

Information Pack

about the Optional Protocol to the Convention on the
Rights of the Child on a Communications Procedure (OP3 CRC)



Ratify OP3 CRC

INTERNATIONAL COALITION FOR THE OPCRC
ON A COMMUNICATIONS PROCEDURE

This information pack was produced by Child Rights Connect for Ratify OP3 CRC – International Coalition for the OPCRC on a Communications Procedure.

ABOUT



The International Coalition provides a platform for coordinated action of national, regional and international NGOs and networks, human rights institutions and other non-governmental bodies that are committed to the rapid entry into force of the OP3 CRC.

The International Coalition was set up in 2012 to raise awareness about the OP3 CRC, share information and ideas to help interested partners work towards ratification of OP3 CRC. It is guided by a Steering Committee composed of regional and international child rights NGOs. It replaced the NGO Working Group that led and coordinated the campaign for the drafting and adoption of the OP3 CRC.¹

ABOUT



Child Rights Connect is an independent, non-profit network that is made up of national, regional and international organisations and coalitions. Our membership covers almost every country in the world.

We are one of the largest international networks for child rights. Our shared aim is to ensure that all children can fully enjoy their rights, which are defined by the Convention on the Rights of the Child (CRC) and its Optional Protocols (OPs).

We were initially set up in 1983 to influence the drafting of the CRC. Since then, we have worked to connect the United Nations human rights system to the daily realities of children's lives.

Why an information pack on the third Optional Protocol to the CRC on a communications procedure (OP3 CRC)?

This Information Pack has been produced by Child Rights Connect to provide all the background information necessary for those interested in knowing more about OP3 CRC.

With the entry into force of OP3 CRC on 14 April 2014, it is crucial that all relevant actors, including children and their defenders as well as States, know about OP3 CRC and understand how it works. This will ensure a rapid ratification of OP3 CRC across the world and effective use of its mechanisms to protect children's rights.

¹ The NGO Working Group was established under the umbrella of Child Rights Connect, based in Geneva, Switzerland

Contents

The information pack contains 6 fact sheets, which can be used separately or as a whole. It also includes a list of abbreviations, the full text of OP3 CRC, a list of additional resources and websites and a glossary explaining the key terms used throughout the pack.

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Visit the International Coalition's website, www.ratifyop3crc.org for all of the latest materials, updates on the work of the Coalition, the membership application, as well as news on the ratification of OP3 CRC sent by members from around the world. If you would like to share some news about OP3 CRC activities in your country, please send an email with your news at info@ratifyop3crc.org.

All interested independent organisations or entities are welcome to apply to join the International Coalition via the membership form accessible on the Coalition's website, www.ratifyop3crc.org.

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Abbreviations

CRC	Convention on the Rights of the Child
UNGA	United Nations General Assembly
HRC	United Nations Human Rights Council
NGO	Non-governmental organisation
Child Rights Connect WG	Working Group of Child Rights Connect
OEWG	Open-ended working group of the United Nations Human Rights Council
OP	Optional Protocol
OPAC	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
OP3 CRC	Optional Protocol to the Convention on the Rights of the Child on a communications procedure
OP-ICESCR	Optional Protocol to the International Covenant on Economic, Social and Cultural Rights
OPSC	Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
UN	United Nations

What is OP3 CRC?

1. A Communications procedure (Art. 5 OP3 CRC)

1. This procedure, also called 'complaints procedure', covers the rights guaranteed under the Convention on the Rights of the Child (CRC), the Optional Protocol to the CRC on the involvement of children in armed conflict (OPAC) or the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography (OPSC). It allows children, groups of children or their representatives, who claim that their rights have been violated to bring a complaint or communication before the relevant 'treaty body', the Committee on the Rights of the Child (the Committee).

The violation must have been committed by a State that is party to the CRC, OPAC and/or OPSC and the State must have recognised the competence of the Committee to receive such complaints through ratification of, or accession to, the Optional Protocol to the Convention on the Rights of the Child on a communications procedure (OP3 CRC).

2. It is a quasi-judicial mechanism: the decisions of the Committee on the communications it receives are not legally binding on the State concerned. However, this does not mean that the State concerned should not comply with them: by becoming a party to OP3 CRC, the State has indeed committed to follow them and provide redress to the victim.
3. Before submitting a communication, the complainant must first 'exhaust domestic remedies', i.e. bring his/her case before national jurisdictions and obtain a final decision, except if s/he can demonstrate that domestic remedies are ineffective or unreasonably prolonged. A communication can only concern facts that occurred after the entry into force of OP3 CRC for the State party concerned. Exceptionally, communications can concern facts that happened before if they continued after that date.



DID YOU KNOW? A communications procedure can be created as part of a core human rights treaty² or as an Optional Protocol (OP) to a core human rights treaty. An OP is a stand-alone treaty that needs to be ratified by States. Since the CRC did not include a communications procedure, it had to be created through a new OP.

2. A friendly settlement procedure (Art. 9 OP3 CRC)

1. The friendly settlement procedure is a tool allowing the parties of a communication, ie. the complainant and the State party concerned, to find a friendly solution to the communication.
2. The Committee will provide its good offices, or assistance with the aim of reaching a friendly settlement.
3. The settlement has to be based on the respect for the obligations set forth in the CRC and/or the OPSC and/or the OPAC.
4. Only an agreement on a friendly settlement reached under the auspices of the Committee closes the consideration of the communication.



DID YOU KNOW? The friendly settlement procedure was created for the first time under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, which was adopted by the UN General Assembly in 2008.

² In the UN, a 'core human rights treaty' is a human rights treaty that also establishes a monitoring committee.

3. An inquiry procedure (Art. 13 OP3 CRC)

1. The inquiry procedure is a mechanism allowing the Committee to investigate allegations of grave or systematic violations of CRC, OPSC and/or the OPAC by a State party to these instruments, if the State concerned has ratified the OP3 CRC and accepted its inquiry procedure.
2. The inquiry procedure is an optional mechanism: paragraph 7 allows States parties to the OP3 CRC to “opt-out” from the inquiry procedure by way of declaration, while paragraph 8 allows States parties that opted-out to withdraw that declaration.
3. If the Committee receives reliable information indicating grave or systematic violations of children’s rights, it can decide to conduct an inquiry.



DID YOU KNOW? Anyone can send information to the Committee alleging grave or systematic violations of children’s rights. No link with a direct victim of a violation is needed. Where needed and with the consent of the State party, the inquiry may also include a visit to its territory by Committee members.

4. An inter-state communications procedure (Art. 12 OP3 CRC)

1. An inter-state communications procedure allows States parties to complain to the relevant treaty body, in this case the Committee on the Rights of the Child, about alleged violations of the treaty by another State party.
2. The inter-state communications procedure is an optional mechanism: it applies only to States parties who have made a declaration accepting the competence of the Committee in this regard (opt-in procedure).



DID YOU KNOW? Since the creation of the inter-state communications procedure in 1965 under the Convention on the Elimination of All Forms of Racial Discrimination, it has never been used.



child rights connect
formerly the ngo group for the crc

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Historical background of OP3 CRC

Key dates of the OP3 CRC³

17 June 2009	The UN Human Rights Council (HRC) created an intergovernmental ‘Open-ended Working Group’ (OEWG) to discuss the idea of a third Optional Protocol (OP) to the Convention on the Rights of the Child (CRC) on a communications procedure. ⁴ The OEWG discussed the proposal in December 2009. ⁵
24 March 2010	Based on the report of the OEWG, the HRC decided to move forward and give the OEWG the mandate to draft the OP. ⁶
16 February 2011	After ten days of negotiations, the OEWG adopted a final draft OP. ⁷
17 June 2011	The HRC adopted the final draft OP and transmitted it to the UN General Assembly (UNGA) for its final adoption. ⁸
19 December 2011	The UNGA adopted the final draft OP to the CRC on a communications procedure, making it a new international treaty. ⁹
28 February 2012	The third OP to the CRC on a Communications Procedure or OP3 CRC was opened for signature and ratification by States during an official ceremony held at the United Nations in Geneva.
14 January 2014	Costa Rica becomes the 10th State to ratify OP3 CRC. The OP3 CRC had been previously ratified by: Albania, Bolivia, Gabon, Germany, Montenegro, Portugal, Slovakia, Spain and Thailand.
14 April 2014	OP3 CRC enters into force.



