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HUMAN RIGHTS COMMITTEE

Eighty-ninth session

12 – 30 March 2007

**DECISION**

**Communication No. 1355/2005**

<u>Submitted by:</u>	Humanitarian Law Center
<u>Alleged victim:</u>	X
<u>State Party:</u>	Serbia
<u>Date of communication:</u>	23 December 2004 (initial submission)
<u>Document references:</u>	Special Rapporteur's rule 97 decision, transmitted to the State party on 1 February 2005 (not issued in document form)
<u>Date of adoption of decision:</u>	26 March 2007

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\* Made public by decision of the Human Rights Committee.

*Subject matter:* Sexual abuse of a minor

*Procedural issues:* Standing to represent the victim

*Substantive issues:* Cruel, inhuman or degrading treatment; arbitrary or unlawful interference with privacy; rights of the child

*Articles of the Covenant:* articles 7, 17, and 24, paragraph 1, taken alone and read in conjunction with article 2, paragraphs 1 and 3

*Article of the Optional Protocol:* article 1

[ANNEX]

**ANNEX**

DECISION OF THE HUMAN RIGHTS COMMITTEE UNDER THE  
OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON  
CIVIL AND POLITICAL RIGHTS

Eighty-ninth session

concerning

**Communication No. 1355/2005\*\***

Submitted by: Humanitarian Law Center  
Alleged victim: X  
State Party: Serbia  
Date of communication: 23 December 2004 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 26 March 2007,

Adopts the following:

**DECISION ON ADMISSIBILITY**

1.1 The author of the communication, dated 23 December 2004, is the Humanitarian Law Center, a non-governmental organization which monitors and investigates human rights violations in Serbia. It submits the complaint on behalf of X, a minor, born in 1992, a citizen of Serbia. The author claims violations of articles 7, 17, and 24, paragraph 1, each taken alone and read in conjunction with article 2, paragraphs 1 and 3, of the Covenant by Serbia. The Optional Protocol entered into force for Serbia on 6 December 2001.

1.2 On 31 January 2005, the Special Rapporteur on New Communications and Interim Measures rejected the requests for interim measures to urge the State party to offer protection to the witnesses named in the complaint, to encourage the State party to prevent further interaction

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\*\* The following members of the Committee participated in the examination of the present communication: Mr. Abdelfattah Amor, Mr. Prafullachandra Natwarlal Bhagwati, Ms. Christine Chanet, Mr. Maurice Glèlè Ahanhanzo, Mr. Yuji Iwasawa, Mr. Edwin Johnson, Mr. Ahmed Tawfik Khalil, Mr. Rajsoomer Lallah, Ms. Zonke Zanele Majodina, Ms. Iulia Antoanella Motoc, Ms. Elisabeth Palm, Mr. José Luis Pérez Sanchez-Cerro, Mr. Rafael Rivas Posada, Sir Nigel Rodley, Mr. Ivan Shearer and Ms. Ruth Wedgwood.

between the perpetrators of the sexual abuse and the victim, and to urge the State party to provide to the victim adequate counselling and continued supervision, as may be necessary.

1.3 On 27 September 2005, the State party requested that the admissibility of the communication be examined separately from the merits of the communication. On 27 September 2005, the Special Rapporteur on New Communications, on behalf of the Committee, determined that the admissibility and the merits of this case should be considered together.

### **Factual background**

2.1 On 15 November 2002, X, a Roma boy aged 10, entered a bar in the village of A, where he met Vladimir Petrašković and Miodrag Radović. Petrašković invited X to drink beer, as a result of which he became intoxicated. Both men then obliged X to perform fellatio on them. Shortly afterwards, three other men named Aleksandar Janković, Maksim Petrović and Vojislav Brajković joined the table and the child was obliged to perform fellatio on all five men. The men and the child then left the bar and went to a discotheque where Radović urinated on the child's head. Thereafter, the men took the child to another bar where they obliged him to perform fellatio on all of them and urinated in his mouth. They threatened him not to say a word to anyone.

