

OPIC Info Pack

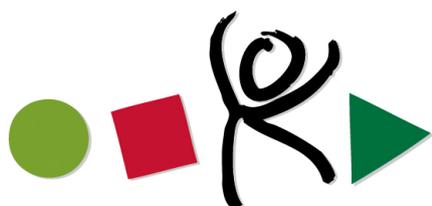
Information Pack about the Optional Protocol
to the Convention on the Rights of the Child on a
Communications Procedure (OPIC)



2020 Update

This Information pack was prepared by Child Rights Connect and finalised in August 2020, as an update of the previous Information Pack produced for the – now dissolved – Ratify OP3CRC: International Coalition for the OPCRC on a Communications Procedure in 2014.

About



child rights connect

[Child Rights Connect](#) is an independent, non-profit network that is made up of national, regional and international child rights 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 (UNCRC) and its Optional Protocols (OPs). We were initially set up in 1983 to influence the drafting of the UNCRC. Since then, we have worked for decades to connect the United Nations human rights system to the daily realities of children's lives.

Visit our website: <https://www.childrightsconnect.org>



Child Rights Connect was instrumental in the creation of the [Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure \(OPIC\)](#) and in the ratification campaign that led to its entry into force in April 2014.

Through this new treaty, the international community has put children's rights on an equal footing with other human rights and allowed for more accountability of States. The recognition that children have the right to appeal to an international mechanism specific to them, if violations cannot be addressed effectively at national level, is also the ultimate example right to be heard and participate into practice.

Visit our dedicated website to the OPIC: <https://opic.childrightsconnect.org/>

Why an information pack on the third Optional Protocol to the UNCRC establishing a communications procedure (OPIC)?

This Information Pack was initially prepared by Child Rights Connect in 2014 to provide all the background information necessary for those interested in knowing more about the OPIC. April 2019, marked five years since the entry into force of the OPIC, and November 2019 marked the 30th anniversary of the UN Convention on the Rights of the Child. An update of this information pack was necessary to capture the recent developments of the OPIC, including the adoption of the first Views of the Committee on the Rights of the Child, the publication of its first inquiry report and the development of its working methods.

It is crucial that all relevant actors, including children, know about the OPIC and have a solid understanding of its mechanisms. This will ensure a rapid ratification of the OPIC across the world, as well as its strategic use by children human rights defenders, including children, to seek redress for children's rights violations and to influence the development of the legal and policy frameworks.



Abbreviations

Child Rights Connect WG	Working Group of Child Rights Connect
HRC	United Nations Human Rights Council
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
NGO	Non-governmental organization
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
OPIC	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
UNCRC	United Nations Convention on the Rights of the Child
UNGA	United Nations General Assembly

Contents

The information pack is composed of 4 different fact sheets, which can be read separately or as a whole. It also includes a list of abbreviations, FAQs, the full text of OPIC, a list of additional resources & websites and a glossary explaining the key terms used throughout the pack.

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Learn more about the OPIC, strategies to advocate for its ratification and access to justice for children through our dedicated website: <http://opic.childrightsconnect.org/>.



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What is the OPIC?

The Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (OPIC)¹, also known as the third Optional Protocol to the Convention on the Rights of the Child, is an rights treaty that allows the United Nations Committee on the Rights of the Child (the Committee) to hear complaints concerning the violations of child rights. Under the OPIC, the Committee is also able to launch inquiries into grave or systematic violations of children's rights in the States-parties to the instrument.

Below, we will look into four procedures composing the OPIC: 1) the communications procedure; 2) the friendly settlement procedure; 3) the inquiry procedure and 4) the inter-State communications procedure.



