child rights impact.

An active Commission

The Inter-American Commission on Human Rights is active, follows up with states on the implementation of its recommendations which has resulted in positive changes for Children's Rights in the region.

An active Civil Society

There is a vibrant civil society community with active lobbyists presenting child rights cases before the Commission.

The Special Rapporteur contributes

A dynamic Special Rapporteur on Children's Rights has contributed to this positive development.

The European Human Rights/ Children's Rights mechanisms of the Council of Europe

The European Convention on Human Rights (ECHR) entered into force in 1953. It has been adopted by all 47 members of the Council of Europe. The Convention sets forth a number of civil and political rights. A number of additional protocols have been adopted for example on the right to education and parental rights. The State Parties to the Convention undertake to secure these rights to everyone within their jurisdiction.

The ECHR establishes **the European Court of Human Rights** (entering into force in 1953) for the observance of and compliance with the Convention. Any state that has ratified the ECHR or any individual, group of individuals or CSOs that believe their rights under the ECHR have been violated can lodge a complaint directly to the Court. The Court is also open to Inter-State Complaints (between two states). CSOs cannot lodge complaints before the court on behalf of individuals.

A final decision by the Court is binding for the member states and must be complied with. The court may decide on reparations to be paid by a State Party. A decision by the Court is a precedent for similar cases and can as such be evoked by CSOs. The Committee of Ministers of the Council of Europe is responsible for supervising that the state takes adequate measures to comply with the judgements of the Court. The Committee of Ministers verifies that necessary steps are taken to stop on-going violations and prevent new violations in the future as well as to remedy the situation of the applicants.

At the request of the Committee of Ministers the Court may give advisory opinions on the interpretation of the ECHR.

Children's rights

Children's rights as human rights are protected by the articles in the ECHR, but there are no specific articles on children's rights. However in judgements regarding children, the CRC is often referred to and the ECHR is often interpreted in the light of the CRC. Issues concerning children's rights have been brought to the Court, such as Prohibition of Corporal Punishment (prohibition in the home, decision in 1998), custody of children and the right to education including discrimination of Roma children. When a decision has been taken by the Court the state is obliged undertake requested legal changes, but the time span for changes in different countries varies a lot. One example is the UK, where still no legal change to abolish corporal punishment in the home has taken place, in spite of the court decision in 1998.

The European Social Charter and the European Committee of Social Rights

The European Social Charter is a complement to the ECHR as it guarantees social and economic rights. It was adopted in 1961 and in a revised version in 1996. It establishes the European Committee of Social Rights as a supervisory mechanism over State Parties. A total of 43 out of 47 of Council of Europe member states have ratified the Charter. The rights guaranteed by the Charter are applicable to all individuals in a member states. They are the right to housing, health, education, employment, social and legal protection, free movement of persons and non-discrimination. A number of articles focus on children's rights, in particular under education, employment and legal and social protection

The European Committee of Social Rights is the body responsible for monitoring the compliance to the Social Charter of Member States. The monitoring process is based on national annual reports submitted by states. If a state does not comply with a decision of the European Committee, the decision is forwarded to the Committee of Ministers of the Council of Europe who addresses a recommendation to the state to comply.

Since 1998 there is a **collective complaints procedure**. Complaints of violations of the Charter may be lodged with the European Committee of Social Rights. Certain organisations are entitled to lodge complaints with the Committee, such as CSOs enjoying participatory status with the Council of Europe. The Committee examines the complaint and if admissible takes a decision on the merits of the complaint. The decisions by the Committee are issued in the form of recommendations not binding on the state. The decision is forwarded to the Committee of Ministers who in its turn makes a recommendation to the State Party.

The impact of the charter on member states is that upon the recommendations from the Committee of Ministers states are expected to make changes in their legislation or practise which complies with the Charter. There is no formal obligation to comply, only pressure from other member states. Although resolutions and recommendations are non-binding legal texts, they serve as significant guidelines for policy development in the member states.

Children's Rights

The collective complaints procedure provides for access for European CSOs and has frequently been used by CSOs including national CSOs. It has proved to be a useful tool for CSOs child rights advocacy. CSOs from Portugal took the ban of corporal punishment to the Committee, which decided that corporal punishment violated the Charter. As result the government of Portugal changed the law and a total legal ban on corporal punishment was established.