2.2 W, a public health nurse working in A learnt about the incident two days later. She met with X who recounted the events described above. The nurse noticed that the boy's mouth was swollen. The following day, she persuaded X to report the incident to the police. In early December 2002, Miroslav Lukic, President of the Municipal Court of A, mentioned X's case to the Public Prosecutor who had not yet been approached by the police.

2.3 On 27 December 2002, the victim submitted a complaint against the five men to the police. As a result, on 9 January 2003, the Office of the Požarevac District Public Prosecutor requested that the Požarevac District Court investigate the case. From 13 January 2003 onwards, the Humanitarian Law Center (hereinafter the HLC) acted as X's counsel. On 14 January 2003, the District Court decided to investigate Vladimir Petrašković and Miodrag Radović. By then, both men had already fled the country. Miodrag Radović was arrested in Austria and extradited to Serbia. On 24 January 2003, the District Court heard 13 witnesses amongst whom only X's parents confirmed his story. After the victim changed his testimony on 5 February 2003, the District Public Prosecutor dropped the charges on 5 March 2003 and the District Court cancelled its investigation on 10 March 2003.

2.4 According to the State party, the charges were dropped because of insufficient evidence: the victim had entirely changed his original statement to the police, telling the investigative magistrate that the accused had in fact not committed any offence. Moreover, the witnesses either gave accounts based on hearsay from local residents whose names they did not know, or denied the allegations altogether. Finally, no witness, including W, requested protection from the Office of the Public Prosecutor. According to the author, W testified before the investigating judge on 5 February 2003. She also told the HLC that during the same hearing, X first confirmed that he had been sexually abused, and then, after a break, denied the accusations. Only the retractions were reflected in the court's records. A few weeks later, X contacted W and told her that his parents had forced him to modify his testimony.

2.5 X's story of sexual abuse received extensive media coverage. From January 2003 to June 2004, many articles appeared in the national printed media, focusing among other things, on the public outrage concerning the incident, the closure of criminal proceedings, the intimidation of witnesses and the suspected collusion between the alleged perpetrators and government officers.

2.6 According to the author, from November 2002 onwards, eyewitnesses and other A residents were threatened and bribed to keep silent about the sexual abuse of X by a group of local criminals. In December 2002, X's father received a telephone call from Miodrag Radović who offered him money if the boy changed his story. W, the nurse who testified on two occasions, received many threats. On 28 October 2004, the author submitted a request to the Chief of Public Security at the Ministry of Internal Affairs for police protection for W. This request went unanswered and the threats continued. W then also sought protection from the Chief of Police in Pozarevac, a nearby town. This request was denied.

2.7 In separate legal proceedings, X's parents were convicted of severe neglect of parental responsibility on 27 March 2002 and stripped of their parental rights by the Municipal Court of A on 28 January 2003. X and his five underage siblings were taken into care on 3 February 2003 and Vera Miscevic, a social worker at the Centre for Social Work of A, was appointed as their legal guardian.

2.8 After the charges were dropped by the Office of the Public Prosecutor on 10 March 2003, the victim was given eight days to initiate a private prosecution. The author did so, on his behalf, on 18 March 2003. At a hearing before the investigating judge on 1 April 2003, four additional witnesses were heard. Three of them confirmed that X had been sexually abused. On 9 April 2003, X's parents sought to withdraw the power of attorney from the HLC and abandon the private prosecution. However, by then, they had lost their parental rights over X. The HLC believes that X's parents have received some benefit in exchange for convincing their child not to pursue criminal proceedings against his abusers: the child's father spoke publicly about having been offered something if the child dropped his accusations. Shortly afterwards, the family home contained new furnishings which the parents were formerly unable to acquire.