1. The Communications Procedure (Art. 5 OPIC)

1. This procedure, also called 'complaints procedure', covers the rights guaranteed under the Convention on the Rights of the Child (UNCRC), the Optional Protocol to the UNCRC on the involvement of children in armed conflict (OPAC) or the Optional Protocol to the UNCRC 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 UN 'treaty body', the Committee on the Rights of the Child (the Committee).
2. The violation must have been committed by a State that is party to the UNCRC, 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 OPIC.
3. 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 OPIC, the State has indeed committed to follow them and provide redress to the victim.
4. 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.
5. In principle it is a written procedure, but the Committee may invite the parties for an hearing, in person or via video/teleconference. If the victim is a child, an oral hearing would only be requested if it were in the child's best interests.

¹ A communications procedure can be created as part of a [core human rights treaty](#) 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 UNCRC did not include a communications procedure, it had to be created through a new OP.



DID YOU KNOW?

During the negotiations of the OPIC text, “collective communications” were discussed as another option to be included in the treaty. These would have allowed national human rights institutions, ombudsperson institutions and NGOs to submit communications without identifying individual victims. In the end however, this option was not included in the final text of OPIC.



2. The Friendly Settlement Procedure (Art. 9 OPIC)

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 UNCRC 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.
5. If a friendly settlement cannot be reached, the examination of the communication will proceed following the individual communication procedure.



DID YOU KNOW?

The friendly settlement procedure was created for the first time under the OP to the International Covenant on Economic, Social and Cultural Rights, which was adopted by the UNGA in 2008.



3. The Inquiry Procedure (Art. 13 OPIC)

1. The inquiry procedure is a mechanism allowing the Committee to investigate allegations of grave or systematic violations of the UNCRC, OPSC and/or the OPAC by a State party to these instruments, if the State concerned has ratified the OPIC and accepted its inquiry procedure.
2. The inquiry procedure is an optional mechanism: paragraph 7 of article 13 allows States parties to the OPIC 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.
4. During an inquiry, the Committee may conduct a visit in the State concerned, with the State’s consent. During the country visit, Committee members can meet with government and civil society representatives as well as alleged victims. Members can also see specific, relevant places (e.g., care facilities, detention centres, schools, etc.).
5. After an inquiry, the Committee drafts a report that includes a summary of the inquiry, the result of the inquiry (whether grave or systematic violations took place or not) and its recommendations to the State concerned.



DID YOU KNOW?

Anyone can send information to the Committee alleging grave or systematic violations of children’s rights. Different to the communication procedure, the exhaustion of domestic remedies is not required for the the inquiry procedure. Further, victims of violations do not need to be individually identified.

In June 2018, the Committee published it’s first inquiry report concerning alternative care in Chile.



4. The Inter-State Communications Procedure (Art. 12 OPIC)

1. The 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 which 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 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)², it has only been used three times. All of them in 2018 and under the ICERD.

² For more information, please see: <https://www.ohchr.org/EN/HRBodies/CERD/Pages/InterstateCommunications.aspx>

Key dates & historical background of the OPIC



Key dates of the OPIC

17 June 2009	The UN Human Rights Council (HRC) created an intergovernmental 'Open-Ended Working Group' (OEWG) to discuss the idea of a third OP to the UNCRC on a communications procedure. ³ The OEWG discussed the proposal in December 2009. ³
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. ³
16 February 2011	After ten days of negotiations, the OEWG adopted a final draft OP. ⁶
17 June 2011	The HRC adopted the final draft OP and transmitted it to the UNGA for its final adoption.
19 December 2011	The UNGA adopted the final draft OP to the UNCRC on a communications procedure, making it a new international treaty.
28 February 2012	The third OP to the UNCRC on a Communications Procedure or "OPIC" was opened for signature and ratification by States during an official ceremony held at the United Nations in Geneva.
8 April 2013	The Committee adopted its Rules of procedure under the OPIC .
14 January 2014	Costa Rica became the 10th State to ratify OPIC. The OPIC had been previously ratified by: Albania, Bolivia, Gabon, Germany, Montenegro, Portugal, Slovakia, Spain and Thailand.
14 April 2014	According to article 19.1 of the OPIC, the instrument entered into force.
2 October 2015	The Committee adopted a model form for submission of individual communications to the Committee under the OPIC .