The Commissioner for Human Rights

The office was instituted in 1999. The Commissioner should foster the observance of human rights, identify shortcomings in law and practice, provide advice, dialogue and information across the region. The Commissioner cannot act upon individual complaints but can take initiatives on the basis of information concerning individuals.

The Commissioner conducts official country missions to member states for the evaluation of the human rights situation. During his visits he should as a principle not only meet with government officials but also with CSOs. CSOs need to follow up with the schedule of visits and ask for opportunities to meet with him. Upon a visit the Commissioner writes a report on human rights practices and with recommendations to the member state in question. The commissioner also issues viewpoints on thematic child rights issues.

The previous and present Commissioner has paid particular attention to the respect for and protection of the rights of the child. The present Commissioner Thomas Hammarberg, mandate ending in 2012, has provided many recommendations to national authorities for improvement of children's rights. He has put focus on and advocated for key rights issues such as violence against children, corporal punishment, discrimination of Roma children, asylum seeking children and juvenile justice. He has issued position papers such as "Position on Child Rights, 2010".

Conclusions:

Collective complaints mechanism works

The collective complaints mechanism to the European Social Charter has worked well and CSOs who have used it have had success. However, it is still a very unknown procedure and more CSOs could make use of it.

The European Court not sufficiently used

The European Court is not used as much as it could be in child rights issues. An CSO cannot file a complaint, it has to be an individual (which means that children themselves can actually file complaints, it says “any person” in the ECHR), but CSOs could provide support to individuals in seeking remedy. The fact that the Court’s decisions are binding on states makes it potentially powerful.

The jurisprudence of the European Court could be more used by CSOs in their national work. The court’s decisions serve as interpretation of the ECHR for all states, and therefore any CSO can eg used the 1998 ruling against UK to lobby for a ban on corporal punishment in their country.

Backlog problem

There is an important backlog of several years in the European Court,, and even an increase of pending cases before the Court, since more and more persons throughout Europe are using this opportunity. The consequences for children are mainly that it takes a lot of time before their cases are tried and they can get remedy. Also, in some cases young persons are legally not children anymore when their case is before the court. However, the ruling can still have validity for children in the country.

The Commissioner for Human Rights promotes children’s rights

The Commissioner for Human Rights’ country visits have proven to be a great success and issues raised by CSOs are often raised by the Commissioner in his report. The visits tend to get a lot of attention in the national media, where also CSOs could take the advantage and use the medial space for its issues. The present Commissioner has actively promoted child rights.

It should also be mentioned that there are several other conventions, recommendations and info material from the Council of Europe that CSOs can make use of in their advocacy work.

The Asean Women’s and Children’s Rights Mechanism

The Association of Southeast Asian Nations, or ASEAN, was established 1967. Members are Indonesia, Malaysia, the Philippines, Singapore, Thailand, Brunei, Vietnam, Laos and Myanmar

The **ASEAN Intergovernmental Commission on Human Rights** (AICHR) was inaugurated in September 2009 as a consultative body of the ASEAN. The human rights commission exists to promote and protect human rights, and regional co-operation on human rights, in the member states The AICHR is directed by a body of Representatives, one per member state, each nominated by and answerable to their government and serving a three-year term.

The ASEAN Commission on the Promotion and Protection of the Rights of Women and Children (ACWC) was established in 2009. The ACWC seeks to promote the well-being,

development, empowerment and participation of women and children in the ASEAN community. It promotes public awareness and education on rights. Among the critical issues on ACWC's agenda are child trafficking, abuse and labor experienced almost universally in the 10 ASEAN member states.

The ACWC will serve as a complementary body to the AICHR and will work on sectorial issues under the guidelines and standards of the AICHR. Rules and procedures for the ACWC need to be further defined to work effectively, including relations with CSOs in particular how they can take part. So far individual complaints are not admitted and the ASEAN has not, as yet, considered a child rights monitoring function for the ACWC. An open question is if in the future ASEAN will accept a Commission with an investigative mandate and legally binding decisions, that is a protective mandate, or retain the present mechanism promoting awareness raising, reporting and human rights education.

Conclusions: As the ACWC is a very new body it would be too early to draw any conclusions. However CSOs positions seem unclear and should be strengthened.

Summary Conclusions

The **CRC** reporting process remains the most used and best known Child Rights mechanism for CSOs. It provides a legal base and a reference for all other Child Rights Mechanisms.

