



Global Initiative to
End All Corporal Punishment
of Children

Using international communications and inquiry procedures to challenge corporal punishment of children

A guide for non-governmental organisations and national human rights institutions

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Communications and inquiry procedures – international mechanisms which can be used to make complaints about human rights violations – are a key avenue through which individuals and groups can enforce their rights. They present an exciting opportunity to advance children’s rights, including their right to protection in law and practice from corporal punishment. Since children are unlikely to be able to access and use these procedures independently, it is important that organisations working for children’s rights take the initiative in using them with children and on their behalf. This guide gives details of the procedures which could be used to challenge corporal punishment of children and suggests starting points for using them.

The Global Initiative is keen to hear from and collaborate with organisations which are considering using international communications and inquiry procedures to challenge corporal punishment of children and wants to encourage organisations which have not yet considered using these procedures to do so. Initiating this sort of action may appear complex and difficult but please do not be put off: we can provide free technical support and assistance and may be able to collaborate in preparing and submitting information. Contact elinor@endcorporalpunishment.org for more information.

Procedures covered by this guide:

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) communications and inquiry procedures

Convention on the Rights of the Child (CRC) communications and inquiry procedures

Convention on the Rights of Persons with Disabilities (CRPD) communications and inquiry procedures

International Covenant on Civil and Political Rights (ICCPR) communications procedure

International Covenant on Economic, Social and Cultural Rights (ICESCR) communications and inquiry procedures

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1 Introduction to communications and inquiry procedures

1.1 What are international communications and inquiry procedures?

These mechanisms, associated with UN treaties, can be used to make complaints about alleged human rights violations. Information submitted about human rights violations is examined by the relevant treaty monitoring body (committee) which can then make recommendations to government and follow up on its recommendations. There are similar mechanisms under some regional human rights systems – see the box in [section 1.2](#).

Communications can be made by or on behalf of individuals or groups of people – including of course children – claiming that their rights under the relevant treaty have been violated. The purpose of communications procedures is to allow victims of human rights violations to hold the state which perpetrated the violations to account.

Inquiries can be agreed and carried out by a committee which has received reliable information containing well-founded indications of serious or systematic violations of the treaty. The information can be submitted by individuals or organisations. The purpose of inquiry procedures is to allow committees to carry out an in-depth investigation of systematic violations of the rights of a group of people, particularly where it is difficult or impossible for the victims to access other mechanisms for enforcing their rights. Unlike a communication, an inquiry does not require a specific victim or victims to be identified.

For both types of procedure, if the committee carrying out the procedure finds that human rights have been violated, it makes recommendations about how the state should prevent similar future violations. **The primary purpose of a communication or inquiry on corporal punishment and other cruel or degrading punishment of children is to generate recommendations to prohibit and eliminate all corporal punishment in the state in question, resulting in a change in law to prohibit all corporal punishment.**

1.2 Why use communications and inquiry procedures to challenge corporal punishment of children?

Prohibiting and eliminating corporal punishment of children is a human rights imperative. However, some governments fail to fulfil their human rights obligations. Communications and inquiry procedures can be used to place extra pressure on these governments to prohibit all corporal punishment and other cruel or degrading punishment of children.

Communications and inquiries are “quasi-judicial” procedures: the committees which examine them are not courts and cannot force governments to accept their recommendations. However, these recommendations are authoritative statements of international law, with a relatively high profile. This makes being subject to these procedures challenging for states – a significant level of stigma is attached to a state being found by an international body to have violated rights in a particular case (communications) or to be committing grave and systematic violations of human rights (inquiries).

Communications and inquiry procedures allow committees to focus extensively on one issue – in this case, corporal punishment of children. This both allows for an in-depth consideration of the issue and highlights its importance.

Many of these procedures have been relatively little used, and rarely or never used by children or on children's issues. Using them on corporal punishment could highlight the importance of the issue nationally and internationally, set a valuable precedent and advance children's rights generally by promoting the use of these mechanisms for children.