³ 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 UNCRC.

⁴ 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.

⁵ 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 required the Chairperson to prepare an initial draft of the OP for the next meeting.

⁶ 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.



Key dates of the OPIC (cont.)

2 June 2017	The Committee adopted its revised working methods to deal with individual communications received under the OPIC .
25 January 2018	The Committee published its first adopted Views concerning a communication versus Denmark.
1 June 2018	The Committee published the report of its first concluded inquiry procedure, concerning Chile.
January 2019	During its 80th session, the Committee published its Guidelines for Interim measures under the OPIC .
September 2019	During its 82nd session, the Committee published its first follow up progress report on individual communications.
January 2020	During its 83rd session, the Committee published its Guidelines on Third party interventions .





How was the Optional Protocol on a communications procedure created?

- 1999** Upon the 10th anniversary of the UNCRC, 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 ”.⁷
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- 2001** Kindernothilfe, a German child rights NGO, launched an NGO campaign for a new OP to the UNCRC 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.
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- 2008** The campaign was established as a Working Group (WG) of Child Rights Connect (then the NGO Group for the UNCRC). 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.
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- 2009** Child Rights Connect WG started an important 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 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 UNCRC. 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.
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⁷ See p 14: <https://www.ohchr.org/EN/HRBodies/CRC/Documents/Recommandations/ten.pdf>



How was the Optional Protocol on a communications procedure created (cont.)?

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.

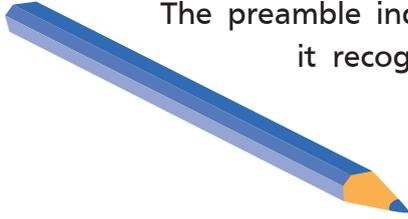
In June 2011, the HRC adopted the final draft OP and transmitted it to the UNGA for final adoption.

In December 2011, the UNGA adopted the final draft OP which became a new international treaty.



The OPIC 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 UNCRC, OPSC and/or OPAC as long as the State(s) concerned is also a party to the relevant instrument.

Rules of procedure 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 OPIC shall protect all individuals who communicate or cooperate with the Committee in connection with OPIC 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 UNCRC, 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)

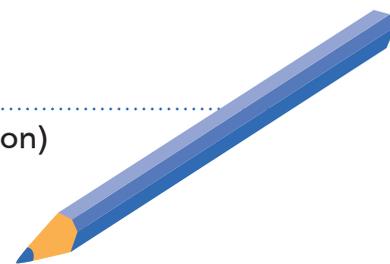
The first stage of the examination of an individual communication is the admissibility stage, which consists in verifying that all admissibility criteria, as listed in OPIC, have been fulfilled. Once the communication has successfully passed this stage, it is transmitted to the State, which will be asked 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. OPIC 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 UNCRC, OPSC and/or OPAC. Such a friendly settlement closes the consideration of the communication.

Inter-State communications (Art. 12)

State parties to OPIC which accept this procedure (by making a declaration) authorise the Committee to receive communications from other State parties to OPIC alleging that they are not fulfilling their obligations under the UNCRC, 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 OPIC 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 UNCRC, OPSC and/or OPAC committed by a State party to the relevant instrument and to OPIC, 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 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 OPIC have the obligation to disseminate OPIC 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 OPIC for the State concerned, except if the exception listed in Article 7 of OPIC applies (i.e. "unless those facts continued after that date").

Final provisions (Arts. 16, 17, 18, 19, 21, 22, 23 and 24)

The OPIC 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 OPIC and the Committee's reporting to the General Assembly.



Explanation of the key provisions of the OPIC

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 OPIC.

In practice

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

If the State concerned has ratified the OPIC then communications can only allege the violation of rights under the UNCRC, OPSC or OPAC, provided that the State has ratified those instruments (Article 1 read in conjunction with Article 5 OPIC).

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



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 OPIC in a way that it ensures the best interests and the right to be heard of the child. To that end, the [Rules of procedure under the OPIC](#) 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 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).