The **UPR** is still a new mechanism of a more political nature than the CRC. As the UPR is getting better known by CSOs it will gradually be used more and more for Child Rights advocacy. National CSOs need more training and information on how to use the UPR.

The African Child Rights Mechanism is fairly recent, a fact which must be taken into account when assessing its work. Still there has been good progress in especially the last few years. About a third of the State parties have reported and Civil Society has submitted alternative reports and actively used the CSO Forums for advocacy. Until the UN CRC system begins to hear complaints, the ACERWC is the only child rights monitoring mechanism with a complaints procedure although the process is largely untested.

The Inter-American Human Rights/Child Rights mechanism may be the most efficient of the regional mechanisms for promoting child rights. The work of the Inter-American Commission on Human Rights has resulted in many positive changes for children in the region. This is very much due to a vibrant civil society presenting child rights cases and advocating before the Commission. Dynamic Special Rapporteurs on Children's Rights have greatly contributed to this positive development.

The European Human Rights / Child Rights mechanism of the Council of Europe is well established. The collective complaints mechanism to the European Social Charter has worked well and CSOs who have used it has had success. However, it is still a much unknown procedure and more CSOs could make use of it.

The European Court is not used as much as it could be for cases of child rights. CSOs could use it better by supporting individuals in seeking remedy. The Court is important as its decisions are binding on member states. The Commissioner for Human Rights' country visits have proven to

be a great success and issues raised by Child Rights CSOs are often raised by the Commissioner in his report.

The ASEAN Commission on the Promotion and Protection of the Rights of Women and Children is very recently established. CSOs positions seem unclear and should be strengthened.

Appendices

Appendix 1: Examples

The African Children's Rights mechanisms

Extract from *Advancing Children's Rights, A Guide for Civil Society Organisations on how to engage with the African Committee of Experts on the Rights and Welfare of the Child*, Save the Children Sweden and Plan, Second edition, 2010

THE CHILDREN'S CHARTER USED FOR ADVOCACY IN SENEGAL

The National Coalition of Associations and CSOs Working for Children in Senegal (CONAFE-Senegal) is a network comprised of over 200 child focused organizations in the country. In 2006, CONAFE Senegal prepared a complementary report to the UN Committee on the Rights of the Child. One of the issues they raised in the report was that there was an administrative Circular from the Senegalese Ministry of Education dating from 1986 which prevented girls from returning to school if they were pregnant. Furthermore, this Circular was being used in practice and pregnant girls were being excluded from school as a consequence. In their Concluding Observations, the UN Committee on the Rights of the Child recommended that the Circular be cancelled 'in accordance with article 11(6) of the 1990 African Charter on the Rights and Welfare of the Child' which states that 'States Parties to the present Charter shall take all appropriate measures to ensure that children who become pregnant before completing their education shall have an opportunity to continue with their education on the basis of their individual ability.' Together with other civil society actors, CONAFE-Senegal subsequently followed up the issue with the Senegalese government asking that the Circular be withdrawn on the grounds of discrimination against girls concerning their access to education. CONAFE-Senegal relied both upon the CRC and the ACRWC in advocating for its withdrawal and it was a great strength for them to be able to point out the provision in the ACRWC specifically relating to this. The Administrative Secretary from CONAFE-Senegal, Justine Laïson, explained that *'The Charter was more specific on this point than the CRC and this was very helpful for us.'* Eventually their advocacy was successful and the government agreed to withdraw the Circular and to replace it with one which ensured that pregnant girls were encouraged to continue with their education.

Nigeria's Initial and First Periodic Report to the Committee 2006

Nigeria's initial and first periodic report to the Committee is very comprehensive and follows the outline given in the Committee's guidelines closely. It draws extensively from its second CRC periodic report. However, it is not simply a duplication of the CRC report since the drafting process for the Children's Charter report involved a consultative meeting with members of civil society, international organizations and development partners. It was also validated at a stakeholders workshop at which members of the Children's Parliament were present. The information has been updated since the CRC report was submitted and also incorporates the government's response to the UN Committee's Concluding Observations and Recommendations. Most of the unique aspects of the Children's Charter are specifically referred to including prohibiting child marriage, fixing 18 as the age at which a person can be involved in hostilities, enhanced

protection for children of imprisoned mothers, for pregnant girls and for children being used for begging. There are some gaps; for example, in the section dealing with refugee children, there is no discussion of the protections given to internally displaced children.