Using a communications or inquiry procedure to challenge corporal punishment of children has the potential to have a very real and significant impact on children's lives. Although initiating this sort of action may at first appear difficult or labour-intensive, the initial work would be well repaid by the possible end result. **The Global Initiative is keen to help and can provide free technical support and assistance and collaborate in preparing and submitting information. Contact elinor@endcorporalpunishment.org for more information.**

The use of communications and inquiry procedures is just one strategy for pursuing and achieving prohibition. It will need to be linked to other forms of advocacy and can form part of an ongoing campaign which includes a variety of other strategies (see [section 4](#)); it should not detract from or delay other attempts to achieve law reform.

Regional procedures

The European Court of Human Rights can hear complaints about violations of the European Convention for the Protection of Human Rights and Fundamental Freedoms. The Court has progressively ruled against corporal punishment of children and is a far stronger mechanism than the UN procedures covered by this guide: in states where it can be used, it is almost certainly a better choice than any UN communications procedure.

Similarly, the European Social Charter and Revised Social Charter have a collective complaints procedure; several collective complaints relating to corporal punishment of children have been examined and the obligation to prohibit it has been repeatedly confirmed. In the European states which have accepted the procedure, it is likely to be a better choice than any UN inquiry procedure.

There are regional procedures in Africa and the Americas which may also be alternatives to UN procedures.

The Global Initiative can provide information and advice on the possibility of using regional procedures to challenge corporal punishment of children – contact elinor@endcorporalpunishment.org.

1.3 Which procedures could be used to challenge corporal punishment of children?

Communications and inquiries must be about a violation of the rights set out in the treaty to which the procedure is attached. Corporal punishment and other cruel or degrading punishment of children is a violation of the right to respect for human dignity and physical integrity, which is protected by most major treaties, and there is a broad and growing consensus within the UN human rights system that children have a right to legal protection. However, whether a procedure is well suited for challenging corporal punishment depends

both on the provisions of the particular treaty and on the position of the relevant committee regarding corporal punishment (where a position has been expressed; as a new committee, the Committee on the Rights of Persons with Disabilities has had relatively little opportunity as yet to form clear positions on many issues including this one).

General comments, concluding observations produced after examining states' reports, and, in some cases, the results of previous communications all help to clarify committees' positions. The Global Initiative systematically monitors committees' jurisprudence on corporal punishment: our analyses indicate that communications or inquiries about corporal punishment of children would be most likely to be successful under the following procedures:

- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) communications and inquiry procedures
- Convention on the Rights of the Child (CRC) communications and inquiry procedures¹
- Convention on the Rights of Persons with Disabilities (CRPD) communications and inquiry procedures
- International Covenant on Civil and Political Rights (ICCPR) communications procedure
- International Covenant on Economic, Social and Cultural Rights (ICESCR) communications and inquiry procedures².

This guide therefore contains information only on these procedures. However, it might also be possible to use the Convention on the Elimination of All Forms of Discrimination against Women communications and inquiry procedures to challenge corporal punishment of children. Contact elinor@endcorporalpunishment.org to discuss this possibility.

¹ This will enter into force when it has been ratified by 10 states, hopefully in 2013.

² In force from 5 May 2013.

1.4 Which procedures can be used in which states?

Communication and inquiry procedures can only be used when states have “accepted” the procedure. The process for doing this varies with the different instruments:

Main instrument	Procedure	The procedure can be used when ...
Convention against Torture	Communications	... the state has ratified the Convention and has made a declaration accepting article 22
Convention against Torture	Inquiries	... the state has ratified the Convention and has not made a declaration rejecting article 20
Convention on the Rights of the Child	Communications	... the state has ratified the Optional Protocol on a Communications Procedure ³
Convention on the Rights of the Child	Inquiries	... the state has ratified the Optional Protocol on a Communications Procedure ⁴ and has not made a declaration rejecting article 13
Convention on the Rights of Persons with Disabilities	Communications	... the state has ratified the Optional Protocol to the Convention
Convention on the Rights of Persons with Disabilities	Inquiries	... the state has ratified the Optional Protocol to the Convention and has not made a declaration rejecting articles 6 and 7
International Covenant on Civil and Political Rights	Communications	... the state has ratified the first Optional Protocol to the Covenant
International Covenant on Economic, Social and Cultural Rights	Communications	...the state has ratified the Optional Protocol to the Covenant ⁵
International Covenant on Economic, Social and Cultural Rights	Inquiries	...the state has ratified the Optional Protocol to the Covenant ⁶ and has made a declaration accepting article 11