At its 70th session (2015), the Committee adopted its [Working methods](#) to deal with individual communications received under the OPIC – which were revised in 2017 – and also provide for specific ways to deal with incoming communications submitted by children. Particularly, the responses to letters received from children will be drafted using child-friendly language.



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 the OPIC.

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 does not take 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. "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:

- An individual 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 UNCRC, the OPSC and/or the OPAC by a State party to the OPIC, provided that the State concerned has ratified the instruments invoked (see explanation under Article 1 OPIC).



DID YOU KNOW?

- By August 2020, the Committee had adopted 39 decisions on individual communications, including 12 on the merits, 17 of inadmissibility and 10 discontinued cases. You can check the adopted decisions by the Committee, and its main trends [here](#)!
- In an attempt to favour transparency and facilitate third party interventions, the Committee regularly publishes a table summarizing the **cases pending** for its review on its website. To track pending cases to the Committee and its the main trends, visit our website [here](#) (you will need to scroll down to see the charts). In 2020 the Committee published its Guidelines on Third party interventions, that you may find [here](#).



Article 5 – Individual communications (cont.)

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 and standing 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 that 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.

The Committee has established that communications can be deemed admissible even if they do not have the consent of the children if the author was acting on the best interest of the child.⁸

In cases where States have argued inadmissibility regarding the criteria of *rationae personae* because the complainant does not appear to be a child, or there are doubts regarding the identity/identity documents of the complainant, the Committee has clarified that “the burden of proof cannot rest solely on the author of the communication, especially given that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to the relevant information.”⁹

To know more about how to submit an individual communication to the Committee, you can refer to **Annex 1: FAQ** below or check our specific page [here](#).



⁸ L.H.L and A.H.L. v. Spain (CRC/C/81/D/13/2017) (inadmissible) para 9.2; Y and Z. v. Finland (CRC/C/81/D/6/2016) (inadmissible) para. 9.4
⁹ D.D. v. Spain (CRC/C/80/D/4/2016) (admissible) para 13.3

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 irregular migrants), until it makes a final decision on the substance of the communication. This is to prevent actions that cannot later be undone.

With the aim of providing more light on the criteria used by the Committee to decide on interim measures requests, the Committee adopted [Guidelines on interim measures](#) in January 2019.

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. According to the Committee's working methods, decisions on interim measures will be adopted within 24 hours.¹⁰

Any communication or inquiry that requires 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.



¹⁰ Working methods to deal with individual communications received under the OPIC, paragraph H.21.



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” (substance) stage. Before the Committee examines the details and substance of the communications it receives, it will first consider whether the communication meets the admissibility requirements of the procedure.

If it considers the communication to be “admissible”, it will then move 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. To know more about each step after submitting an individual communication to the Committee (including flowcharts) check our [OPIC mechanisms page](#).

Article 7 lists the admissibility requirements for a communication to be admissible under the OPIC. 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 OP-ICESCR.¹¹

¹¹ OP-ICESCR was the latest communications procedure to be drafted by the UN before the OPIC. It was adopted by the UN General Assembly on 10 December 2008 and entered into force on 5 May 2013.

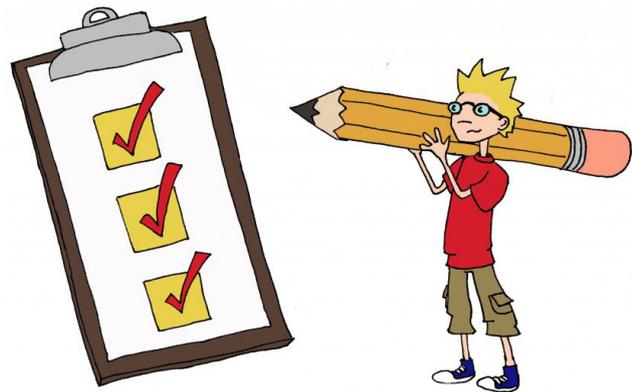
Article 7– Admissibility of a communication (cont.)