WHERE ARE WE NOW? To read about the latest updates of the ratification campaign, go to: www.ratifyop3crc.org.

³ To find all the documents submitted throughout the OP3 CRC discussion and negotiation process and the reports of the Open-ended Working Group’s meetings, go to: www.ohchr.org/EN/HRBodies/HRC/WGCRC/Pages/OpenEndedWorkingGroupIndex.aspx

⁴ In June 2009, the HRC adopted a first resolution (A/HRC/RES/11/1) establishing an OEWG to explore the possibility of elaborating a new communications procedure for the CRC.

⁵ In December 2009, the OEWG held a three day meeting (the meeting was initially scheduled to last for five days but had to be shortened) during which State representatives, UN agencies, independent experts, NGOs and other actors discussed different aspects of an OP. For the full report of the session and the submissions made by the experts, see www.ohchr.org/EN/HRBodies/HRC/WGCRC/Pages/OpenEndedWorkingGroupSession1.aspx

For an account of the session day by day, see www.crin.org/resources/infoDetail.asp?ID=21261&flag=event

⁶ In March 2010, the HRC adopted a Resolution (A/HRC/RES/13/3) changing the *mandate* of the OEWG from simply ‘considering’ the need for an OP to actually drafting the procedure. The Resolution also requires the Chairperson to prepare an initial draft of the OP for the next meeting.

⁷ The OEWG met for ten days in December 2010 and February 2011 to draft the new protocol. On 16 February 2011, the OEWG adopted a final draft OP and agreed to transmit this final draft to the UN Human Rights Council for its consideration and adoption.

⁸ To read the resolution, go to: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/17/18

⁹ To read the UNGA resolution and final text of the OP, go to: www.un.org/Docs/asp/ws.asp?m=A/RES/66/138

How was the Optional Protocol on a communications procedure created?

- 1999** Upon the 10th anniversary of the CRC, the Committee on the Rights of the Child (the Committee) decided to “consider initiating discussions on an Optional Protocol to the Convention providing a mechanism for individual communications, to ensure the availability of legal remedies at the international level with regard to the Convention” and encouraged “States parties to support its efforts in this respect”.¹⁰
- 2001** Kindernothilfe, a German child rights NGO, launched an NGO campaign for a new OP to the CRC establishing a communications procedure.
- 2006** The campaign became international as several additional national, regional and international child rights organisations joined Kindernothilfe in the cause of ensuring the availability of legal remedies for children at the international level.
- 2008** The campaign was established as a Working Group (WG) of Child Rights Connect (then the NGO Group for the CRC). Founding organisations include: Child Rights International Network (CRIN), Global Initiative to End All Corporal Punishment of Children, Kindernothilfe, Plan International, Save the Children, SOS Villages International, World Organisation against Torture (OMCT) and World Vision International. An international petition was launched.
- 2009** Child Rights Connect WG started an awareness raising campaign to mobilise support from UN Member States as well as NGOs and UN experts both in Geneva and at national level through expert meetings, joint statements at the UN Human Rights Council (HRC) and lobbying in Geneva and in capitals.
- A ‘core group of friendly States’ was formed and backed the idea of proposing a new OP to the HRC. In June 2009, the HRC established a first “Open-ended Working Group” (OEWG) to “explore the possibility of elaborating” a new OP to the CRC. Child Rights Connect WG presented a joint written submission explaining the added value of such an OP and calling States for the elaboration of this new instrument. The OEWG met during five days in December 2009.
- 2010** In March 2010, the OEWG presented its report to the HRC and the HRC decided to extend the mandate of the OEWG to elaborate a new OP.
- The Chairperson of the OEWG prepared a draft proposal to be used as the basis of the negotiation and circulated it in September 2010. Child Rights Connect WG submitted a joint written submission in October 2010 in reaction to the Chair’s proposal. The OEWG met for a first round of negotiations in December 2010 during five days and Child Rights Connect WG delivered joint oral statements on each item discussed.
- 2011** Following the first round of negotiations, the Chairperson put together a revised draft OP and circulated it in January 2011. Child Rights Connect WG shortly submitted a new joint written submission in reaction to the revised draft OP.
- The OEWG met for its second and final round of negotiations in February 2011 during five days and Child Rights Connect WG delivered joint oral statements on each item discussed. At the end of the fifth day, the OEWG adopted a final draft OP ad referendum.
- In June 2011, the HRC adopted the final draft OP and transmitted it to the UNGA for final adoption.
- In December 2011, the UNGA adopted the final draft OP which became a new international treaty.

¹⁰ See www.ohchr.org/EN/HRBodies/CRC/Documents/Recommandations/ten.pdf p.14

Why is OP3 CRC needed?

"Children will now be able to join the ranks of other rights-holders who are empowered to bring their complaints about human rights violations before an international body"

UN High Commissioner for Human Rights Navi Pillay

For rights to have meaning, all victims must have access to a justice system that will protect their rights and address violations.

States are required to address rights violations in their national justice systems. However, these systems do not always provide adequate solutions. When rights are not sufficiently protected at the national level, it is critical that there be a system to turn to at the international level in order to address violations.

The Convention on the Rights of the Child (CRC) was the only major, international human rights treaty, which did not have a communications (i.e. complaints) procedure. Every other core human rights treaty had a communications procedure in addition to a reporting procedure: these are complementary procedures and just as necessary for achieving the potential of the CRC as for other Conventions and Covenants.

A communications procedure under the CRC allows children and their representatives to address serious violations, like violence, exploitation or discrimination, not resolved at the national level before an internationally elected specialist committee of experts. This expert committee, the Committee on the Rights of the Child (the Committee), will be able to develop an international jurisprudence that will clarify the provisions of the CRC and help States parties to better understand their obligations and how to implement them.

■ OP3 CRC IS THE ONLY COMPLAINTS MECHANISM TO COVER THE FULL RANGE OF CHILDREN'S RIGHTS

While children and their representatives can use the mechanisms already established under other international instruments to pursue many of their rights, those instruments do not cover, separately or together, the full range and detail of rights for children set out in the CRC (the CRC contains many unique rights; see Annex).

Violations of children's rights need to be addressed: it was a matter of serious discrimination that no communications mechanism existed for the full range of children's rights in the CRC. The Optional Protocol to the CRC on a communications procedure (OP3 CRC) not only provides children a mechanism to address violations of their rights, it also strengthens and underpins their status as right holders.

Women, people with disabilities and migrant workers all have communications procedures allowing petitions to be considered by a specialist committee. OP3 CRC allows children's issues to be considered by their "specialist committee", the Committee on the Rights of the Child.

■ OP3 CRC HELPS ENSURE THAT CHILDREN HAVE EFFECTIVE REMEDIES AVAILABLE TO REDRESS VIOLATIONS

The Committee has highlighted that for rights to have meaning, effective remedies must be available to redress violations. It has also emphasised that: "children's special and dependent status creates real difficulties for

them in pursuing remedies for breaches of their rights." (General Comment No. 5).¹¹ When national complaints mechanisms fail to provide an effective remedy for the violation of a child's rights, or do not exist, children and their representatives need an available remedy at the international level.

OP3 CRC fills this gap. It also helps to stimulate the development of more effective national and regional systems for remedies.

■ OP3 CRC HELPS STRENGTHEN THE EFFECTIVE IMPLEMENTATION OF THE CRC AND THE ACCOUNTABILITY OF STATES PARTIES

By ratifying OP3 CRC, States reaffirm that children are full right holders and allow them to seek a remedy at the international level, if violations of their rights could not be solved at national level.

The mechanisms set up under OP3 CRC are quasi-judicial. If the Committee finds that a violation has occurred, it will make concrete recommendations to the States concerned. The recommendations detail specific measures the State can take to address the violations, such as rehabilitation, financial compensation or requests to prosecute the perpetrator(s), and ensure that they will not reoccur. While the recommendations are not legally binding, by ratifying OP3 CRC, States commit to follow them and provide redress to the victim.