2.9 On 7 May 2003, the Office of the Public Prosecutor rejected the HLC's request to investigate Aleksandar Janković, Maksim Petrović and Vojislav Brajković who were the three other men involved in the sexual abuse. It also informed Vera Miscevic, the child's guardian, that she could take over the criminal prosecution within eight days. On 16 May 2003, Vera Miscevic gave a power of attorney to the HLC which made another request for a more comprehensive investigation which would cover all five men. On 10 June 2003, she revoked it. As a result, the HLC's request was rejected on 18 June 2003 on the ground that it was not authorised to make such a request. The author filed an appeal with the Court of Appeal Section of the Pozarevac District Court which annulled on 27 June 2003 the decision to terminate the investigation and ordered that it be extended to include all five men. On 29 July 2003, Vera Miscevic granted again a power of attorney to the HLC. On 12 August 2003, she revoked it again and for the last time. From then on, the HLC was barred from participating in the court proceedings and denied access to the case file. On 19 November 2003, the District Court suspended the investigation because the Centre for Social Work, citing the victim's state of health, decided not to pursue the case any further.

2.10 The HLC continued to monitor X's situation after August 2003, but had no information as to the timing or the conditions, if any, attached to the reinstatement of parental authority or whether the Centre for Social Work in A or Požarevac continued to exercise some supervisory responsibility over the child. According to the State party, the Municipal Court of A reinstated parental authority on 17 September 2004.

### **The complaint**

3.1 The author claims a violation of article 7, taken alone and read in conjunction with article 2, paragraphs 1 and 3 of the Covenant. It submits that rape and other forms of sexual assault constitute treatment in violation of article 7.<sup>1</sup> In the present case, the treatment suffered by the victim clearly constitutes a cruel, inhuman and degrading treatment, especially in the light of his personal circumstances such as his age, his membership of the Roma group, his low mental ability and unstable emotional state. The State party should have investigated the incident promptly and impartially, and identified and prosecuted the perpetrators.

3.2 In addition or in the alternative, the author alleges a violation of the victim's right to privacy as protected by article 17, taken alone and read in conjunction with article 2, paragraphs 1 and 3. It recalls that the Committee's jurisprudence establishes that "privacy" includes attacks on dignity<sup>2</sup> and covers an individual's interactions with other persons,<sup>3</sup> including consensual and non-consensual sexual activity.<sup>4</sup> It considers that the treatment suffered by the victim constitutes an arbitrary and unlawful interference with his privacy.

3.3 The author alleges a violation of article 24, paragraph 1, taken alone and read in conjunction with article 2, paragraphs 1 and 3. It argues that States parties are required to adopt such measures of protection as are required by each child's status as a minor. The best interest of the child is the foremost consideration in assessing and addressing the needs of children. The author submits that through its acts and omissions the State party violated article 24, paragraph 1, because the national authorities were clearly not guided by the best interest of the child in making the decisions that affected him.

3.4 The author submits that the victim's abuse occurred against a backdrop of widespread discrimination against members of the Roma community. This factor contributed to the very occurrence of the abuse and the public manner in which it was played out.

3.5 With regard to the lack of express authorisation to represent the victim, the author recalls the Committee allows a communication to be submitted on behalf of an alleged victim when the

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<sup>1</sup> See Communication No. 981/2001, *Casafranca de Gómez v. Peru*, Views adopted on 23 July 2003, paras.2.2 and 7.1.

<sup>2</sup> See Communication No.721/1996, *Boodoo v. Trinidad and Tobago*, Views adopted on 2 April 2002, para.6.7.

<sup>3</sup> See Communication No.453/1991, *Coeriel and Aurik v. The Netherlands*, Views adopted on 31 October 1994, para.10.2.