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 communications is child-sensitive and in the best interests of children (Art. 7 read in conjunction with Articles 2 and 3 OPIC).

Concerning the burden of proof, the Committee has followed the interpretations made by the Human Rights Committee¹², and determined that it 'does not rest solely with the author of the communication, especially considering that the author and the State party do not always have equal access to the evidence and that frequently the State party alone has access to the relevant information'.¹³

Regarding the exhaustion of domestic remedies, the Committee has recalled the interpretation of the Human Rights Committee by considering that domestic remedies need not be exhausted if they objectively have no prospect of success. For example, in cases where, under applicable domestic laws the claim would inevitably be dismissed, or where established jurisprudence of the highest domestic tribunals would preclude a positive result.¹⁴ However, the Committee on the Rights of the Child has also asserted that mere doubts or assumptions about the success or effectiveness of remedies do not absolve the authors from exhausting them.¹⁵



The Committee has also adopted a child sensitive approach when determining the admissibility of the cases. For instance, in cases of deportation or asylum, the Committee has established that "States parties should give the benefit of the doubt to young people who claim to be minors, despite lacking identity documents, and that it should presume them to be minors and treat them as such until it can be established with certainty, by reliable evidence, that they are of full legal age."¹⁶

¹² See Cases *Purna Maya v. Nepal* (CCPR/C/119/D/2245/2013), para. 12.2; *El Hassy v. Libyan Arab Jamahiriya* (CCPR/C/91/D/1422/2005), para. 6.7; and *Medjnoune v. Algeria* (CCPR/C/87/D/1297/2004), para. 8.3.

¹³ *M.T. v. Spain*, CRC/C/82/D/17/2017, para 13.4

¹⁴ *D.C v Germany* (CRC/C/83/D/60/2018), para 6.5. See also, *Pratt and Morgan v. Jamaica*, communication No. 225/1987, paras. 12.3–12.5; *Barzhig v. France*, communication No. 327/1988, para. 5.1; *Young v. Australia* (CCPR/C/78/D/941/2000), para. 9.4.; *R.T. v. France*, communication No. 262/1987, para. 7.4; *S.S. v. Norway*, communication No. 79/1980, para. 6.2; and *Sadic v. Denmark* (CERD/C/62/D/25/2002), para. 6.5-].

¹⁵ *Ibid.* See also, *R.T. v. France*, communication No. 262/1987, para. 7.4; *S.S. v. Norway*, communication No. 79/1980, para. 6.2.; and *Sadic v. Denmark* (CERD/C/62/D/25/2002), para. 6.5.

¹⁶ *A.D. v Spain* (CRC/C/80/D/14/2017), para 10.4



Article 7– Admissibility of a communication (cont.)

Additionally, the Committee has mentioned that in cases of non-refolument States should follow its General Comment 6 regarding that assessment of the existence of a real risk of irreparable harm in the receiving State should be conducted in an age and gender-sensitive manner¹⁷, and the joint General Comment 3 and 23¹⁸ concerning that the best interests of the child should be a primary consideration in decisions concerning the return of a child, and that such decisions should be taken pursuant to a procedure that should ensure that the child, upon return, will be safe and provided with proper care and enjoyment of rights.¹⁹ The best interests of the child should be ensured explicitly through individual procedures as an integral part of any administrative or judicial decision concerning the return of a child.²⁰

Up through August 2020, the Committee had found inadmissible²¹:

- 5 cases or claims under article 7 (c) as inadmissible
- 2 cases or claims under article 7 (d) as inadmissible
- 3 cases or claims under article 7 (e) as inadmissible
- 11 cases or claims under article 7 (f) as inadmissible
- 3 cases or claims under article 7 (g) as inadmissible



DID YOU KNOW?