The Global Initiative holds information on which mechanisms are available for use in a particular state, and can advise on the most appropriate one to use – contact elinor@endcorporalpunishment.org.

³ See note 1

⁴ See note 1

⁵ See note 2

⁶ See note 2

2 How to use communications procedures

This section covers communications procedures under the CAT, CRC, CRPD, ICCPR and ICESCR.

2.1 Victims

The victim(s) of the communication will be **a child or children whose rights have been violated by the legality of corporal punishment**. In the case of the CRPD, the victim will be a child with a disability.

2.1.1 Identifying victims

Children are very unlikely to know of the existence of communications procedures or to be able to use them without adult support; some children, including babies and young children, are clearly unable to initiate action themselves. Therefore, rather than waiting for children to come forward, **organisations must actively seek children who are interested in taking this kind of action and support them in taking it, as well as actively working to take action on behalf of children who are unable to do so.**

Actively working to initiate this kind of action with children and on their behalf shows real respect for them as rights holders. Advances in human rights have often been achieved through the work of individual victims of violations of rights who have taken action, including using international mechanisms, to enforce their rights. Children's rights are as important as those of adults and progress in fulfilling them is as desperately needed. International mechanisms are as important in advancing children's rights as adults' – but children are far less likely than adults to be able to independently use them. Genuine respect for children and recognition of them as rights-holders requires organisations to acknowledge their greater difficulty in accessing human rights mechanisms and to seek to remedy this, including by actively searching for children who may want to take action and taking action on behalf of those who are not able to do so.

Organisations which might be able to help identify children with an interest in using communications procedures to challenge corporal punishment include:

- ombudspersons, national human rights institutions, children's commissioners and other bodies which can receive complaints of violations of children's rights
- children's clubs and other organisations in which children advocate for their own rights (children working in these organisations may also be able to approach other children who may be interested)
- social service and health providers to children and families
- children's helplines
- specialised NGOs and INGOs working in institutional settings – for example, the alternative care, education and penal systems (children in these settings may

experience corporal punishment within and outside them and may have experienced it outside the institution)

- disability rights NGOs and INGOs and other disabled people's organisations in contact with children
- other NGOs and INGOs working on any aspect of children's rights.

Most of these organisations are unlikely to be able to pass on children's details – but they may be able to approach children directly themselves and gain their interest and consent.

In some cases, information about current action being taken nationally by a child or their representatives against corporal punishment may be publicly available – for example, complaints by parents and/or children about school corporal punishment which are reported in the media – and it may be possible to approach these children.

2.1.2 Children's consent

It is of course essential that children give informed consent to taking part in the procedure, except where they are unable to do so. This is necessary both to ensure respect for the child or children's rights to have their views heard and participate in decisions on all matters that affect them and to meet the requirement under most procedures that the alleged victim has consented to using the procedure, unless the applicant can demonstrate they were unable to do so.

Factors to consider when obtaining the consent of and working with child victims include the need to be clear with them about what is involved in the procedure, including the likely timescale and its possible results for them individually (for example, in relation to redress) and for other/all children affected, the need to present information in an appropriate format, including formats adapted as necessary for children with disabilities, and the duty to ensure children's ongoing consent.

Where children are unable to give informed consent (for example, babies and very young children, who are the victims of much corporal punishment), it would be justifiable to act on their behalf without their consent; when such cases are identified, organisations should consider doing so.

2.1.3 Children's privacy

The identity of child victims will be known to the committee to which the communication is addressed and to the state, but other than that it can and should be kept confidential unless the child has given informed consent to it being made public. To achieve this, under some procedures it may be necessary to ask the committee both to keep the identity of the child confidential in the final, public decision and to request the state not to reveal the child's identity.

