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By email: CRCOP3@ag.gov.au

Dear Suzanne

Draft Third Optional Protocol to the Convention on the Rights of the Child

Thank you for your email of 9 November 2010 inviting our brief initial comments on Australia's role in the development of an optional protocol to the Convention on the Rights of the Child.

Operation of the Third Optional Protocol

As you will be aware, the draft Third Optional Protocol proposes four procedures pursuant to which the Committee on the Rights of the Child may consider complaints alleging violations of children's rights:

- an 'individual communication procedure', pursuant to which individuals and groups of individuals may submit a complaint of an alleged violation of any of the rights contained in the CRC or the First or Second Protocol thereto to the Committee and to seek redress for that violation;
- a 'collective communication procedure', pursuant to which National Human Rights Institutions and non-government organisations in consultative status with ECOSOC may submit complaints alleging grave or systematic violations of any of the rights set forth in the CRC or its Optional Protocols;
- an 'inter-state complaints procedure', which allows the Committee to consider communications from one State party alleging that another State party is not fulfilling its obligations under the CRC or its Optional Protocols; and

- an inquiry procedure, which allows the Committee, upon receipt of reliable information, to initiate inquiries into grave or systemic violations by a State party of any of the rights contained in the CRC or its Optional Protocols.

The inter-state complaints and inquiry procedures are both 'opt-in' procedures. Further, in relation to both of the communications procedures and the inter-state complaints procedure, a state can opt-out of recognising the Committee's jurisdiction over rights under the First and Second Optional Protocols.

The Draft Third Optional Protocol does not grant or recognise any additional substantive rights above those already recognised in the CRC and its First and Second Optional Protocols.

Need for the Third Optional Protocol

As has been recognised by the international NGO Group for the CRC, the elaboration and adoption of the Third Optional Protocol is essential for at least three key reasons:

- First, the full range and detail of rights in the CRC are not covered, separately or together, by any other human rights mechanism;
- Second, children must have an international mechanism to appeal to when national remedies do not exist or are ineffective;
- Third, even when admissible, child rights complaints to existing human rights bodies are not considered by a Committee with expertise on child rights.

As further recognised by the international NGO Group for the CRC, the elaboration and adoption of the Third Optional Protocol will have at least five key benefits:

- First, it will complement the State party reporting process and reinforce the implementation of the CRC;
- Second, it will encourage States to develop and strengthen appropriate remedies at the national level;
- Third, through Committee decisions and views, it will provide practical and authoritative interpretation of the CRC provisions and states' obligations thereunder;
- Fourth, it will facilitate the development of international child rights jurisprudence and, it is expected, influence domestic legal and judicial systems positively in this regard; and
- Fifth, it will raise international recognition of children as rights holders, and promote public awareness of and engagement with the CRC.

Australia's Role in Elaborating the Third Optional Protocol

As you will be aware, Australia has already acceded to allowing individual communications and, in some instances, inquiries under the International Covenant on Civil and Political Rights (pursuant to its First Optional Protocol), the Convention Against Torture, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women (pursuant to its Optional Protocol), and the Convention on the Rights of Persons with Disabilities (pursuant to its Optional Protocol).

In the Centre's view, Australia should take a constructive leadership role in the elaboration of the draft Third Optional Protocol to the Convention on the Rights of the Child.

The benefits of Australia taking an active, principled and constructive approach include:

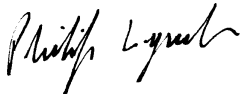
- re-affirming Australia's commitment to constructive engagement with the United Nations system – active membership of the UN is one of the three pillars underpinning the Australian Government's approach to foreign policy;
- enhancing Australia's position internationally as a leader in human rights – the Australian Government has consistently stated the importance, as part of its re-engagement with the international human rights community, of Australia playing a leadership role in the promotion and protection of human rights. Australia played an historic and significant role in the development and adoption of the Universal Declaration on Human Rights. Active engagement with the elaboration of the proposed draft Optional Protocol would build on Australia's legacy of contributing to the normative and institutional protection of human rights;
- involving Australia in a process which has the potential to enhance public awareness and understanding of human rights and the UN human rights system, and which resonates with the concern for children's rights identified as being important to Australians through the National Human Rights Consultation.

Comments on the Text of the Third Optional Protocol

The Human Rights Law Resource Centre adopts and endorses the comments on the negotiation and content of the draft text set out in the *Joint NGO Submission to the Open-ended Working Group on an Optional Protocol to the Convention on the Rights of the Child to provide a communications procedure* (October 2010).¹

We would be pleased to discuss the text of the draft Third Optional Protocol and how Australia could constructively contribute to its enhancement and elaboration further.

Yours sincerely



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¹ Available at www.crin.org/docs/Joint_NGO_Written_Submission_October_2010_EN.doc.