- Admissibility requirements explain why a considerable number the communications received by the Committee do not make it to registration. By April 2020, the Committee had received more than 300 individual communications, of which only 116 were registered.
- The three most common reasons why cases are inadmissible are because:
 1. the case was not sufficiently substantiated: the rights which had been violated, and the reasons for their violations, were not well and clearly explained;
 2. The cases or specific claims concerned the rights of adults and not of children, and therefore, were incompatible with the provisions of the Convention.
 3. Domestic remedies were not exhausted and/or exceptions to the latter were not sufficiently substantiated.

¹⁷ General comment No. 6 (2005) of the Committee on the Rights of the Child on treatment of unaccompanied and separated children outside their country of origin, para. 27; K.H., M.H. and E.H. v. Denmark (CRC/C/82/D/32/2017) (inadmissible), para. 8.5; A.P. and K.P. v. Denmark (CRC/C/82/D/33/2017) (inadmissible), para. 8.6; A.S. v. Denmark (CRC/C/82/D/36/2019) (inadmissible), para. 9.5

¹⁸ Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, paras. 29 and 33;

¹⁹ Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, paras. 29 and 33; K.H., M.H. and E.H. v. Denmark (CRC/C/82/D/32/2017) (inadmissible) para. 8.5; A.P. and K.P. v. Denmark (CRC/C/82/D/33/2017) (inadmissible) para. 8.6; A.S. v. Denmark (CRC/C/82/D/36/2019) (inadmissible) para. 9.5

²⁰ Joint general comment No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, para. 30; A.S. v. Denmark (CRC/C/82/D/36/2019) (inadmissible) para. 9.5

²¹ Some of the communications have been deemed inadmissible under more than one article.

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 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 OPIC), 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.



To learn more about each step of the individual communication procedure, including flowcharts, check our [OPIC mechanisms page](#).

In Practice

The language of Article 10 para. 4 OPIC was directly taken from Article 8 para. 4 OP-ICESCR. Its added value is still unclear since the Committee will have to refer to Article 4 of the UNCRC 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 can make available its good offices upon the request of a party or at its own motion, if it deems it necessary and appropriate.²²

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 UNCRC, the OPSC and/or the OPAC.
- The Committee will not accept any friendly settlement that is not based on the respect of the UNCRC, the OPSC and/or the OPAC.

²² Working methods to deal with individual communications received under the OPIC, paragraph F.15.



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 the OPIC makes a declaration accepting inter-state communications, another State party to OPIC, 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 to the matter.

In Practice

So far, this procedure has not been used under the OPIC.



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 UNCRC, OPSC and/or the OPAC by a State party to these instruments, if the State concerned has ratified the OPIC and accepted its inquiry procedure.

In its inquiry report concerning Chile, the Committee considered violations to be "**grave**" if they are likely to cause substantial harm to victims. It further stated that, when determining the graveness of any violations, the scale, prevalence, nature and impact of the violations encountered should be taken into account.²³ Similarly, the Committee explained that the term "**systematic**" refers to the organised nature of the acts that lead to repeated violations and to the unlikelihood they are to occur randomly.²⁴

²³ See paragraph 112 of the [report](#)

²⁴ *Ibid*, paragraph 113.

Article 13 - Inquiry procedure for grave or systematic violations (cont.)

The inquiry procedure is an optional mechanism: paragraph 7 allows States parties to the OPIC 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

1. The Committee receives information indicating grave or systematic violations of the UNCRC, the OPAC and/or the OPSC by a State party to these instruments and to OPIC.
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 actualized 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).
6. After examining the findings of its rapporteurs in charge of the inquiry, the Committee transmits its findings, comments or recommendations to the State concerned. The State is requested to respond in writing, as soon as possible and within six months, to the recommendations or views of the Committee. The response shall include any action taken or envisaged in the light of these views or recommendations.

After the completion of the procedure and after consultation of the State concerned, the Committee may decide to include a summary account of the proceedings in its report (Art. 16 OPIC).

The Committee can also invite the State concerned to submit further information about measures taken in response to its views or recommendations, including in the State's periodic report before the Committee under UNCRC, the OPSC and/or the OPAC.