2.1.4 The level and nature of children's involvement

A child or children will necessarily be the alleged victim(s) of a communication on corporal punishment – in this sense, they are central to the process. However, it is important to understand that, if children do not want to be actively involved in the procedure, they will not have to be – the process can be initiated and carried out entirely by adults working on children's behalf. This does not imply that children are being "used" or "exploited": it is appropriate that organisations working for children's rights use these mechanisms for children.

Communications can be submitted by a child or children themselves (of course with appropriate adult support) or by a representative acting on their behalf – for example, the child's parent or carer, an NGO or human rights institution or a lawyer.

The violation of the child's rights will need to be clearly documented in the submission to the committee, including if possible through a statement from the child. Documentation involving statements from the child of the violations of children's rights should be obtained in a child-sensitive manner and children should not be required to repeatedly discuss their experiences.

The CAT and CRC committees are able to hold oral hearings as part of their consideration of a communication, although (for CAT) these have rarely been held. Child victims would not be required to attend any hearings, although they might have the opportunity to do so if they wish.

If an organisation is bringing the communication, a designated person or a few people from the organisation should keep in touch with the child throughout the process, ensuring as far as possible that s/he knows about and understands any developments, and should be available for the child to contact for any reason.

2.1.5 The violation

Ideally, the victim would be a child who has experienced corporal punishment in the family home. Such a case would be most likely to lead to a clear recommendation on prohibition in all settings of children's lives. However, cases in which children have experienced corporal punishment in other settings of their lives – schools, care settings and the penal system – could also be suitable. The corporal punishment experienced must have been legal – not unlawful under legislation prohibiting severe or injurious corporal punishment, for example, or under general legal provisions prohibiting assault or other forms of violence – and must have taken place after the state accepted the communications procedure (see [section 1.4](#)).

It might be possible to bring a communication on behalf of a child or children who has not experienced corporal punishment, or who experienced it before the state accepted the communications procedure. Such a communication would focus on the risk to children posed by the lawfulness of corporal punishment, and would need to show how the child or children are victims of this risk.

It is important to be clear with children and their parents/carers that in all cases, the communication is against the state and not against the adults who inflicted the corporal

punishment. The communication would focus on the failure of the state to prevent the corporal punishment and provide a legal remedy for the victims.

2.1.6 Parental consent and involvement

The consent of children's parents should not in principle be required for children to bring a communication: children are independent holders of human rights and have a right to a remedy for violations of those rights; any condition that parental consent is required could in itself be a breach of the child's rights. But in practice it will be difficult for many children to take action without their parents' or carers' consent. Where the corporal punishment which is the subject of the communication was inflicted by parents themselves, consent may pose a problem and could cause strife within the family which the child does not want. However, there are some situations in which parental consent should not pose a problem; these include communications by or on behalf of a child or children:

- whose parents/carers consent to a communication being brought about corporal punishment they inflicted in the past (many adults regret using corporal punishment and may welcome the opportunity to help to get it banned)
- in the care of a family member who consents to a communication being brought about corporal punishment which was inflicted by another family member
- in alternative care, who experienced corporal punishment in their family home prior to entering care.

The perpetrator would be named in the communication. However, where the perpetrator is a parent, other family member or carer of a child, and perhaps also in other circumstances, it is both possible and important (for the child's privacy) to keep their identity confidential. As for child victims, this means that their identity would be known to the committee and to the state, but not made public.

The perpetrator would not be expected to contribute anything to the communication or to communicate in any way with the committee. As noted in [section 2.1.5](#) above, it must be emphasised that the communication is against the state which allows corporal punishment, not the particular perpetrator of it; there will be no repercussions, penal or otherwise, arising from the communication for the perpetrator.