■ OP3 CRC INCREASES PUBLIC AWARENESS OF THE RIGHTS OF THE CHILD

The existence and publication of communications, inquiries and views of the Committee under OP3 CRC will serve to promote public awareness, domestically and globally, of children's rights. This has been the case with complaints submitted under existing complaints procedures and, in particular, complaints under the First Optional Protocol to the International Covenant on Civil and Political Rights.

■ OP3 CRC WILL CONTRIBUTE TO DOMESTIC CASE LAW CONCERNING THE RIGHTS OF THE CHILD

Thanks to OP3 CRC, the Committee will be able to produce decisions similar to case-law. The establishment of such jurisprudence on child rights by a Committee of international experts will help the incorporation and effective implementation of child rights at the national level and help States to better understand their obligation to protect, respect and fulfill the rights of children.

In addition, as the first international communication procedure taking into account the special status of children and their need for appropriate representation, OP3 CRC sets a standard and model for other child-sensitive processes at the national, regional and international levels.

National tribunals and institutions dealing with complaints will also be able to base their decisions on the interpretation of child rights given by the Committee and will thus render decisions in better compliance with the international child rights standards applicable in their countries (either by applying those standards directly or by interpreting their national law in accordance with those standards).

Further, the Committee will provide case studies on the application of the best interests of the child, how they should be taken into account and how they should be interpreted in conjunction with other rights of the child. The Committee will also be able to explain how child rights violations should be remedied, including how similar violations could be prevented and how the revictimisation of child victims can be avoided.

¹¹ To access General Comment No. 5:
http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fGC%2f2003%2f5&Lang=en

Thanks to OP3 CRC, children can:

- Bring their individual cases to be considered by the UN Committee on Rights of the Child: a group of 18 independent child rights experts;
- Access a communications mechanism adapted to their specific rights, which will provide concrete recommendations to States about violations incurred;
- Get international recognition of the violations they suffered.

Unique rights for children in the CRC

Some articles in the CRC mirror guarantees established for “everyone” in the International Covenants or other instruments, underlining that these rights apply equally to children. However, many other provisions in the Convention, including the following, provide unique rights for children:

- ✓ Best interests of the child to be a primary consideration in all actions concerning children
- ✓ Obligation to give due weight to children’s expressed views in all matters affecting the child; also to provide opportunity for child to be heard in judicial or administrative proceedings
- ✓ Obligation to ensure maximum survival and development of the child
- ✓ Institutions and services for care and protection of children to conform to established standards
- ✓ Right of the child to know and be cared for by parents
- ✓ Preservation of the child’s identity
- ✓ Right not to be separated from parents unless in best interests with judicial review
- ✓ Obligations to prevent abduction and non-return of children abroad
- ✓ Detailed aims defined for the education of the child
- ✓ Specific protection from sexual exploitation and abuse including child pornography
- ✓ Obligation to ensure the child’s access to information and material from a diversity of national and international sources
- ✓ Right to protection from “all forms of physical or mental violence”
- ✓ Prohibition of life imprisonment of children without possibility of release; arrest, detention, imprisonment of the child only as a last resort and for shortest appropriate period
- ✓ Specific limitations on recruitment and involvement of children in armed conflict
- ✓ Right of access for child to health care services and obligations to take specific measures for health; protection from traditional practices prejudicial to health
- ✓ Distinct aims for juvenile justice systems and rights of children involved

The first two Optional Protocols to the CRC add further unique rights and safeguards.



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formerly the ngo group for the crc

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How does a State become a party to OP3 CRC and when does OP3 CRC become applicable?

Now that the Optional Protocol to the Convention on the Rights of the Child on a communications procedure (OP3 CRC) has been adopted by the United Nations General Assembly (UNGA) and opened to signature and ratification, any State which has ratified or acceded to the Convention on the Rights of the Child (CRC), the Optional Protocol to the CRC on the involvement of children in armed conflict (OPAC) or the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography (OPSC) can sign, ratify or accede to OP3 CRC at the UN in New York.

Step 1: Becoming a party to OP3 CRC

In order to become a party to OP3 CRC, States must demonstrate, through a concrete act, their willingness to be legally bound by the provisions of OP3 CRC. This willingness can be expressed in two different ways:

- By signing and ratifying OP3 CRC
- By acceding to OP3 CRC

Both procedures have the same legal effect.

Note: The process of treaty ratification or accession is determined by national law in each country, generally in the national Constitution. Often, the government can decide to sign a treaty without further consultation, while ratification or accession generally needs to be approved by the national Parliament.

1. Signing and ratifying OP3 CRC.

When a State signs OP3 CRC, it signals its intention to become a party in the future. The State agrees that it will not do anything inconsistent with the object and purpose of OP3 CRC. However, at this stage, the State is not yet legally bound by it and individuals under its jurisdiction cannot yet submit communications or information on grave or systematic child rights violations to the Committee on the Rights of the Child.

After signing the Convention, a State should proceed to ratify it and become a State party that is legally bound to implement its provisions.

Note: a State can sign and ratify OP3 CRC at the same time. For example, Thailand did this on 25 September 2012.

2. Acceding to OP3 CRC.

A State may also express its consent to be bound by OP3 CRC by depositing an instrument of accession with the Secretary-General of the United Nations. This will have the same effect as ratification and does not require signing OP3 CRC first.

Which State representatives can sign, ratify or accede to OP3 CRC?

Under established international practice, only Heads of State, Heads of Government or Ministers for Foreign Affairs are empowered, by virtue of their functions, to sign, ratify or accede to treaties on behalf of States without having to produce full powers to that effect.

Other representatives, such as the Ambassador of the State's mission before the UN in New York, can sign, ratify or accede if they are in possession of the appropriate full powers emanating from one of the above-mentioned authorities.¹²

Full powers need to be provided in advance of the date of signature/ratification or accession to:

Treaty Section
Office of Legal Affairs
United Nations Headquarters
New York, New York
United States of America
Tel: +1 212 963 50 47
Fax: +1 212 963 36 93
E-mail: treaty@un.org

Step 2: When does OP3 CRC become applicable for a State?

The ratification or accession to OP3 CRC by a State does not mean that OP3 CRC is instantly applicable.

There are two elements to take into account to establish when OP3 CRC becomes applicable for a State party (see Art. 19 OP3 CRC).

Firstly, for the ten first States parties, OP3 CRC is applicable from the date of its entry into force, which is 3 months after the 10th State has ratified or acceded to OP3 CRC. With its entry into force on 14 April 2014, it is applicable for Albania, Bolivia, Costa Rica, Gabon, Germany, Montenegro, Portugal, Slovakia, Spain and Thailand from that date.

For the other States parties, OP3 CRC is applicable three months after they have ratified or acceded to OP3 CRC.

To check the dates of States parties' ratification of or accession to OP3 CRC, go to www.ratifyop3crc.org

¹² More information on full powers can be found in the Treaty Handbook on the United Nations Treaty Collection Web site, which can be accessed at: <http://treaties.un.org/doc/source/publications/THB/English.pdf>.



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OP3 CRC at a glance

■ PREAMBLE

The preamble indicates the reasons and intention behind the Protocol. In particular, it recognises that “children’s special and dependent status may create real difficulties for them in pursuing remedies for violations of their rights” and considers that the “Protocol will reinforce and complement national and regional mechanisms allowing children to submit complaints for violations of their rights”.

■ SCOPE OF APPLICATION OF THE OPTIONAL PROTOCOL (ART. 1)

Communications and information on grave or systematic violations of children’s rights (for the inquiry procedure) can only be examined by the Committee if they concern States which have ratified or acceded to the OP and relate to violations of the Convention on the Rights of the Child (CRC), the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography (OPSC) and/or the Optional Protocol to the CRC on the involvement of children in armed conflict (OPAC) as long as the State(s) concerned is also a party to the relevant instrument.

■ METHODS OF WORK OF THE COMMITTEE (ARTS. 2 AND 3)

The Committee will exercise its functions with respect to the best interests of the child, the right of the child to have his/her views taken into consideration and the rights of the child in general. The rules of procedure of the Committee provide specific measures to set up a child-sensitive procedure and include safeguards to ensure the best interests of the child and avoid his/her manipulation. The Committee can decline the consideration of a communication which it considers not to be in the best interests of the child.