PUTTING CHILDREN'S RIGHTS ON THE AU SUMMIT AGENDA

Each AU Summit has a theme, nearly all of which will impact on children in some way. The theme for 2010 for example was maternal, infant and child health and development. There is great scope to push the issue of children's rights in relation to the theme of the AU Summit. The theme can be highlighted in advocacy work during the year and relevant children's rights issues can be raised with national government delegations going to the AU Summit, Ambassadors to the AU and donors. CSOs who wish to become involved in putting children's rights onto the AU Summits' agenda should consider convening open meetings among interested civil society groups at least two months before the summit to generate an exchange of views and perspectives on upcoming decisions and to prepare joint statements to be shared with states. Request meetings in your country with the Ministry of Foreign Affairs to obtain a briefing on the government's position and advocate for the concerns of civil society groups. Make contact with the media so that they are aware of the critical issues and the AU's role in influencing and affecting outcomes for children. See 'Strengthening Popular Participation in the African Union: A Guide to AU Structures and Processes, AfriMAP and Oxfam (2010)' for more guidance on how to engage effectively with the AU Summit.

The Inter-American Human Rights/ Children's Rights mechanisms

Advisory opinion on Corporal Punishment

In 2005, Save the Children together with partners working on promoting alternative non-violent means of education, Ombudspersons from the Latin-American region, Parliamentarians, children's rights experts and Human Rights ONGs, joined efforts and presented a hearing before the IACHR on the issue of corporal and humiliating punishment. The hearing provided the opportunity to present an outlook of the existing legal setting regarding child protection against corporal and humiliating punishment in the Americas as well as the legal arguments in order to challenge the current status quo. The petitioners (Save the Children and its partners and allies) requested that the IACHR would ask the Inter-American Court of Human Rights whether corporal and humiliating punishment was in accordance with the American Convention on Human Rights or not.

It took three years for the IACHR to present the request before the Inter-American Court. The delay was mainly due to two factors: first, some difficulties in the IACHR in understanding the importance and urgency of considering this issue which constitute one of the most wide-spread child rights violation, and secondly, the very limited human and economic resources available to the IACHR to carry out its mandate and the priority given to other issues considering more pressing and urgent. Save the Children and its partners were aware about this situation and decided to support the IACHR by sending legal articles by academics, a regional study on the legal framework in the Americas, examples of new legislations prohibiting corporal and humiliating punishment in other countries, as well as the media coverage on the topic and other

studies that were carried out by our partners and allies. The aim was that the IACHR could have available all relevant information in order to draft its petition. By the time that the IACHR presented its petition before the Inter-American Court, three countries of the region have already passed laws banning corporal and humiliating punishment against children. The only three countries in the region that have laws banning corporal and humiliating punishment in all settings are Uruguay, Venezuela and Costa Rica¹⁰. Other countries in the region ban it from schools and/or other institutions but not from home and within the family.

In December 2008 the Inter-American Commission on Human Rights formally asked the Inter-American Court of Human Rights to issue an advisory opinion on whether corporal punishment of children is compatible with various articles in the American Convention on Human Rights and the American Declaration of Human Rights and Duties.

Referring to articles 1 (non-discrimination), 2 (obligation to adapt domestic law to the American Convention), 5 (right to humane treatment) and 19 (rights of the child) of the American Convention and article VII (right to protection for mothers and children) of the American Declaration, the Commission asked the Court whether these provisions, in light of the best interests of the child, oblige OAS Member States: 1) to “regulate paternal authority and protection in such a way as to protect children against all forms of corporal punishment”; and 2) to “adopt legislative and other measures for the purpose of ensuring that children are not subjected to corporal punishment as a method of discipline within the family, at school or in institutions”.

The basis for the Commission’s petition was, firstly, that there is no standard in the Inter-American context which clearly states that corporal punishment should be prohibited because it is incompatible with respect for human rights and, secondly, that corporal punishment is widely practised and in most states is lawful, and although nearly all states have ratified the UN Convention on the Rights of the Child, very few have adapted their national laws in line with the Convention. The Commission argued that a statement by the Court on the issue would have a positive influence on elimination and prohibition of corporal punishment through legislative and other reforms in the states concerned.

In its response to the request, the Court makes it clear that there is no need to issue an advisory opinion on this matter because the questions can be answered with reference to the existing jurisprudence of the Court, “as well as from the obligations issued by other international instruments ratified by the states in the region”.

