



Opinion by
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Children's complaints to the UN could embarrass Canberra, but should be heard

Is the Australian government scared of children? There can be no other explanation for why we have refused to sign on to the new system that allows children to bring complaints of human rights violations to the UN.

Australia, along with almost every other country in the world, has ratified the UN Convention on the Rights of the Child. This treaty is the benchmark for how we should treat our children. It includes provisions relating to a child's right to education and healthcare, to be protected from abuse and exploitation and to participate in decisions relating to matters that affect them.

Until this week, these international laws have largely been unenforceable. There was no mechanism permitting children to bring a complaint to the UN about an alleged violation of their child rights. However, the Third Optional Protocol to the Convention on the Rights of the Child changed all that, and there is now a process whereby children can seek a remedy for breaches of their rights.

If a child has been unable to obtain a resolution for a rights violation in the Australian legal system, the new Optional Protocol empowers them to seek a remedy in the international arena. This new process is nothing like taking the government to court, because there is no trial, judge or jury. Rather, the child makes a written complaint to the UN Committee on the Rights of the Child, which consists of 18 child rights experts. The government is invited to respond in writing to the allegations. After considering both the complaint and the response to it, the committee gives a written decision. Nobody appears in person; it is done entirely "on the papers".

The convention defines children as anyone below the age of 18. A child wishing to claim that their rights have been violated, may, depending on their age, need assistance in preparing a written complaint. The UN is aware of the risk of manipulation of children by those acting on their behalf, and is developing procedural safeguards to guard against such manipulation, including refusing to hear a complaint if it does not believe it is in the child's best interest.

The nature of international human rights law is that it only applies to countries that agree to be bound by it. So far, 10 countries have agreed that children in their jurisdiction can bring a human rights complaint to the UN. These include Germany, Portugal, Spain and Thailand. A further 45 countries have indicated their intention to sign onto this Optional Protocol.

So why is Australia absent from this long list of countries willing to allow their children to seek a remedy for breaches of their rights? What is our government afraid of?

Is it worried that children held in immigration detention centres might bring complaints regarding their treatment? Certainly the Australian Human Rights Commission's current inquiry into children in detention centres suggests it is a fertile ground for complaints by children. The heart-wrenching pictures that children on Christmas Island have drawn leave no doubt that they are suffering as a result of their prolonged detention in a harsh environment. This would appear to be in violation of our obligations under the Convention on the Rights of the Child to detain children only as a last resort and to ensure they are protected from harm.

There may also be indigenous children who would like to take a complaint to Geneva. In 2012, the UN Committee on the Rights of the Child, in its review of Australia's compliance with the treaty, recommended the Australian government "undertake all necessary measures to ensure that all children enjoy the same access to and quality of health services with special attention to children in vulnerable situations, especially indigenous children."

If indigenous children suffer systemic disadvantage, and are not given the same opportunity to access quality healthcare as other Australian kids, this could form the basis of a complaint to the UN.

The committee also raised concerns about whether the Australian government was fully respecting "the rights of Aboriginal and Torres Strait Islander children to their identity, name, culture, language and family relationships". Failure to protect and preserve Indigenous children's identity could also form the basis of a complaint to the UN.

Children with disabilities are another group that might be keen to take a complaint of human rights abuses to the UN. In 2011, the Productivity Commission found that disability support was "underfunded, unfair, fragmented and inefficient, and gives people with a disability little choice and no certainty of access to appropriate supports, with children with disabilities frequently failing to receive crucial and timely early intervention services, support for life transitions, and adequate support for the prevention of family or carer crisis and breakdown."

Too often children with disabilities are unable to access basic services such as education, and are treated with little respect for their rights.

In 2012, the Attorney-General's Department did hold a public consultation on whether to sign the Third Optional Protocol, and received numerous submissions in support. However, since that time, there has been nothing but silence from the government on this issue.

Our recently appointed national children's commissioner, Megan Mitchell, has urged the government to sign up to the new UN complaints system, saying that silencing the voices of children is not the answer; we need to allow children to speak up.

With the significant potential for complaints of human rights violations by children, it is not surprising that the Australian government is scared that children in Australia might bring complaints of human rights violations to the UN. We are clearly failing to fully protect children's rights; rights that we have already told the international community we will respect.

But it would be better if the Australian government, instead of resisting input from the UN Committee on the Rights of the Child, recognised it as an opportunity to receive expert advice about how we can better protect children. After all, there is little point in signing UN human rights treaties if we are not willing to implement these rights, and be held to account if we don't.

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