■ PROTECTION MEASURES (ART. 4)

States parties to the Optional Protocol to the CRC on a communications procedure (OP3 CRC) shall protect all individuals who communicate or cooperate with the Committee in connection with OP3 CRC from any human rights violation, ill-treatment or intimidation. The identity of the individual or group of individuals cannot be revealed to the public without their express consent.

■ INDIVIDUAL COMMUNICATIONS (ART. 5)

Individual communications can be submitted by or on behalf of individuals or group of individuals for violations of the rights contained in the CRC, OPSC and/or OPAC as long as the State concerned is a party to the relevant instrument.

■ INTERIM MEASURES (ART. 6)

In cases where the victim or group of victims may suffer an irreparable damage before the resolution of the case, the Committee may request the State concerned to take any measure deemed relevant in the interim to prevent such damage.

■ PROCEDURE FOR THE CONSIDERATION OF INDIVIDUAL COMMUNICATIONS (ARTS. 7, 8, 10 AND 11)

The first stage of the examination of an individual communication is the admissibility stage, which consists in verifying that all admissibility criteria, as listed in OP3 CRC, have been fulfilled. Once the communication has successfully passed this stage, it is transmitted to the State, which will be asked to submit its written explanations and clarifications. Based on the information received from both parties, the Committee will proceed to the examination of the merits (or substance) of the case. Such examination will take place in closed

meetings and in a speedy manner. The views and – if any – the recommendations of the Committee will be transmitted to the parties. OP3 CRC also provides for a follow-up procedure to monitor the measures the State concerned has taken in response to the views and recommendations of the Committee.

■ FRIENDLY SETTLEMENT (ART. 9)

Any friendly settlement shall be reached under the auspices of the Committee and shall be respectful of the rights and obligations provided in the CRC, OPSC and/or OPAC. Such a friendly settlement closes the consideration of the communication.

■ INTER-STATE COMMUNICATIONS (ART. 12)

States parties to OP3 CRC which accept this procedure (by making a declaration) authorise the Committee to receive communications from other States parties to OP3 CRC alleging that they are not fulfilling their obligations under the CRC, OPSC and/or OPAC as long as the State concerned has ratified or acceded to the relevant instrument.

■ INQUIRY PROCEDURE (ARTS. 13 AND 14)

Unless the State party to OP3 CRC makes a declaration explicitly excluding this procedure, the Committee may, upon receipt of reliable information on grave or systematic violations of the rights contained in the CRC, OPSC and/or OPAC committed by a State party to the relevant instrument and to OP3 CRC, conduct an inquiry in a confidential manner. If the State concerned consents, it may also undertake in-country visits. A follow-up procedure to monitor the measures the State concerned has taken in response to the inquiry of the Committee is also provided.

■ INTERNATIONAL ASSISTANCE AND COOPERATION (ART. 15)

If the State concerned consents, the Committee may ask United Nations (UN) specialised agencies, funds and programmes and other competent bodies to assist the State with the implementation of any view or recommendation that requires technical advice or assistance.

■ DISSEMINATION OF AND INFORMATION ON THE OPTIONAL PROTOCOL (ART. 17)

States parties to OP3 CRC have the obligation to disseminate OP3 CRC and the views and recommendations of the Committee in accessible formats to adults and children alike, including those with disabilities.

■ TEMPORAL JURISDICTION OF THE COMMITTEE (ART. 20)

The Committee can only examine violations committed after the entry into force of OP3 CRC for the State concerned, except if the exception listed in Article 7 of OP3 CRC applies (i.e. "unless those facts continued after that date").

■ FINAL PROVISIONS (ARTS. 16, 17, 18, 19, 21, 22, 23 AND 24)

OP3 CRC contains a number of final clauses, which are standard provisions in similar treaties. They deal with the signature, ratification, accession, entry into force, amending procedure and denunciation of OP3 CRC and the Committee's reporting to the General Assembly.



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Explanation of the key provisions of OP3 CRC

Article 1: Competence of the Committee on the Rights of the Child

The Protocol

- “1. A State party to the present Protocol recognizes the competence of the Committee as provided for by the present Protocol.
- 2. The Committee shall not exercise its competence regarding a State party to the present Protocol on matters concerning violations of rights set forth in an instrument to which that State is not a party.
- 3. No communication shall be received by the Committee if it concerns a State that is not a party to the present Protocol.”

What it means

For the Committee to be able to receive a communication:

- The communication must concern the violation of rights guaranteed in an instrument ratified by the State against which the communication is brought, and
- The State concerned must have ratified the Optional Protocol on a communications procedure (OP3 CRC).

In practice

If the State concerned has not ratified the OP3 CRC, then no communication can be brought against it.

If the State concerned has ratified the OP3 CRC, then communications can only allege the violation of rights under the Convention on the Rights of the Child (CRC), the Optional Protocol on the sale of children, child prostitution and child pornography (OPSC) or the Optional Protocol on the involvement of children in armed conflict (OPAC), provided that the State has ratified those treaties (Article 1 read in conjunction with Article 5 OP3 CRC). For example:

- If the State concerned has ratified the OP3 CRC, the CRC and the OPSC, then communications can only be brought about violations of the rights guaranteed under the CRC and the OPSC, but not under the OPAC.
- If the State concerned has ratified the OP3 CRC, then the OPSC and the OPAC, communications can only be brought about violations of the rights guaranteed under the OPSC and the OPAC, but not under the CRC.

Articles 2 and 3: General principles guiding the functions of the Committee and its Rules of Procedure

The Protocol

Article 2 – General principles guiding the functions of the Committee

"1. In fulfilling the functions conferred on it by the present Protocol, the Committee shall be guided by the principle of the best interests of the child. It shall also have regard for the rights and views of the child, the views of the child being given due weight in accordance with the age and maturity of the child."

Article 3 – Rules of procedure

- "1. The Committee shall adopt rules of procedure to be followed when exercising the functions conferred on it by the present Protocol. In doing so, it shall have regard, in particular, for article 2 of the present Protocol in order to guarantee child-sensitive procedures.**
- 2. The Committee shall include in its rules of procedure safeguards to prevent the manipulation of the child by those acting on his or her behalf and may decline to examine any communication that it considers not to be in the child's best interests."**

What it means

The Committee shall interpret the provisions of the OP3 CRC in a way that ensures the best interests and the right to be heard of the child. To that end, the new rules of procedure regarding the communications procedure, which the Committee adopted in February 2013, must guarantee child-sensitive procedures.

In addition, the Committee has the power to decline to examine any communication that would be contrary to the child's best interests. For example, communications which aim is to defend the child's representative's interests to the detriment of the child's best interests.

In practice

The Committee's rules of procedure further explain how these principles will be respected in practice. In particular, they provide that the Committee will take all appropriate measures to ensure that communications are handled expeditiously and avoid unnecessary delay and that the child(ren) is/are not subject to improper pressure or inducement by those acting on his/her/their behalf. The Committee will also provide prompt and adequate information to author(s) of communication(s), on the timing and progress of the proceedings as well as on the decision regarding their case. When necessary, the information will be provided in an appropriate and accessible format for adults and children alike and, to the extent possible, adapted to the age and maturity of the author(s).

Article 4: Protection measures

The Protocol

- “1. A State party shall take all appropriate steps to ensure that individuals under its jurisdiction are not subjected to any human rights violation, ill-treatment or intimidation as a consequence of communications or cooperation with the Committee pursuant to the present Protocol.
2. The identity of any individual or group of individuals concerned shall not be revealed publicly without their express consent.”

What it means

No one should suffer any kind of intimidation or human rights violation because s/he cooperates with the Committee under OP3 CRC.

The identity of anyone cooperating with the Committee should remain confidential and not be made public by the State concerned, the Committee or any other actor, unless the person concerned has explicitly consented to it.

In practice

If the State has not taken all appropriate measures to protect those individuals, the Committee may request the State to urgently take such measures and to submit written explanations to the Committee about the situation. Compliance with the Committee's request will be monitored and, where needed, the Committee may issue a public statement and take any appropriate action.