<sup>4</sup> See Communication No.488/1992, *Toonen v. Australia*, Views adopted on 31 March 1994, para.8.2.

victim is unable to submit the communication personally, especially in cases concerning children. In its jurisprudence, the Committee had been guided not solely by the rules of domestic procedure in matters of standing and representation, but also by “the best interests of the child.”<sup>5</sup> The author also refers to the test applied by the European Commission of Human Rights. When deciding over the standing of a solicitor who had represented minor children in domestic custody proceedings, the Commission examined (1) whether other or more appropriate representation existed or was available; (2) the nature of the links between the author and the child; (3) the object and scope of the application introduced on the victim’s behalf; and (4) whether there were any conflicts of interest.<sup>6</sup> The author submits that no alternative legal representation exists for the victim in this case, since neither the parents, nor the guardian were willing to initiate a private prosecution. It recalls that it was the child’s former legal counsel in the domestic proceedings. As to the object and scope of the application, it notes that the present communication is confined to complaints that the domestic criminal investigation did not comply with standards enshrined in the Covenant. Finally, there are no possible conflicts of interest between the author and the victim in the pursuit of this communication since it addresses matters in which the author was duly authorized to represent the victim at the domestic level.

3.6 The author claims that all effective and adequate domestic remedies have been exhausted and that the State party failed to provide the victim with a legal or any other remedy for the violations he suffered. The HLC alleges that the authorities had sufficient information about the abuse to investigate and prosecute the offenders, but failed to do so. Local and prosecutorial authorities showed no willingness to investigate the case properly, and witnesses were threatened by the alleged perpetrators, with impunity. The Centre for Social Work in A granted and withdrew the power of attorney from the author several times in the span of three months, thereby sabotaging the author's efforts to move the prosecution forward, while the investigating judge granted the author’s request to broaden the investigation only after the appeal (having rejected it twice before) and cancelled the investigation on three occasions before the final cancellation in November 2003.

3.7 The author requests the Committee to urge the State party to reopen the criminal investigation, to interview witnesses in a confidential manner, to protect such witnesses, to punish those responsible for abusing the victim and to provide appropriate psychological support to him. It also requests that adequate compensation be paid to the victim.

### **State party’s submissions on admissibility and merits**

4.1 By note verbale of 8 August 2005, the State party challenged the admissibility of the communication on the ground that the author has no standing before the Committee and that the

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<sup>5</sup> See Communication No.417/1990, *Balaguer Santacana v. Spain*, Views adopted on 15 July 1994, paras.6.1 and 9.2; and Communication No.901/1009, *Laing v. Australia*, Inadmissibility decision adopted on 9 July 2004, para.7.3.

<sup>6</sup> See *S.P., D.P. and A.T v. United Kingdom*, Admissibility decision, Application No. 23715/94 (20 May 1996). See also *P., C. and S. v. United Kingdom*, Application No.56547/00, Admissibility decision (11 December 2001); and *C. and D. v. United Kingdom and S. and others v. United Kingdom*, Applications No.34407/02 and 34593/02, Inadmissibility decision (31 August 2004).

communication is insufficiently substantiated. It argues that the author's submission does not make clear whether a violation of article 2 of the Covenant taken alone or read in conjunction with articles 7, 17, and 24, is also alleged.

4.2 Referring to former rule 90(b) of the Committee's Rules of Procedure and the Committee's past jurisprudence,<sup>7</sup> the State party argues that the communication is inadmissible under article 2 of the Optional Protocol because the author has not justified its authority to submit the complaint on behalf of the victim. It distinguishes the decisions invoked by the author from the present case. The two Committee's decisions and two of the decisions of the European Court of Human Rights concern the standing of parents to submit complaints on behalf of their children where they were not recognized as their legal representatives.<sup>8</sup> In the present case, such a "special bond" between parent and child does not exist between the author and the victim. In the two remaining decisions of the European Court of Human Rights cited by the author,<sup>9</sup> the children were represented by their former counsel. However, counsel had represented the children up to the end of the domestic proceedings. Moreover, counsel's action on behalf of the children was previously or subsequently approved by the children's parents or foster parents. In the present case, the author's power of attorney was revoked before the end of the proceedings, both by the victim's parents and legal guardian. The author's communication to the Committee was never approved by the victim's parents or legal guardian. The author never attempted to obtain such approval. Finally, all decisions invoked by the author involved custody and care procedures, which justified a more extensive interpretation of the criteria for representation, especially since the legal representatives had conflicting interests with the children themselves.