2.2 Admissibility

Committees consider communications in two stages (usually, in practice, these two stages take place during the same session of the committee – see [section 2.4](#) for more detail). First, the committee decides whether the case is **admissible** (i.e. whether the case meets the criteria which would allow the committee to consider it). If the case is found to be inadmissible, it will not be considered further. Only if the committee decides that the case is admissible can it progress to the next stage: consideration of the **merits** of the case (i.e. considering whether rights under the relevant treaty have been violated in this case). It is therefore important in preparing the communication to ensure that the admissibility requirements are met.

The admissibility requirements (which, except where otherwise noted, apply to all communications procedures covered by this guide) are:

1. The communication must be made **in writing**, or, for CRPD communications, an alternative format such as audio. For CRC communications, the written submission can be supplemented with non-written materials.
2. The communication must **not be anonymous**. However, the identity of the victim can and should be kept confidential (in which case it will be known only to the committee and the state) unless they decide otherwise – see [section 2.1.3](#)).
3. The communication must be brought by or on behalf of victim(s) of the violation. In the case of corporal punishment of children, this means that the communication must be brought **by or on behalf of a child or children whose rights have been violated by the legality of corporal punishment** (see [section 2.1.1](#))
4. The violation of rights which the communication is about must have occurred **after the date on which the state accepted the communications procedure** (the Global Initiative can supply this information; see also the table in [section 1.4](#)).
5. The communication must be sufficiently **substantiated**. This means that it must contain detailed factual information and explanation about the alleged violation of the child's (or children's) rights.
6. The communication must not be an **abuse of the process**: it must be a serious claim about an alleged violation of the child (or children's) rights.
7. The case must **not be or have been under examination by another international mechanism** – communications can only be submitted under one procedure.
8. Before the communication is submitted, **all available and effective domestic remedies must have been exhausted**. This means the communication must show that it has not been possible to resolve the rights violation within the state's legal system. The purpose of this rule is to ensure that these international communications procedures are only used when violations cannot be effectively challenged at national level (and also thus to encourage states to develop effective national remedies) and to ensure that the state is aware of the alleged violation of rights and has had a chance to prevent or redress it. Where, as in most states worldwide, corporal punishment of children is clearly lawful and is widespread and socially accepted, it cannot be argued that the state is unaware of the situation or has not had the opportunity to remedy it. Moreover, the fact that corporal punishment is lawful means that children have no possibility of a remedy for the violation of their rights under national law. It is therefore not possible for children or their representatives to resolve this violation of their rights within the state: **no effective domestic remedies are therefore available**. The lack of an effective domestic remedy is itself a violation of children's rights and would be likely to form part of the communication. Information about the availability, effectiveness and exhaustion of domestic remedies must be included in the communication; the Global Initiative can help with this.

2.3 Writing the communication

This section contains information on the likely contents of a communication on corporal punishment. It is not intended to be a complete guide to writing a communication but to give a general idea of the kind of information that is likely to be needed and to demonstrate that it does not have to be a very complex or time-consuming process. A lawyer or other person familiar with the law may be needed to help with some sections of a communication, particularly those on national law and the exhaustion of effective domestic remedies. **The Global Initiative can also provide some of the information needed and is able to advise on and to help with drafting communications. Contact elinor@endcorporalpunishment.org.** The following list suggests the contents of a communication on corporal punishment.

- Details about the author of the communication (the person or organisation who is submitting it). This can be the victim or a person or organisation representing them (see [section 2.1.4](#)). If the author is not the victim, details about the victim must also be provided.
- A description of how the victim's rights have been violated by the legality of corporal punishment, identifying which provisions of the relevant treaty have been violated.
- Details on the legality of corporal punishment in the state in question. Much of this information is already held by the Global Initiative.
- Information on the availability, effectiveness and exhaustion of domestic remedies (see [section 2.2](#)).

An analysis of the relevant committee's past statements on corporal punishment in general comments, recommendations to states and possibly jurisprudence from previous communications on related issues would also be a useful part of the communication. The Global Initiative can provide this information.

There is a [form](#) which can be used to submit communications under CAT, CRPD and ICCPR. Use of this form is optional.

An example of a communication can be seen in Appendix 5 of Australian Human Rights Commission (2011), *Mechanisms for advancing women's human rights*, Sydney: AHRC ([PDF/Word](#)).