Article 5: Individual communications

The Protocol

- "**1. Communications may be submitted by or on behalf of an individual or group of individuals, within the jurisdiction of a State party, claiming to be victims of a violation by that State party of any of the rights set forth in any of the following instruments to which that State is a party:**
 - (a) **The Convention;**
 - (b) **The Optional Protocol to the Convention on the sale of children, child prostitution and child pornography;**
 - (c) **The Optional Protocol to the Convention on the involvement of children in armed conflict.**
- 2. Where a communication is submitted on behalf of an individual or group of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent."**

What it means

A communication can be submitted by:

- a victim;
- a group of victims;
- a representative of a victim;
- a representative of a group of victims.

If the communication is submitted by a representative of the victim or of the group of victims, the representative will have to show to the Committee that s/he is acting with the consent of the victim(s), except if s/he can demonstrate that s/he cannot act with their consent.

The communication has to allege the violation of rights guaranteed under the CRC, the OPSC and/or the OPAC by a State party to the OP3 CRC, provided that the State concerned has ratified the instruments invoked (see explanation under Article 1 OP3 CRC).

In practice

Any alleged victim, including those who are represented, can correspond with the Committee directly.

Any individual or group of individuals, claiming to be victim(s) of a child rights violation, may submit a communication, regardless of their legal capacity in the State concerned.

There will be many cases where the representative of a child victim will not be able to show that s/he has the consent of the victim for bringing a communication:

- For example, if the victim is a baby, the representative will not be able to show that the baby consented to be represented.
- Similarly, if the victim has disappeared, has been abducted or is imprisoned but cannot be contacted, the representative will not be able to show that s/he has the consent of the victim.

In such cases, the representative will have to explain in the communication why s/he cannot get the consent of the victim. The Committee may also issue a confidential request of additional information or documents from third party sources which show that the representative is acting in the best interests of the child.

If possible, the alleged victim who could not give consent will be informed of the communication and his/her/ their views will be given due weight in accordance with their age and maturity.

Article 6: Interim measures

The Protocol

- "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. Where the Committee exercises its discretion under paragraph 1 of the present article, this does not imply a determination on admissibility or on the merits of the communication."

What it means

Interim measures are measures taken provisionally to ensure that the right to complain and seek a remedy at the international level is not rendered ineffective through irreparable damage to the complainant.

The Committee can request the State party against which a communication has been submitted to take interim measures, such as the suspension of judicial or administrative decisions (e.g. deportation of illegal migrants), until it makes a final decision on the substance of the communication. This is to prevent actions that cannot be undone.

In practice

If you file a communication and would like the Committee to consider requesting interim measures, you should clearly state this in your communication. Any communication or inquiry that required interim measures will be prioritised so that its consideration can be expedited.

If the Committee requests the State to take interim measures, it will monitor compliance with its request and may also issue public statements in this regard.

Some cases of non-compliance with interim measures' requests have been considered as a violation of the right to have a remedy by existing human rights treaty bodies.

Article 7: Admissibility of a communication

The Protocol

"The Committee shall consider a communication inadmissible when:

- (a) The communication is anonymous;
- (b) The communication is not in writing;
- (c) The communication constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of the Convention and/or the Optional Protocols thereto;
- (d) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;
- (e) All available domestic remedies have not been exhausted. This shall not be the rule where the application of the remedies is unreasonably prolonged or unlikely to bring effective relief;
- (f) The communication is manifestly ill-founded or not sufficiently substantiated;
- (g) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State party concerned, unless those facts continued after that date;
- (h) The communication is not submitted within one year after the exhaustion of domestic remedies, except in cases where the author can demonstrate that it had not been possible to submit the communication within that time limit."

What it means

There are two major stages in a communications procedure: the "admissibility" stage and the "merits" stage. Before the Committee examines the details and substance of the communications it receives, it will first consider whether the communication meets the requirements of the procedure.

If it considers the communication to be "admissible", it will then move it to the "merits" stage during which it will examine the violations alleged. If the communication fails to meet the admissibility requirements, the merits of the case will not be considered and the communication will be dismissed.

Article 7 lists the admissibility requirements for a communication to be admissible under the OP3 CRC. It is worth noting that Art. 7(h) is not a standard provision of other communications procedures and was directly inspired from Article 3 of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR).¹³

In practice

These admissibility requirements can also be found in similar communications procedure and it is expected that the Committee will generally follow the interpretation given by other treaty bodies. It may also have an innovative interpretation of them to ensure that the communication is child-sensitive and in the best interests of children (Art. 7 read in conjunction with Articles 2 and 3 OP3 CRC).

¹³ OP-ICESCR was the most recent communications procedure to be drafted by the UN before the OP3 CRC. It was adopted by the UN General Assembly on 10 December 2008 and entered into force on 5 May 2013.

Articles 8 and 10: Transmission and Consideration of communications

The Protocol

Article 8 – Transmission of the communication

- “1. Unless the Committee considers a communication inadmissible without reference to the State party concerned, the Committee shall bring any communication submitted to it under the present Protocol confidentially to the attention of the State party concerned as soon as possible.
2. The State party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that it may have provided. The State party shall submit its response as soon as possible and within six months.”

Article 10 – Consideration of communications

- “1. The Committee shall consider communications received under the present Protocol as quickly as possible, in the light of all documentation submitted to it, provided that this documentation is transmitted to the parties concerned.
2. The Committee shall hold closed meetings when examining communications received under the present Protocol.
3. Where the Committee has requested interim measures, it shall expedite the consideration of the communication.
4. When examining communications alleging violations of economic, social or cultural rights, the Committee shall consider the reasonableness of the steps taken by the State party in accordance with article 4 of the Convention. In doing so, the Committee shall bear in mind that the State party may adopt a range of possible policy measures for the implementation of the economic, social and cultural rights in the Convention.
5. After examining a communication, the Committee shall, without delay, transmit its views on the communication, together with its recommendations, if any, to the parties concerned.”

What it means

These articles provide the steps that the Committee shall follow when it receives a communication that is *prima facie* (ie. at first sight) admissible, and in particular the different time lines of the procedure.

The phrase “as soon as possible and within six months” in Art. 8 para.2 is intended to encourage States to provide a swifter response than in other communications procedures (the standard phrase is “within six months”).

Article 10 also provides special requirements in two cases: 1) when the Committee has requested interim measures (see Article 6 OP3 CRC), it shall prioritise that communication, and 2) if the communication alleges violations of economic, social or cultural rights, the Committee shall use a specific standard of review taking into account the “reasonableness of the steps taken by the State party in accordance with article 4” of the CRC.

In practice

The language of Article 10 para. 4 OP3 CRC was directly taken from Article 8 para. 4 OP-ICESCR. Its added value is unclear since the Committee will have to refer to Article 4 of the CRC to determine States’ obligations regarding economic, social or cultural rights anyway.

Article 9: Friendly settlement

The Protocol

- “1. The Committee shall make available its good offices to the parties concerned with a view to reaching a friendly settlement of the matter on the basis of respect for the obligations set forth in the Convention and/or the Optional Protocols thereto.
2. An agreement on a friendly settlement reached under the auspices of the Committee closes consideration of the communication under the present Protocol.”

What it means

This article allows the resolution of a communication through a friendly settlement, i.e. without the Committee having to reach a decision on the alleged violation(s). If a friendly settlement is reached “under the auspices of the Committee”, this closes the communications procedure.

In practice

The Committee will only make available its good offices upon the request of a party, not at its own motion.

While this article is based on the language of Article 7 OP-ICESCR, its paragraph 2 contains an innovation in the phrase “reached under the auspices of the Committee” which was added to provide extra protection to the victim.

The exact scope of this protection will be further defined by the Committee’s practice but some elements of it can already be found in its new rules of procedure:

- The Committee will terminate its facilitation of the friendly settlement procedure if the matter is not susceptible to reaching a resolution, if any of the parties does not consent to its application or does not display the requisite will to reach a friendly settlement based on the respect of the CRC, the OPSC and/or the OPAC.
- The Committee will not accept any friendly settlement that is not based on the respect of the CRC, the OPSC and/or the OPAC.

