Guidelines for Interim measures under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure[1]

1. In accordance with article 6.1 of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure:

   "1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State party concerned for its urgent consideration a request that the State party take such interim measures as may be necessary in exceptional circumstances to avoid possible irreparable damage to the victim or victims of the alleged violations."

2. Interim measures have a dual nature, precautionary and protective. Regarding their protective nature, the measures seek to avoid irreparable harm and preserve the exercise of human rights. Regarding their precautionary nature, the measures have the purpose of preserving a legal situation under consideration by the Committee. Their precautionary nature aims at preserving rights at risk of a grave violation until the Committee can examine the complaint. Its object and purpose are to ensure the integrity and effectiveness of the Committee's decision on the merits and, thus, avoid infringement of the rights at stake, which may adversely affect the useful purpose (*effet utile*) of the final decision. Interim measures also enable the State concerned to implement the final Views and comply with the ordered reparations. Hence, for the purposes of making a decision on the adoption of interim measures, the Committee considers that:

   a. "**exceptional circumstances**" refers to a **grave impact** that an action or omission by a State party can have on a protected right or on the eventual effect of a pending decision in a case or petition before the Committee;

   b. "**irreparable damage**" refers to a violation of rights which, due to their nature, would not be susceptible to reparation, restoration or adequate compensation. This also implies that, in principle, there is no domestic remedy that would be available and effective; and

3. In analyzing those requirements, the Committee considers that the risk or threat must be imminent and can materialize; if the risk is not imminent, the author may request the interim measures at a later stage, when the risk becomes imminent. In any case, the risk or threat of an imminent irreparable damage needs not be proven beyond doubt; rather, the information provided by the alleged victim(s) should enable the Committee to determine *prima facie* (on face value) if an imminent risk of irreparable harm having a grave impact on children's rights exists. For this purpose, the author of a complaint should provide sufficient information on the relevant facts and alleged violations in order to establish an arguable case, and include, where available, supporting documents, such as relevant decisions by national authorities or relevant reports on a country situation, in order to make plausible the existence of a risk.

4. With regard to the gravity of the impact, the Committee recalls that the Convention and its two substantive Optional Protocols impose particular obligations on States in view of the special status of children. Violations of children's rights often have severe and long-lasting effects on their development. The Committee considers that violations that have a grave impact on children's rights in the sense of article 6 of the OPIC are not

[1] Adopted by the Committee on the Rights of the Child at its 80th session (14 January to 1 February 2019).

limited to violations to the right to life or integrity but may extend to all rights enshrined in the Convention and its two substantive Optional Protocols.

5. In the analysis of "irreparable damage", the Committee considers that children are evolving subjects and that certain violations of their rights during that evolution may be impossible to restore, and that no adequate reparation exists. The assessment of the existence of irreparable damage will be done on a case-by-case basis, taking into account the age of the affected children, among other circumstances.

6. In accordance with article 6.2, the Committee recalls that the adoption of interim measures does not imply a determination on admissibility or on the merits of the communication.

7. Under article 6.1 of the OPIC, the Committee may adopt interim measures at its own initiative in the best interest of the child.

8. Interim measures can be adopted at any time of the procedure but it is generally at the registration stage. Since the information on which the Committee relies is at that time preliminary (notably, in the absence of State party's observations), a decision on interim measures can be reviewed in light of further information provided by the parties.

9. The Committee is of the view that interim measures issued under article 6 of the OPIC impose an international legal obligation on State parties to comply. A failure by the State party concerned to implement the interim measures would undermine the effectiveness of the individual communications procedure and render the case moot. Such non-compliance would entail a violation of article 6 of the OPIC, which expressly establishes the Committee's competence to issue interim measures.