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 OPIC. 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 and in our [OPIC mechanisms page](#).



DID YOU KNOW?

Any person or organisation, including NGOs, can submit information indicating grave or systematic violations of the UNCRC and/or its protocols to the Committee on the Rights of the Child. To submit an inquiry see details of requirements [here](#).



FAQs



Individual Communications

Q How to submit an individual communication to the Committee on the Rights of the Child?

For a communication to be considered by the Committee:

- It cannot be anonymous
- it must be submitted in writing
- it must concern a State which is both party to the OPIC and to the instrument(s) which protects the rights allegedly violated (UNCRC and/or OPAC and/or OPSC)
- it must be submitted by:
 - an individual or a group of individuals within the jurisdiction of the State party in question (regardless of whether their legal capacity is recognized in the State party against which the communication is directed); or
 - by their designated representatives; or
 - by others acting on behalf of the alleged victim(s) with their express consent;
 - by others acting on behalf of the alleged victim(s) without their express consent, provided that the author can justify his/her/their action.
- The victim(s) must agree to disclose his/her/their identity to the State against which the violation is alleged

However, the names of the author(s) and/or alleged victim(s) of a communication shall not be published in any final decision taken by the Committee, except where, in view of the age and maturity of the victim(s), express consent may be provided to publish their names.

Rule 13 and 29.4 of the Rules of procedures under the OPIC

For a communication to be considered by the Committee:

- All available domestic remedies must have been exhausted. This shall not be the rule where the application of the remedies is unreasonably prolonged or unlikely to bring effective relief;
- The same matter must not already been examined by the Committee or under another procedure of international investigation or settlement;
- The facts that are the subject of the communication must have occurred prior to the entry into force of the OPIC for the State concerned, unless those facts continued after that date;
- The communication cannot be submitted more than one year after the exhaustion of domestic remedies;

Rule 16 of the Rules of procedures under the OPIC

Preparing the form for submission of the complaint:

The Committee on the Rights of the Child has prepared a [model form for submission of individual communications to the Committee on the Rights of the Child under the OPIC](#), guiding the submission process.

I 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.

For a communication to be considered by the Committee:

Once completed, the complaint (and any relevant information which becomes available after the complaint has been submitted) can be sent by e-mail to the Petitions Team of the United Nations Office of the High Commissioner for Human Rights:

Petitions Team
Office of the High Commissioner for Human Rights
United Nations Office at Geneva
1211 Geneva 10, Switzerland
E-mail : petitions@ohchr.org

Request of additional information/clarification & comments to the other party:

The Petitions team can request for clarification or additional information. If the complaint is registered, it will be shared with the State-party against which the communication was brought, which will be invited to comment.

The author(s) of the communication and the State-party against which the communication was brought will always be informed on the other parties' comments, having the possibility to provide its own response.

Rule 15, 16 and 18 of the Rules of procedures under the OPIC

Q Who can be a victim under the individual communication procedure of OPIC?

Under the OPIC, a victim can be anyone who alleges a violation of his/her rights under the UNCRC, the OPSC and/or the OPAC:

- The victim does not need to be a child at the time of submission. This is meant to take into account the fact that the victim may be an adult by the time the communication reaches the Committee on the Rights of the Child.
- If the victim is a child, s/he can submit a communication directly, without being represented, regardless of his/her age and his/her national legal status or capacity.
- The victim does not need to have the nationality of the State party against which the communication is submitted.

Q Are there any measures to protect the victim(s) or his/her/their representative(s)?

- Yes, the OPIC requires States parties to ensure that “individuals under [their] jurisdiction are not subjected to any human rights violation, ill-treatment or intimidation as a consequence of communications or cooperation” with the Committee.²⁵
- If the Committee receives reliable information that a State party failed to protect these individuals, it may request that the State party urgently take all appropriate measures to stop the reported breach in protection and submit written explanations and clarifications. The Committee will monitor the State’s compliance with this request and may also issue public statements about the case and take any other appropriate action.²⁶



Inquiry procedure

Q What could be some advantages of the inquiry procedure?