Article 12: Inter-State communications

The Protocol

- "1. A State party to the present Protocol may, at any time, declare that it recognizes the competence of the Committee to receive and consider communications in which a State party claims that another State party is not fulfilling its obligations under any of the following instruments to which the State is a party:
 - (a) The Convention;
 - (b) The Optional Protocol to the Convention on the sale of children, child prostitution and child pornography;
 - (c) The Optional Protocol to the Convention on the involvement of children in armed conflict.
2. The Committee shall not receive communications concerning a State party that has not made such a declaration or communications from a State party that has not made such a declaration.
3. The Committee shall make available its good offices to the States parties concerned with a view to a friendly solution of the matter on the basis of the respect for the obligations set forth in the Convention and the Optional Protocols thereto.
4. A declaration under paragraph 1 of the present article shall be deposited by the States parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communications by any State party shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State party concerned has made a new declaration."

What it means

If a State party to OP3 CRC makes a declaration accepting inter-State communications, another State party to OP3 CRC, which has also made that declaration, will be able to submit a communication against that State.

The Committee may also assist both States in reaching a friendly settlement on the matter.

In practice

Although the inter-State communications procedure has existed since 1965 for other treaty bodies' communications procedures, it has not been used to date.

Article 13: Inquiry procedure for grave or systematic violations

The Protocol

- "1. If the Committee receives reliable information indicating grave or systematic violations by a State party of rights set forth in the Convention or in the Optional Protocols thereto on the sale of children, child prostitution and child pornography or on the involvement of children in armed conflict, the Committee shall invite the State party to cooperate in the examination of the information and, to this end, to submit observations without delay with regard to the information concerned.
2. Taking into account any observations that may have been submitted by the State party concerned, as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State party, the inquiry may include a visit to its territory.
3. Such an inquiry shall be conducted confidentially, and the cooperation of the State party shall be sought at all stages of the proceedings.
4. After examining the findings of such an inquiry, the Committee shall transmit without delay these findings to the State party concerned, together with any comments and recommendations.
5. The State party concerned shall, as soon as possible and within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.
6. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2 of the present article, the Committee may, after consultation with the State party concerned, decide to include a summary account of the results of the proceedings in its report provided for in article 16 of the present Protocol.
7. Each State party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it does not recognize the competence of the Committee provided for in the present article in respect of the rights set forth in some or all of the instruments listed in paragraph 1.
8. Any State party having made a declaration in accordance with paragraph 7 of the present article may, at any time, withdraw this declaration by notification to the Secretary-General of the United Nations."

What it means

The inquiry procedure is a mechanism allowing the Committee to investigate allegations of grave or systematic violations of CRC, OPSC and/or the OPAC by a State party to these instruments, if the State concerned has ratified the OP3 CRC and accepted its inquiry procedure.

The inquiry procedure is an optional mechanism: paragraph 7 allows States parties to the OP3 CRC to "opt-out" from the inquiry procedure by way of declaration, while paragraph 8 allows States parties that opted-out to withdraw that declaration.

If the Committee receives reliable information indicating grave or systematic violations of children's rights, it can decide to conduct an inquiry.

In practice

Any person or organisation, including NGOs, can submit information indicating grave or systematic violations of the CRC, the OPAC and/or the OPSC by a State party to these instruments and to OP3 CRC to the Committee on the Rights of the Child.

The inquiry procedure is composed of different stages:

1. The Committee receives information indicating grave or systematic violations of the CRC, the OPAC and/or the OPSC by a State party to these instruments and to OP3 CRC.
2. The Committee then invites the State party concerned to cooperate in the examination of the information and to submit observations without delay with regard to the information received.
3. The Committee decides whether the information received is reliable or not and whether an inquiry procedure to investigate such violations should be launched or not.
4. To that end, the Committee can consult any other reliable information, request further information from the author of the information, request the State concerned to provide more or actualised information and request and conduct a country visit in the State concerned.
5. If the Committee decides to conduct a country visit, and if the State concerned accepts such a visit, members of the Committee can meet with government representatives, civil society representatives and alleged victims in the country. It can also visit specific places (e.g., detention centres and prisons).

While the cooperation of the State party concerned shall be sought at all stages of the inquiry procedure, the Committee can undertake an inquiry without their approval or cooperation once the State accepted this mechanisms under Art.13.7 OP3 CRC. Country visits, however, can only be conducted with the consent of the State concerned.

More details about each stage of the process is provided in the rules of procedures of the Committee on the Rights of the Child.



Ratify OP3 CRC
INTERNATIONAL COALITION FOR THE OPCRC
ON A COMMUNICATIONS PROCEDURE

This information pack was produced by Child Rights Connect for Ratify OP3 CRC – International Coalition for the OPCRC on a Communications Procedure.

Text of the Optional Protocol

■ OPTIONAL PROTOCOL TO THE CONVENTION ON THE RIGHTS OF THE CHILD ON A COMMUNICATIONS PROCEDURE

The States parties to the present Protocol,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, the recognition of the inherent dignity and the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Noting that the States parties to the Convention on the Rights of the Child (hereinafter referred to as the Convention) recognize the rights set forth in it to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status,

Reaffirming the universality, indivisibility, interdependence and interrelatedness of all human rights and fundamental freedoms,

Reaffirming also the status of the child as a subject of rights and as a human being with dignity and with evolving capacities,

Recognizing that children's special and dependent status may create real difficulties for them in pursuing remedies for violations of their rights,

Considering that the present Protocol will reinforce and complement national and regional mechanisms allowing children to submit complaints for violations of their rights,

Recognizing that the best interests of the child should be a primary consideration to be respected in pursuing remedies for violations of the rights of the child, and that such remedies should take into account the need for child-sensitive procedures at all levels,

Encouraging States parties to develop appropriate national mechanisms to enable a child whose rights have been violated to have access to effective remedies at the domestic level,

Recalling the important role that national human rights institutions and other relevant specialized institutions, mandated to promote and protect the rights of the child, can play in this regard,

Considering that, in order to reinforce and complement such national mechanisms and to further enhance the implementation of the Convention and, where applicable, the Optional Protocols thereto on the sale of children, child prostitution and child pornography and on the involvement of children in armed conflict, it would be appropriate to enable the Committee on the Rights of the Child (hereinafter referred to as the Committee) to carry out the functions provided for in the present Protocol,

Have agreed as follows:

PART I

General provisions

Article 1

Competence of the Committee on the Rights of the Child

1. A State party to the present Protocol recognizes the competence of the Committee as provided for by the present Protocol.
2. The Committee shall not exercise its competence regarding a State party to the present Protocol on matters concerning violations of rights set forth in an instrument to which that State is not a party.
3. No communication shall be received by the Committee if it concerns a State that is not a party to the present Protocol.

Article 2

General principles guiding the functions of the Committee

In fulfilling the functions conferred on it by the present Protocol, the Committee shall be guided by the principle of the best interests of the child. It shall also have regard for the rights and views of the child, the views of the child being given due weight in accordance with the age and maturity of the child.

Article 3

Rules of procedure

1. The Committee shall adopt rules of procedure to be followed when exercising the functions conferred on it by the present Protocol. In doing so, it shall have regard, in particular, for article 2 of the present Protocol in order to guarantee child-sensitive procedures.
2. The Committee shall include in its rules of procedure safeguards to prevent the manipulation of the child by those acting on his or her behalf and may decline to examine any communication that it considers not to be in the child's best interests.

Article 4

Protection measures

1. A State party shall take all appropriate steps to ensure that individuals under its jurisdiction are not subjected to any human rights violation, ill-treatment or intimidation as a consequence of communications or cooperation with the Committee pursuant to the present Protocol.
2. The identity of any individual or group of individuals concerned shall not be revealed publicly without their express consent.

PART II

Communications procedure

Article 5

Individual communications

1. Communications may be submitted by or on behalf of an individual or group of individuals, within the jurisdiction of a State party, claiming to be victims of a violation by that State party of any of the rights set forth in any of the following instruments to which that State is a party:
 - (a) The Convention;
 - (b) The Optional Protocol to the Convention on the sale of children, child prostitution and child pornography;
 - (c) The Optional Protocol to the Convention on the involvement of children in armed conflict.
2. Where a communication is submitted on behalf of an individual or group of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.

Article 6

Interim measures

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. Where the Committee exercises its discretion under paragraph 1 of the present article, this does not imply a determination on admissibility or on the merits of the communication.