4.3 In any case, the State party submits that the criteria developed by the European Court of Human Rights are not fulfilled in the present case.<sup>10</sup> Firstly, regarding the question of whether other or more appropriate representation exists or is available, it contends that the author got involved with the case only *after* having been alerted by a journalist in January 2003, by which time the initial police investigation was almost completed. The author's power of attorney was revoked for the last time on 12 August 2003, while the investigation continued for another three months until being finally cancelled on 19 November 2003 when the victim denied the allegations for the second time. Appropriate representation other than by the author was thus available at the domestic level. As to the issue of representation before the Committee, the State party submits that other and more appropriate representation is available to the victim through

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<sup>7</sup> See for instance Communication No.128/1982, *U.R. v. Uruguay*, Inadmissibility decision of 6 April 1983; Communication No.78/1980, *The Mikmaq tribal society v. Canada*, Inadmissibility decision of 29 July 1984.

<sup>8</sup> See Communication No.417/1990, *Balaguer Santacana v. Spain*, Views adopted on 15 July 1994, paras.6.1 and 9.2; Communication No.901/1009, *Laing v. Australia*, Inadmissibility decision adopted on 9 July 2004, para.7.3; *P., C. and S. v. United Kingdom*, Application No.56547/00, Admissibility decision (11 December 2001); and *C. and D. v. United Kingdom*, Application No.34407/02, Inadmissibility decision (31 August 2004).

<sup>9</sup> See *S.P., D.P. and A.T v. United Kingdom*, Admissibility decision, Application No. 23715/94 (20 May 1996); and *S. and others v. United Kingdom*, Application No.34593/02, Inadmissibility decision (31 August 2004).

<sup>10</sup> See *S.P., D.P. and A.T v. United Kingdom*, Admissibility decision, Application No. 23715/94 (20 May 1996).



his parents or “any lawyer or NGO in Serbia or in any other country” who has been duly authorized to act on the victim’s behalf.

4.4 Secondly, for reasons explained above, regarding the nature of the links between the author and the victim, the State party submits that although the author acted as counsel for the victim for seven months (with interruptions), this link is not such as to allow the author to continue representing the victim before the Committee. It adds that the author’s lack of knowledge as to the victim’s present circumstances proves that whatever links may have existed between the author and the child, they no longer exist. Thirdly, the State party notes that while the author claims that the object and scope of the communication is confined to complaints about the domestic criminal investigation not complying with the standards contained in the Covenant, it is actually much broader.

4.5 Finally, on the existence of any conflicts of interest, the State party submits that even though the author may believe that it is acting in the victim’s best interest, the author is not necessarily the best, nor the only authority to do so. It claims that there were no conflict of interest between the child and the Centre for Social Care which was the victim’s legal guardian from 28 January 2003 until his parents’ legal rights were restored. The Centre had in fact acted in the victim’s best interest by revoking the author’s power of attorney because the child’s involvement in the proceedings would disturb his present condition.

4.6 By note verbale of 4 July 2006, the State party reiterated its arguments on the admissibility of the communication and commented on its merits. It recalls that article 14, paragraph 2, of the Covenant provides that everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law; and that the District Court of Pozaverac has found insufficient evidence to continue the criminal investigation against the five alleged perpetrators. It refutes the author’s claim that the treatment of the alleged victim by the competent authorities was discriminatory because of his Roma ethnic origin or social status.