Individual communications and inquiries are two different mechanisms under the OPIC. Inquiry requests can be submitted to the Committee in relation to **grave or systematic violations** by a State party of rights set forth in the UNCRC and/or the OPAC and/or the OPSC.

1. Different to the communication procedure, the inquiry procedure does not require the identification of individual victims. It can thus enable the Committee to review violations that affect large groups of children without identifying them.
2. Unlike the individual communications procedure, the inquiry procedure does not have admissibility requirements. In particular, it is not necessary to exhaust domestic remedies at national level before submitting an inquiry request. Therefore, inquiries can be used as a more rapid response to address general situations of grave and/or systematic violations of children’s rights.
3. The inquiry procedure gives the Committee the opportunity to issue recommendations that may have a broader impact than those it can issue under the individual communications procedure. It also allows the Committee to set certain standards with regards of a particular issue, going beyond the country subject to the inquiry. Indeed, the Committee’s recommendations are strong advocacy tools that can be used at the national levels.

For more FAQs, please refer to our website [here](#).

²⁵ See art.4 OPIC

²⁶ See Rule 4 of the Committee’s rules of procedure under the OPIC, CRC/C/62/3.

Text of the OPIC

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

Various resources can be found on the OPIC website of Child Rights Connect at: <https://opic.childrightsconnect.org/>.

They include:

- A section explaining [what is the OPIC](#): it's mechanisms (with flowcharts explaining the procedures), how to submit an individual communication and follow-up once a decision is adopted by the Committee; [FAQs](#).
- The [ratification status of the OPIC](#) including a map, graphs and charts;
- A [database of child rights jurisprudence](#) of the universal human rights system and a section highlighting [trends of the decisions adopted by the Committee on the Rights of the Child](#);
- [Pending cases to the Committee](#) with graphs and charts showing the main trends of cases received by the Committee;
- A [child-friendly section](#) of the OPIC currently being developed together with children;
- Publications, advocacy material and all of the OPIC official documents, including:
 - the [text of the Optional Protocol in all six UN languages](#);
 - the Committee's [Rules of procedure under OPIC](#);
 - its [Working methods to deal with individual communications received under the OPIC](#);
 - the [model form to submit a complaint](#) developed by the Committee;
 - its [guidelines on interim measures](#)
 - its [guidelines on third party interventions](#), and
 - its [reports of concluded inquiry procedures](#).



We would love to include and help disseminate **YOUR** resources and advocacy material in relation to the OPIC in our website. Please write to us [here](#)!

The UN Committee on the Rights of the Child:

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

The UN Treaty Collection, status of OPIC ratification:

https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-d&chapter=4&lang=en

Glossary of Key Terms

COMMITTEE: See **TREATY BODY**

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

COMPLAINT PROCEDURE: See **COMMUNICATIONS PROCEDURE**

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 (UNCRC, adopted 1989; entered into force 1990): Convention setting forth a full spectrum of civil, cultural, economic, social and political rights for children. The USA and Somalia are the only countries which have failed to ratify. The Convention is also the only international human rights treaty that expressly gives non-governmental organisations (NGOs) a role in monitoring its implementation (under Article 45a).

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 UNCRC.

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): A treaty that has already entered into force may enter into force in a manner specified in it for a State or international organization that expresses its consent to be bound by it after its entry into force.

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.

OMBUDSPERSON: An ombudsperson 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 Ombudsperson is referred to, at least officially, as the ‘Parliamentary Commissioner’ (e.g., the West Australian state Ombudsperson). As well as for a government, an ombudsperson 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 Ombudsperson’ 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.

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 procedure 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. Eight Treaty bodies have been set up for the core UN human rights treaties to monitor states parties' efforts to implement their provisions.



Visit our dedicated website to the OPIC: <https://opic.childrightsconnect.org/>