2.4 The procedure

This section summarises the process followed when committees consider communications. Except where otherwise noted, the process is the same for all communications procedures covered by this guide.

1. A communication is submitted.
2. It is registered – formally listed as a case for consideration by the relevant committee. If it appears to meet all admissibility criteria and to be sufficiently substantiated it is registered – formally listed as a case for consideration by the relevant committee. Before registration the author may be requested to submit additional information.

3. At this stage or later in the process, the committee can request the state to take interim measures to prevent irreparable damage to the victim.
4. The communication is transmitted to the state and the state is requested to submit its observations on the admissibility and merits of the communication within a set time frame (usually six months).
5. The committee may ask the person or organisation who submitted the communication (the author) or the state for further information. Both the state and the author may be offered the opportunity to comment on any information provided by the other party.
6. The CAT, CRC, CRPD and ICESCR committees may use information from parties other than the author and the state (for example, UN agencies) in considering the communication. Under the CRC procedure, the author and the state can recommend that the committee consult particular independent experts, and third parties can submit information regarding the communication (however, it may not be publicly known that a communication is being undertaken: the committee will not make any information public while a communication is being considered and it can request the author and the state to keep information about it confidential).
7. The CAT and CRC committees may hold an oral hearing with the author and/or the state (however oral hearings have very rarely been held by the CAT committee). Other committees do not hold oral hearings.
8. The committee considers the admissibility of the communication. If the committee decides that the communication is inadmissible the procedure ends. If it considers that the communication is admissible, it then considers the content of the communication (its “merits”) and decides whether a violation of rights has occurred. Typically, the merits of a communication are considered during the same session that decided that it was admissible and the committees’ views on admissibility and merits are issued together (the author and state are not informed of the decision on admissibility separately from any decision on merits). It is possible, although unusual, for committees to consider the admissibility and merits of a communication separately. In this case, the author and the state will be informed of the decision to declare the communication admissible before the decision on the merits is made.
9. The committee issues its views on the communication. **The views are the main outcome of the communications procedure** – similar to a judgment in a court case. If the committee decides that a violation of rights has occurred, the views typically contain recommendations to the state about redressing the violation and preventing future violations. In a communication on corporal punishment of children, it is hoped and expected that the views would contain recommendations to prohibit it. If no violation is judged to have taken place, the views state this and the procedure ends.
10. If the committee has decided that a violation of rights has taken place, it can follow up on the results of the communication. The state is required to submit information on the actions it has taken in the light of the committee’s views and recommendations on the communication, usually within 6 months. Committees can then ask the state for further information until a satisfactory solution is reached.

The entire process (from the initial submission of the communication to the committee's recommendations) can take several years, for example usually 2-4 years for CAT and 3-4 years for ICCPR.

A flowchart showing the process of the consideration of a communication can be found in Giffard, C. (2000), [*Torture Reporting Handbook: How to document and respond to allegations of torture within the international system for the protection of human rights*](#), Colchester: University of Essex Human Rights Centre, available in several formats and languages.

3 How to use inquiry procedures

This section covers inquiry procedures under the CAT, CRC, CRPD and ICESCR.

3.1 Admissibility

In an inquiry procedure, a committee can investigate and make recommendations on grave or systematic violations of rights.

Under the CRC, CRPD and ICESCR, **grave or systematic violations** of any of the rights set out in the relevant treaty can be the subject of an inquiry. Since there have not yet been any inquiries under these procedures, no jurisprudence about the meaning of “grave” and “systematic” for these treaties is available. However, jurisprudence on inquiries by the Committee on the Elimination of Discrimination against Women (CEDAW) suggests that a grave violation is a “severe abuse of fundamental rights”⁷ and a systematic violation is a violation which “is not an isolated case, but rather a prevalent pattern in a specific situation; one that has occurred again and again, either deliberately with the intent of committing those acts, or as the result of customs and traditions, or even as the result of discriminatory laws or policies, with or without such purpose”⁸.