4.7 The State party concedes that, during the investigation, the parents of the victim had first given and then revoked the power of attorney to a lawyer from the HLC, changed their statements, tried to obtain money from the suspected perpetrators in return for favourable statements and influenced the alleged victim in various ways, thus compromising the credibility of their evidence and prolonging the proceedings. As a result, the authorities have taken prompt measures to have the alleged victim and his five siblings removed from this “unhealthy family environment”. Steps were taken to ensure their rehabilitation and social integration. To that end, financial and material assistance was provided to the parents several times in 2003 and 2004. Following from the above, the State Party believes that there is no violation of any of the rights contained in articles 7, 17, 24, paragraph 1, read alone or in conjunction with article 2, paragraphs 1 and 3.

#### **Author’s comments**

5.1 By letter dated 11 September 2006, the author argues that it should be allowed standing to represent the victim before the Committee. It recalls that the circumstances of the case clearly demonstrate that the victim is unable to submit the communication personally, which is a situation provided for in rule 96 of the Committee’s Rules of Procedure. With regard to the State

party's argument that the link between the author and the victim is not as close as to qualify the former to act on the latter's behalf, the author submits that while there is no biological link between itself and the victim, it acted as legal counsel for the victim and demonstrated a sustained willingness and ability to seek redress for the victim. Neither the parents, nor the legal guardian have acted in the best interests of the victim.

5.2 As for the State party's argument that the author is neither the sole, not the most competent authority to determine the best interests of the victim, the author recalls that it has already submitted many communications before several human rights treaty bodies and that this experience cannot be compared with that of any other organization in Serbia. This renders the author qualified to assess the reasons for instigating proceedings from the point of view of any victim. In the present case, the victim's interests are that those who sexually abused him should be punished.

5.3 With regard to the State party's observations on the merits of the communication, the author reiterates its earlier arguments. It noted that W is the only person who has been willing to testify about all the circumstances of the incident and that, as a result, she has received many threats. On 13 March 2006, she was even found guilty by the Belgrade Second Municipal Court of defaming Miodrag Deimbacher (formerly Radović), whom she had accused on national television of having sexually abused the child. By letter dated 19 December 2006, the author informed the Committee that this was upheld by the Belgrade District Court on 7 July 2006.

### **Issues and proceedings before the Committee**

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with article 93 of its rules and procedures, decide whether or not it is admissible under the Optional Protocol of the Covenant.

6.2 The Committee has ascertained that the same matter is not being examined under another procedure of international investigation or settlement for the purposes of article 5, paragraph 2(a), of the Optional Protocol.

6.3 With regard to the author's standing to represent the victim, the Committee recalls that rule 96(b) of its Rules of Procedure provides that a communication should normally be submitted by the individual personally or by that individual's representative, but that a communication submitted on behalf of an alleged victim may, however, be accepted when it appears that the individual in question is unable to submit the communication personally. Where it is impossible for the victim to authorise the communication, for instance where the victim has been killed, had disappeared or is held incommunicado, the Committee has considered a close family connection to be a sufficient link to justify an author acting on behalf of an alleged victim.<sup>11</sup> However, it has not considered that an individual had standing to act on behalf of a personal friend or an

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<sup>11</sup> See for instance Communication No.5/1977, *Valentini de Bazzano v. Uruguay*, Views adopted on 15 August 1979, para.5; and Communication No.1196/2003, *Bourchef v. Algeria*, Views adopted on 30 March 2006, para.1.1.

employee where no authorisation had been obtained from the victim.<sup>12</sup> In this regard, the Committee recalls that it

“has always taken a wide view of the right of alleged victims to be represented by counsel in submitting communications under the Optional Protocol. However, counsel acting on behalf of victims of alleged violations must show that they have real authorization from the victims (or their immediate family) to act on their behalf, that there were circumstances which prevented counsel from receiving such authorization, or that given the close relationship in the past between counsel and the alleged victim it is fair to assume that the victim did indeed authorize counsel to proceed with a communication to the Human Rights Committee.”<sup>13</sup>