The Court refers to the UN Convention on the Rights of the Child, and notes that the obligation of states to respect the responsibilities, rights and duties of parents is subject to “the duty to establish the best interests of the child as the fundamental elements of his or her upbringing and development, whether this be in the hands of the child’s parents or legal guardians”. The Court

¹⁰ *Uruguay: November 2007; Venezuela: December 2007; Costa Rica: June 2008.*

also refers to the rights of the child to respect for their human dignity with regard to school discipline (article 28 of the Convention) and to protection from all forms of violence (article 19) and from torture or other cruel, inhuman or degrading treatment or punishment (article 37).

With reference to General Comment No. 8 adopted by the CRC Committee, the Court draws particular attention to the definitions of “corporal punishment” and “other cruel or degrading forms of punishment”, their incompatibility with the UN Convention on the Rights of the Child in the home and family as in any other environment, and the standards set by the CRC Committee for protecting children against corporal punishment which include legislative, educational, monitoring and evaluation measures. The Court stresses the CRC Committee’s view that “eliminating the violence and humiliating punishment of children is an immediate and unqualified obligation of the State Parties”.

The Court also highlights its own jurisprudence which has emphasised, for example, that children “have rights and are not just an object of protection”, that they have the same rights as all human beings, that the state must protect these rights in the private as well as the public sphere, and that this requires legislative as well as other measures.

The protection of children against corporal punishment begins with the adoption of a legal provision banning the use of corporal punishment, but its effective implementation compels the state to ensure appropriate mechanisms, programs and policies to support families in learning and using positive discipline to upbringing their children. Only in this manner can a state ensure less violent societies that respect human rights.

So, the Inter-American Court of Human Rights has confirmed the human rights obligations of Member States of the Organization of American States (OAS) to prohibit and eliminate all corporal punishment of children. Children are as well as adults the holders of fundamental human rights, including the rights to respect for human dignity and physical integrity.

The full text of the Court’s decision is available in English (unofficial translation) and Spanish. See also the IACHR press release in English and in Spanish.

After the Court’s decision the IACHR issued a Report where it presented in detail the current legal setting in the region as well as the legal arguments upon which the Court based its decision, providing all the information needed in order to support states in making the necessary changes to its laws and programmes in order to comply with their international obligations regarding child protection

Appendix 2: Sources for reference, reports and websites links

Advancing Children's Rights - A Guide for Civil Society Organisations on how to engage with the African Committee of Experts on the Rights and Welfare of the Child, Save the Children Sweden and Plan, Second edition 2010

Developing Children's Rights in the Americas; Save the Children Sweden Regional Office for Latin America and CEJIL; 2007.

A report on the Rapporteurship on the Rights of the Child of the Inter-American Commission on Human Rights by Save the Children Sweden Regional Office for Latin America and the University of Texas School of Law (soon to be published)

Universal Periodic Review – the Status on Children's Rights; 2010; CRIN

Universal Periodic Review Toolkit; the NGO Group for the Convention on the Rights of the Child and the Working group on the Human Rights Council

Universal Periodic Review Toolkit - A guide for Country Programs; Save the Children.

Websites

African Charter on the Rights and Welfare of the Child: www.au.int

African Committee of Experts on the Rights and Welfare of the Child: www.acerwc.org

ASEAN: Terms of Reference of the ASEAN Commission for the Promotion and Protection of the Rights of Women and Children (ACWC); www.asean.org./documents/TOR-ACWC.pdf

Council of Europe Programme for Children's Rights:
http://www.coe.int/t/dg3/children/default_en.asp

Child Rights Information Network: www.crin.org

European Social Charter:
http://www.coe.int/t/dghl/monitoring/socialcharter/ecsr/ecsrdefault_EN.asp

European Court: www.echr.coe.int/ECHR/homepage_en

European Court (cases): www.coe.int/t/dg3/children/caselaw/CaseLawChild_en.asp

European Commissioner for Human Rights:
http://www.coe.int/t/commissioner/default_EN.asp

Inter-American Commission on Human rights: www.cidh.oas.org

Inter-American Court on Human Rights: www.corteidh.or.cr

Inter-American Special Rapporteur on children: www.cidh.oas.org/Ninez/default_eng.htm

NGO Group for the Convention on the Rights of the Child: www.childrightsnet.org

The OHCHR Civil Society Unit: www.ohchr.org

UPR at OHCHR: www.ohchr.org

Save the Children International: www.savethechildren.net