Article 7

Admissibility

1. The Committee shall consider a communication inadmissible when:
 - (a) The communication is anonymous;
 - (b) The communication is not in writing;
 - (c) The communication constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of the Convention and/or the Optional Protocols thereto;
 - (d) The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;
 - (e) All available domestic remedies have not been exhausted. This shall not be the rule where the application of the remedies is unreasonably prolonged or unlikely to bring effective relief;
 - (f) The communication is manifestly ill-founded or not sufficiently substantiated;
 - (g) The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State party concerned, unless those facts continued after that date;
 - (h) The communication is not submitted within one year after the exhaustion of domestic remedies, except in cases where the author can demonstrate that it had not been possible to submit the communication within that time limit.

Article 8

Transmission of the communication

1. Unless the Committee considers a communication inadmissible without reference to the State party concerned, the Committee shall bring any communication submitted to it under the present Protocol confidentially to the attention of the State party concerned as soon as possible.
2. The State party shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that it may have provided. The State party shall submit its response as soon as possible and within six months.

Article 9

Friendly settlement

1. The Committee shall make available its good offices to the parties concerned with a view to reaching a friendly settlement of the matter on the basis of respect for the obligations set forth in the Convention and/or the Optional Protocols thereto.
2. An agreement on a friendly settlement reached under the auspices of the Committee closes consideration of the communication under the present Protocol.

Article 10

Consideration of communications

1. The Committee shall consider communications received under the present Protocol as quickly as possible, in the light of all documentation submitted to it, provided that this documentation is transmitted to the parties concerned.
2. The Committee shall hold closed meetings when examining communications received under the present Protocol.
3. Where the Committee has requested interim measures, it shall expedite the consideration of the communication.
4. When examining communications alleging violations of economic, social or cultural rights, the Committee shall consider the reasonableness of the steps taken by the State party in accordance with article 4 of the Convention. In doing so, the Committee shall bear in mind that the State party may adopt a range of possible policy measures for the implementation of the economic, social and cultural rights in the Convention.
5. After examining a communication, the Committee shall, without delay, transmit its views on the communication, together with its recommendations, if any, to the parties concerned.

Article 11

Follow-up

1. The State party shall give due consideration to the views of the Committee, together with its recommendations, if any, and shall submit to the Committee a written response, including information on any action taken and envisaged in the light of the views and recommendations of the Committee. The State party shall submit its response as soon as possible and within six months.
2. The Committee may invite the State party to submit further information about any measures the State party has taken in response to its views or recommendation or implementation of a friendly settlement agreement, if any, including as deemed appropriate by the Committee, in the State party's subsequent reports under article 44 of the Convention, article 12 of the Optional Protocol on the sale of children, child prostitution and child pornography or article 8 of the Optional Protocol on the involvement of children in armed conflict, where applicable.

Article 12

Inter-State communications

1. A State party to the present Protocol may, at any time, declare that it recognizes the competence of the Committee to receive and consider communications in which a State party claims that another State party is not fulfilling its obligations under any of the following instruments to which the State is a party:
 - (a) The Convention;
 - (b) The Optional Protocol to the Convention on the sale of children, child prostitution and child pornography;
 - (c) The Optional Protocol to the Convention on the involvement of children in armed conflict.
2. The Committee shall not receive communications concerning a State party that has not made such a declaration or communications from a State party that has not made such a declaration.
3. The Committee shall make available its good offices to the States parties concerned with a view to a friendly solution of the matter on the basis of the respect for the obligations set forth in the Convention and the Optional Protocols thereto.
4. A declaration under paragraph 1 of the present article shall be deposited by the States parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall

not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communications by any State party shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State party concerned has made a new declaration.

PART III

Inquiry procedure

Article 13

Inquiry procedure for grave or systematic violations

1. If the Committee receives reliable information indicating grave or systematic violations by a State party of rights set forth in the Convention or in the Optional Protocols thereto on the sale of children, child prostitution and child pornography or on the involvement of children in armed conflict, the Committee shall invite the State party to cooperate in the examination of the information and, to this end, to submit observations without delay with regard to the information concerned.
2. Taking into account any observations that may have been submitted by the State party concerned, as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State party, the inquiry may include a visit to its territory.
3. Such an inquiry shall be conducted confidentially, and the cooperation of the State party shall be sought at all stages of the proceedings.
4. After examining the findings of such an inquiry, the Committee shall transmit without delay these findings to the State party concerned, together with any comments and recommendations.
5. The State party concerned shall, as soon as possible and within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.
6. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2 of the present article, the Committee may, after consultation with the State party concerned, decide to include a summary account of the results of the proceedings in its report provided for in article 16 of the present Protocol.
7. Each State party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it does not recognize the competence of the Committee provided for in the present article in respect of the rights set forth in some or all of the instruments listed in paragraph 1.
8. Any State party having made a declaration in accordance with paragraph 7 of the present article may, at any time, withdraw this declaration by notification to the Secretary-General of the United Nations.

Article 14

Follow-up to the inquiry procedure

1. The Committee may, if necessary, after the end of the period of six months referred to in article 13, paragraph 5, invite the State party concerned to inform it of the measures taken and envisaged in response to an inquiry conducted under article 13 of the present Protocol.
2. The Committee may invite the State party to submit further information about any measures that the State party has taken in response to an inquiry conducted under article 13, including as deemed appropriate by the Committee, in the State's party subsequent reports under article 44 of the Convention, article 12 of the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography or article 8 of the Optional Protocol to the Convention on the involvement of children in armed conflict, where applicable.

PART IV

Final provisions

Article 15

International assistance and cooperation

1. The Committee may transmit, with the consent of the State party concerned, to United Nations specialized agencies, funds and programmes and other competent bodies its views or recommendations concerning communications and inquiries that indicate a need for technical advice or assistance, together with the State party's observations and suggestions, if any, on these views or recommendations.
2. The Committee may also bring to the attention of such bodies, with the consent of the State party concerned, any matter arising out of communications considered under the present Protocol that may assist them in deciding, each within its field of competence, on the advisability of international measures likely to contribute to assisting States parties in achieving progress in the implementation of the rights recognized in the Convention and/or the Optional Protocols thereto.

Article 16

Report to the General Assembly

1. The Committee shall include in its report submitted every two years to the General Assembly in accordance with article 44 (5) of the Convention a summary of its activities under the present Protocol.

Article 17

Dissemination and information on the Optional Protocol

1. Each State party undertakes to make widely known and to disseminate the present Protocol and to facilitate access to information about the views and recommendations of the Committee, in particular with regard to matters involving the State party, by appropriate and active means and in accessible formats to adults and children alike, including those with disabilities.

Article 18

Signature, ratification and accession

1. The present Protocol is open for signature to any State that has signed, ratified or acceded to the Convention or either of the first two Optional Protocols thereto.
2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Convention or either of the first two Optional Protocols thereto. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention or either of the first two Optional Protocols thereto.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General.

Article 19

Entry into force

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after the deposit of the tenth instrument of ratification or instrument of accession, the present Protocol shall enter into force three months after the date of the deposit of its own instrument of ratification or accession.

Article 20

Violations occurring after the entry into force

1. The Committee shall have competence solely in respect of violations by the State party of any of the rights set forth in the Convention and/or the first two Optional Protocols thereto occurring after the entry into force of the present Protocol.

2. If a State becomes a party to the present Protocol after its entry into force, the obligations of that State vis-à-vis the Committee shall relate only to violations of the rights set forth in the Convention and/or the first two Optional Protocols thereto occurring after the entry into force of the present Protocol for the State concerned.

Article 21

Amendments

1. Any State party may propose an amendment to the present Protocol and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States parties with a request to be notified whether they favour a meeting of States parties for the purpose of considering and deciding upon the proposals. In the event that, within four months of the date of such communication, at least one third of the States parties favour such a meeting, the Secretary-General shall convene the meeting under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States parties present and voting shall be submitted by the Secretary-General to the General Assembly for approval and, thereafter, to all States parties for acceptance.
2. An amendment adopted and approved in accordance with paragraph 1 of the present article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States parties that have accepted it.

Article 22

Denunciation

1. Any State party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.
2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under articles 5 or 12 or any inquiry initiated under article 13 before the effective date of denunciation.