Using these definitions, corporal punishment constitutes a grave and systematic violation of children’s rights in many states worldwide.

The CAT inquiry procedure can only be used to investigate an alleged **systematic practice of torture**, and not violations of any of the other rights under CAT. A systematic practice of torture means that torture is “habitual, widespread and deliberate in at least a considerable part of the territory in question”⁹. Torture is “any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity” (CAT article 1). Cruel, inhuman or degrading treatment or punishment which does not amount to torture cannot be investigated under the CAT inquiry procedure.

Although the threshold of what treatment is defined as “torture” is high, in some cases corporal punishment may constitute a systematic practice of torture, particularly where the corporal punishment experienced is severe and is inflicted in institutional settings such as schools, care settings or the penal system.

Unlike a communication, an inquiry does not require a specific victim or victims to be identified. A submission could be made on behalf of a large group of children (for example,

⁷ Australian Human Rights Commission (2011), *Mechanisms for advancing women’s human rights: A guide to using the Optional Protocol to CEDAW and other international complaint mechanisms*, Australian Human Rights Commission

⁸ See note 7

⁹ Giffard, C. (2000), *Torture Reporting Handbook: How to document and respond to allegations of torture within the international system for the protection of human rights*, Colchester: University of Essex Human Rights Centre

many children with disabilities experiencing corporal punishment in a particular type of institutional setting, children who have been subjected to corporal punishment as a sentence for crime or, for the CRC, simply all children subject to corporal punishment in a particular state) without individual children being identified. In theory, information can be submitted by anyone, including anonymously – unlike communications, inquiries do not have an author – although in practice submissions are usually made by NGOs and it is very helpful to provide contact details.

If a particular victim of an alleged violation has already been identified, then a communications procedure is likely to be a better choice. However, contact the Global Initiative for more information and to discuss which procedure is appropriate:

elinor@endcorporalpunishment.org.

3.2 Writing the submission

Inquiry procedures have been used far less than communications procedures (for example, as at February 2013 there have been fewer than 10 inquiries under CAT but more than 500 communications have been or are being examined). There is therefore less information and guidance available about the contents of a submission which seeks to prompt an inquiry than is available about the contents of communications. As a guide, however, a submission on corporal punishment of children would probably contain at least the following elements:

- Evidence of the prevalence and nature of corporal punishment of children which clearly shows how it violates children's rights. For example, this could take the form of one or several research studies or other documentation of a large number of cases of corporal punishment. The information must be reliable: in practice this might mean that the studies or documentation are carried out and/or published by reputable organisations.
- Details on the legality of corporal punishment in the state in question. Much of this information is already held by the Global Initiative.
- A statement of which provisions of the relevant treaty have been violated, including an analysis of the relevant committee's past statements on corporal punishment in general comments, recommendations to states and possibly jurisprudence from previous communications and inquiries on relevant topics. In the case of CAT, the submission would need to demonstrate that the corporal punishment experienced by children in this state, in at least one setting, amounts to a systematic practice of torture, with reference to the committee's past views on what constitutes torture. The Global Initiative can provide much of this information.
- Suggestions of relevant organisations and individuals that the committee could contact and places to visit.

The Global Initiative can provide some of the information listed above and is able to advise on and to help with drafting submissions. Contact

elinor@endcorporalpunishment.org.

Details of the materials submitted for inquiries under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women are available on the [Optional Protocol to CEDAW website](#) – providing an example which may be useful for submissions for inquiries under other procedures.