6.4 The Committee recalls that children must generally rely on other persons to present their claims and represent their interests, and may not be of an age or capacity to authorise any steps to be taken on their behalf. A restrictive approach should thus be avoided. Indeed, it has been the constant practice of the Committee to consider that a parent has standing to act on behalf of his or her children without explicit authorisation from them.<sup>14</sup> While a parent is the most appropriate person to act on behalf of a child, the Committee does not exclude that the counsel of the child in the domestic proceedings may continue to present the child’s claims to the Committee. Nonetheless, the Committee must still examine, as mentioned above, whether counsel has authorisation from the child (or his or her immediate family) to act on his or her behalf, whether there are circumstances which prevented counsel from receiving such authorization, or that given the close relationship in the past between counsel and the child it is fair to assume that the child did indeed authorize counsel to proceed with a communication to the Committee.

6.5 In the present case, the Committee must decide whether the author which acted as counsel for the child for part of the domestic proceedings has standing to bring a communication to the Committee on his behalf, regardless of the fact that it has no authorisation from the child, his legal guardian or his parents. The Committee notes that the author conceded that it was not authorised to act by the child, his legal guardian or his parents (para.3.5 above). Indeed, the question of instructing the author to submit a communication to the Committee on behalf of the child has not been discussed with the child, his legal guardian or the parents. There is no indication either that the child, who was 12 at the time of the submission of the communication in 2004 and thus likely to be able to give his consent to the presentation of the a complaint, the legal guardian or the parents have, at any time, consented to the author’s acting on behalf of the child.

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<sup>12</sup> See Communication No.436/1990, *Solís Palma v. Panama*, Inadmissibility decision adopted on 18 July 1994, para.5.2; and Communication No.16/1977, *Mbenge v. Zaire*, Views adopted on 25 March 1983, para.5. See also Communication No.565/1993, *R. and M.H. v. Italy*, Inadmissibility decision adopted on 8 April 1994, para.4.2.

<sup>13</sup> Communication No.772/1997, *Y. v. Australia*, Inadmissibility decision adopted on 17 July 2000, para.6.3.

<sup>14</sup> See Communication No.417/1990, *Balaguer Santacana v. Spain*, Views adopted on 15 July 1994, paras.6.1 and 9.2; Communication No.901/1009, *Laing v. Australia*, Inadmissibility decision adopted on 9 July 2004, para.7.3.

6.6 The Committee also notes the author's argument that consent from the child, his legal guardian or his parents could not be obtained because all are under the influence of the alleged perpetrators of the sexual abuse. Nevertheless, the Committee also notes that after receiving the initial submission, it had asked the author to submit a power of attorney from the mother if she has regained parental authority or, if the child still has a legal guardian, to at least indicate consent to the examination of the case. On 14 January 2005, the author explained that it was unable to provide such a power of attorney or agreement for the reasons already spelt out above. There is no indication that the author has sought to obtain informal consent from the child, with whom it is no longer in contact.

6.7 In the absence of express authorisation, the author should provide evidence that it has a sufficiently close relationship with the child to justify it acting without such authorisation. The Committee notes that the author acted as counsel for the child in the domestic proceedings between January and August 2003 with several interruptions. Since the author ceased to represent the child in the domestic proceedings in August 2003, it has not been in contact with him, his legal guardian or his parents. In such circumstances, the Committee cannot even assume that the child does not object, let alone consent, to the author proceeding with a communication to the Committee. Consequently, notwithstanding that the Committee is gravely disturbed by the evidence in this case, it is precluded by the provisions of the Optional Protocol from considering the matter since the author has not shown that it may act on the victim's behalf in submitting this communication.

7. Accordingly, the Committee decides:

- (a) that the communication is inadmissible under article 1 of the Optional Protocol;
- (b) that this decision be transmitted to the State party and to the author.

[Adopted in English, French and Spanish, the English text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

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