Article 23

Depositary and notification by the Secretary-General

1. The Secretary-General of the United Nations shall be the depositary of the present Protocol.
2. The Secretary-General shall inform all States of:
 - (a) Signatures, ratifications and accessions under the present Protocol;
 - (b) The date of entry into force of the present Protocol and of any amendment thereto under article 21;
 - (c) Any denunciation under article 22.

Article 24

Languages

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.

List of resources and websites

Resources

Various resources can be found on the materials page of the International Coalition's website at <http://www.ratifyop3crc.org/material/> including:

- The leaflet on OP3 CRC developed by Ratify OP3 CRC that contains information and answers key questions on OP3 CRC;
- The child-friendly version of the OP3 CRC leaflet;
- The Q&A on the OP3 CRC;
- The official text of OP3 CRC;
- The Rules of Procedure for OP3 CRC, adopted by the Committee on the Rights of the Child,
- Advocacy Toolkit in English, French and Spanish for campaigners to get their States to ratify;
- A letter for campaigners to send to their governments, urging them to sign/ratify, in English, French and Spanish

The child-friendly version of the Optional Protocol by the Special Representative of the Security-General (SRSG) on Violence against Children is available at http://srsg.violenceagainstchildren.org/story/2013-09-19_898

Websites

The Committee on the Rights of the Child:

<http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>

Status of treaties in the UN Treaty Collection:

<https://treaties.un.org/Pages/ParticipationStatus.aspx>

UN annual treaty event:

https://treaties.un.org/Pages/TreatyEvents.aspx?path=treaty=Treaty/Focus/Page1_en.xml

Ratify OP3 CRC – International Coalition's website:

www.ratifyop3crc.org

Child-friendly section on OP3 CRC:

www.ratifyop3crc.org/SpeakUp

Glossary of key terms

COMMITTEE: See TREATY BODY

COMMUNICATIONS or COMPLAINTS PROCEDURE: It is an international procedure that allows individuals, groups or their representatives who claim that their rights have been violated by a State that is party to an international human rights CONVENTION to bring a complaint or communication before the relevant 'TREATY BODY' or COMMITTEE, provided that the State has recognised the competence of the Committee to receive such complaints. It is a QUASI-JUDICIAL mechanism: the decisions of the Committee on the complaints it receives are not legally binding on the State concerned.

COMPLAINANT: Also 'plaintiff' – the person or party bringing a case, for example a child who has had his/her rights breached.

CONVENTION: Also called TREATY or COVENANT, it is an agreement signed between States. It is legally binding on the States that are parties to the convention (STATES PARTIES) and defines their mutual duties and obligations. In the case of human rights conventions, STATES PARTIES accept obligations about the manner they treat all individuals under their jurisdiction. Once a convention is adopted by the UN General Assembly, MEMBER STATES of the United Nations can ratify the convention, committing to comply with the international obligations it provides. When a State ratifies a convention, the articles of that convention become part of its domestic legal obligations. UN mechanisms are put in place to monitor States' implementation of the standards set forth in a convention.

CONVENTION ON THE RIGHTS OF THE CHILD (CRC, adopted 1989; entered into force 1990):

Convention setting forth a full spectrum of civil, cultural, economic, social and political rights for children. The USA, Somalia and South Sudan are the only countries which have not ratified it.

CORE GROUP: This refers to the initial group of States that sponsored the Resolution of the Human Rights Council to establish the Open Ended Working Group for the Optional Protocol under the CRC.

COVENANT: See CONVENTION. The major international human rights covenants, both adopted by the UN General Assembly in 1966, are the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

ENTRY INTO FORCE (OF A TREATY): Entry into force of a treaty is the moment in time when a treaty becomes legally binding on the parties to the treaty. The provisions of the treaty determine the moment of its entry into force. This may be a date specified in the treaty or a date on which a specified number of ratifications, approvals, acceptances or accessions have been deposited with the depositary. The date when a treaty deposited with the Secretary-General enters into force is determined in accordance with the treaty provisions.

ENTRY INTO FORCE (FOR A STATE): The date of entry into force of a treaty does not necessarily coincide with the date of entry into force of that treaty for a particular State or international organisation. A treaty, even if it is already in force, will only enter into force and thus be applicable for a specific State once that State has expressed its consent to be bound by it.

EXHAUSTION OF DOMESTIC REMEDIES: It is a principle of international law that States shall be given the opportunity to remedy human rights violations before an international body can be seized of the matter. A complainant shall therefore seek a remedy before national courts and get a final decision before submitting a complaint to a COMMUNICATIONS PROCEDURE – except if s/he can demonstrate that national remedies are ineffective or unduly prolonged.

JURISPRUDENCE: The collection of judicial decisions providing solutions to specific legal questions.

MANDATE: The literal definition of ‘mandate’ is simply a ‘command’ or ‘instruction.’ In the context of the UN, it is frequently used to refer to the document describing how a particular role is to be fulfilled. For example, the mandate of the Special Representative on Violence Against Children may include investigation into the different types of violence experienced by children. Or you might say s/he is mandated to investigate alleged cases of violence against children as perpetrated by governments, for example.

MEMBER STATES: Countries that are members of the United Nations or other relevant inter-governmental body.

OMBUDSMAN or OMBUDSPERSON: An ombudsman is an official, usually appointed by the government, parliament or other institutions such as the European Union, who is charged with representing the interests of the public by investigating and addressing complaints reported by individual citizens. In some jurisdictions, the ombudsman is referred to, at least officially, as the ‘Parliamentary Commissioner’ (e.g., the West Australian state Ombudsman). As well as for a government, an ombudsman may work for a corporation, a newspaper, an NGO, or even for the general public. In the case of children, such roles may be referred to as both ‘Children’s Ombudsman’ or ‘Children’s Commissioner’.

OPTIONAL PROTOCOL (OP): An optional protocol to a treaty is a multilateral agreement that States parties can ratify or accede to, intended to further a specific purpose of the treaty or to assist in the implementation of its provisions.

QUASI-JUDICIAL: Having to do with powers that are to some extent judicial, for example human rights commissions may have quasi-judicial powers. A quasi-judicial body has powers and procedures resembling those of a court of law or a judge and can make decisions in the general manner of courts, but it is not a court or a judge. See COMMUNICATIONS PROCEDURE.

RATIFICATION, RATIFY: Ratification, acceptance and approval all refer to the act undertaken on the international plane, whereby a State establishes its consent to be bound by a treaty. Most multilateral treaties expressly provide for States to express their consent to be bound by signature subject to ratification, acceptance or approval.

RULES OF PROCEDURE: The formal rules adopted by a treaty body to govern the way in which it undertakes its business. Each committee is empowered by the relevant treaty to adopt its own rules of procedure. The rules of procedure usually cover such matters as election of officers and procedures for adopting decisions especially where no consensus can be reached. Rules of procedures are related to, but distinct from, working methods.

STATE PARTY: A State party to a treaty is a State that has expressed its consent to be bound by that treaty by an act of ratification, acceptance, approval or accession etc., where that treaty has entered into force for that particular State. This means that the State is bound by the treaty under international law.

TREATY: See CONVENTION

TREATY BODY: A Committee of independent experts formally established through the principal (or ‘core’) international human rights treaties to monitor States parties’ compliance with the treaties. Nine Treaty bodies have been set up for the core UN human rights treaties to monitor States parties’ efforts to implement their provisions.

Ratify OP3 CRC

INTERNATIONAL COALITION FOR THE OPCRC
ON A COMMUNICATIONS PROCEDURE

The International Coalition provides a platform for coordinated action of national, regional and international NGOs and networks, human rights institutions and other non-governmental bodies that are committed to the rapid entry into force of OP3 CRC.

The International Coalition was set up in 2012 to raise awareness about OP3 CRC, and share information and ideas to help interested partners work towards ratification of OP3 CRC. It is guided by a Steering Committee composed of regional and international child rights NGOs. The International Coalition replaced Child Rights Connect's Working Group for a Communications Procedure, which led and coordinated the campaign for the drafting and adoption of the OP3 CRC.

Join Ratify OP3 CRC today! Organisations that join the International Coalition stay connected and up-to-date on the Coalition's work, proposed activities, and upcoming events. It is free to join and members have access to tools and publications about best practices and lessons learnt to help with advocacy efforts. They can also share their experiences and collaborate with other members.

www.ratifyop3crc.org/JOINUS