3.3 The procedure

1. Information is received by the committee.
2. The committee decides whether the information is reliable and indicates grave or systematic violations of rights, or, in the case of CAT, whether it contains well-founded indications that torture is being systematically practised.
3. The committee asks the state to submit observations on the information.
4. The committee may ask others, including non-governmental organisations and individuals, for further information.
5. The committee decides whether to establish an inquiry and, if it decides to establish one, designates a member or members to carry it out.
6. The member(s) may request information from the state. With the state's consent, they may visit the state. Visits can include oral hearings.
7. The members' findings are examined by the committee and then transmitted to the state. **The findings are the principal result of the inquiry procedure.** They state whether the committee believes that grave and systematic violations of the treaty have taken place and, if so, include recommendations on how these violations can be prevented in future. Even if a committee concludes that grave and systematic violations have not taken place, it may still issue recommendations. In an inquiry on corporal punishment, it is hoped and expected that the findings would include a recommendation to prohibit and eliminate it.
8. The state is asked to respond to the findings, usually within six months.
9. The committee may publish a summary of the inquiry and its results in its annual report. With the State's consent, the committee can make public the full report of the inquiry. This is the only stage at which information on the inquiry is made publicly available.
10. The committees may ask the state to provide further information in its future examinations under the relevant treaty.

CAT inquiries so far have taken 3-6 years to complete.

Inquiry procedures involve far less contact with the person who submitted the information than communications procedures. The procedures are confidential until the committee publishes a summary of the inquiry (step 9 above). This means that organisations making a submission to prompt an inquiry will not necessarily be told whether an inquiry is established or kept informed of the progress of the procedure (although if an inquiry is carried out they may of course be asked for further information as part of the procedure described above).

4 Advocacy to accompany the use of communications and inquiry procedures

The use of communications and inquiry procedures is just one strategy for pursuing and achieving prohibition. It can be combined with a variety of other linked advocacy strategies at national level. These could include:

- ensuring that the law reforms needed to prohibit all corporal punishment are identified and drafted
- ensuring that answers to the common concerns about and arguments against prohibition are formulated and disseminated
- building an alliance of supportive organisations to campaign on the issue – including, for example, national and international NGOs, the NHRI and any similar bodies, professional organisations, faith groups and others
- lobbying government and parliament, including directly approaching the relevant government ministries and working with parliamentarians to raise the issue in parliament.

For guidance on national advocacy for prohibition, contact the Global Initiative:
elinor@endcorporalpunishment.org.

Appendix: Sources of further information on communications and inquiry procedures

Publications

- **Australian Human Rights Commission (2011), *Mechanisms for advancing women's human rights*, Sydney: AHRC. Available in [PDF](#) and [Word](#).** Guide intended for advocates and lawyers, focussed primarily on the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, but also covering procedures under the CAT, ICCPR and CRPD. Includes an example communication (see Appendix 5).
- **Giffard, C. (2000), *Torture Reporting Handbook: How to document and respond to allegations of torture within the international system for the protection of human rights*, Colchester: University of Essex Human Rights Centre. Available in several formats and languages.** Guide on taking action in response to allegations of torture or ill-treatment, covering the CAT and ICCPR communications procedures as well as a wide range of other UN and regional procedures.
- **International Disability Alliance [n.d.], *IDA Factsheet on the Optional Protocol to the CRPD*, IDA.** Guide to using the CRPD communications procedure.
- **Joseph, S. et al (2006), *Seeking Remedies for Torture Victims: A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies*, Geneva: World Organisation Against Torture (OMCT). Available in several languages.** Handbook designed to give practical guidance to persons seeking redress for torture and other ill-treatment before the United Nations human rights treaty bodies, including comprehensive guidance to the CAT and ICCPR communications procedures.
- **Office of the High Commissioner for Human Rights (2008), *Working with the United Nations Human Rights Programme: A Handbook for Civil Society*, NY & Geneva: OHCHR. Available in several languages.** Guide by the Office of the High Commissioner of Human Rights to working with the UN human rights system; part VII covers communications under the CAT, ICCPR and CRPD, among other procedures.

Websites

- The [Office of the High Commissioner of Human Rights website](#) gives details about communications and inquiry procedures, including where to send submissions.
- The [Child Rights International Network "Mechanisms for Children's Rights" webpage](#) provides a comprehensive guide to the international, regional and national mechanisms which can be used for children's rights.
- The [Optional Protocol to CEDAW website](#) (unofficial) includes a [page](#) which gives details of the materials submitted for inquiries under the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women – providing an example which may be useful for submissions for inquiries under other procedures.