



ADVOCACY TOOLKIT

Campaign for the ratification of the third Optional Protocol to the CRC on a communications procedure

**For activities targeting the ratification of the third Optional
Protocol to the CRC on a communications procedure**

May 2012

About the NGO Group for the CRC

The NGO Group for the Convention on the Rights of the Child is a network of 80 international and national non-governmental organisations, which work together to facilitate the implementation of the United Nations Convention on the Rights of the child. It was originally formed in 1983 when members of the NGO Group were actively involved in the drafting of the Convention.

Since the adoption of the Convention, the NGO Group has been supporting the work of national and international NGOs as well as the Committee on the Rights of the child to monitor and implement the Convention and its *Optional Protocols*.

Our mission is to promote, implement and monitor the UN Convention on the Rights of the Child.

Tell us what you think about this Toolkit

We would very much appreciate any comment you might have on this Advocacy Toolkit. We would particularly like to know how you have used it, what you found most helpful and if you think that other aspects of the campaign should be addressed.

Please email Anita Goh, Advocacy Officer of the NGO Group for the CRC, at goh@childrightsnet.org with your comments.

If you wish to know more about the campaign and how to join us, check our dedicated webpage: www.childrightsnet.org/NGOGroup/childrightsissues/ComplaintsMechanism/

How to use this Advocacy Toolkit

This short version of the Advocacy Toolkit has been prepared by the NGO Group for the CRC to support those who are interested in joining the campaign for the ratification of the third Optional Protocol to the CRC establishing a communications procedure.

It contains background information about the campaign, an explanation of the key provisions of the new Optional Protocol, a glossary of key terms (in *italic* in the text) and a list of abbreviations.

The present toolkit is a revised version of previously published toolkits. We endeavour to send you an updated version every time some significant developments happen with regards to the campaign.¹

Updated versions will be circulated via the CRINMAIL and members of the NGO Group as the process unfolds.

For the third Optional Protocol to become a tangible reality for children and their defenders, it is crucial that we all join forces. A new international coalition “Ratify OP3 CRC – International Coalition for the OPCRC on a Communications Procedure” (the “International Coalition”)² will soon be officially launched to strengthen links between national and international advocacy and lobbying actions. Since the ratification process differs from one country to another, it is essential that we all get actively engaged to ensure that the third Optional Protocol becomes a reality in *our* country.

A web platform, accessible at www.ratifyop3crc.org, will soon be set up for the International Coalition. In the meantime, regular updates on the international campaign and the international coalition will be circulated through the NGO Group's and CRIN's website and CRINMAILS.

This short version of the toolkit is organised in two different factsheets:

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¹ A first toolkit was circulated in December 2009 to prepare the first session of the UN Open-ended Working Group and a first update was circulated in June 2010

² The International Coalition succeeds to the NGO Working Group that coordinated the international campaign for the drafting and adoption of the OP3CRC, under the umbrella of the NGO Group for the CRC based in Geneva. It is guided by a Steering Committee composed of international and regional child rights NGOs, currently composed of: African Child Policy Forum, Eurochild, Child Rights Information Network (CRIN), Global Initiative to End All Corporal Punishment of children (GIEACP), Kindernothilfe, NGO Group for the Convention on the Rights of the Child, Plan International, Red latinoamericana y caribeña por la defensa de los derechos de los niños, niñas y adolescentes (Redlamyc), Save the Children, TDHIF and World Vision.

List of abbreviations

CRC	Convention on the Rights of the Child
UNGA	General Assembly of the United Nations
HRC	United Nations Human Rights Council
MFA	Ministry of Foreign Affairs
NGO	Non-governmental organization
NGO Group	NGO Group for the Convention on the Rights of the Child
NGO Group WG	Working Group of the NGO Group for the Convention on the Rights of the Child
NHRI	National Human Rights Institution
OEWG	Open-ended working group of the United Nations Human Rights Council
OP	Optional Protocol
OPAC	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
OP3 CRC	Optional Protocol to the Convention on the Rights of the Child on a communications procedure
OPICESCR	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



FACTSHEET 1 – Background information on the campaign for the ratification of the third Optional Protocol to the CRC establishing a communications procedure

What is a communications procedure?	
Definition	<ul style="list-style-type: none"> ▪ A communications or ‘complaints procedure’ allows individuals, groups of individuals or their representatives who claim that their rights have been violated by a State that is party to an international human rights <i>Convention</i> or <i>Covenant</i> to bring a complaint or communication before the relevant ‘<i>treaty body</i>’ or <i>Committee</i>, provided that the State has recognised the competence of the Committee to receive such complaints. ▪ It is a <i>quasi-judicial mechanism</i>: the decisions of the Committee on the complaints it receives are not legally binding on the State concerned. ▪ Before submitting a communication, the <i>complainant</i> must first ‘<i>exhaust domestic remedies</i>’, 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.
Ways of creation	A communications procedure can be created as part of a core human rights <i>treaty</i> ³ or as an <i>Optional Protocol</i> (OP) to a core human rights <i>treaty</i> . An OP is a stand-alone <i>treaty</i> that needs to be ratified by States. Since the Convention on the Rights of the Child (the CRC) did not include a communications procedure, it had to be created through a new OP to the CRC.
Why was a communications procedure under the CRC needed?	
To fill a protection gap	<ul style="list-style-type: none"> ▪ The CRC was the only core international human rights <i>treaty</i> without a communications procedure. This will now raise international recognition of children as rights holders ▪ It will cover the full range and detail of rights in the CRC and its two existing OPs, as relevant, unlike the existing communications procedures ▪ Children will have an international <i>mechanism</i> to appeal to when national remedies do not exist or are ineffective ▪ Child rights complaints will be considered by a Committee of child rights experts
To strengthen the implementation of children’s rights at the national level	<ul style="list-style-type: none"> ▪ The Committee will develop international <i>jurisprudence</i> and provide practical and authoritative interpretation of the CRC provisions and States’ obligations ▪ The possibility of submitting complaints at the international level will encourage States to strengthen/develop appropriate remedies at national level ▪ It will allow the Committee to undertake inquiries if they receive reliable information indicating grave or systematic child rights violations by a <i>State party</i>
Useful quotes	“Children will now be able to join the ranks of other rights-holders who are empowered to bring their complaints about human rights violations before an international body” ⁴

³ A ‘core human rights treaty’ is a human rights treaty that also establishes a monitoring Committee

⁴ Statement of the UN High Commissioner for Human Rights Navi Pillay, quoted in the OHCHR news release, accessible here: www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=11732&LangID=E

How was the Optional Protocol on a communications procedure created?

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 CRC.⁵ The OEWG discussed the proposal in December 2009.⁶

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.⁷

February 2011: After ten days of negotiations, the OEWG adopted a final draft OP.⁸

June 2011: the HRC adopted the final draft OP and transmitted it to the UN General Assembly (UNGA) for its final adoption.⁹

19 December 2011: the UNGA adopted the final draft OP to the CRC on a communications procedure, which consequently became a new international treaty.¹⁰

Where are we now (May 2012)?

Twenty States, namely Austria, Belgium, Brazil, Chile, Costa Rica, Finland, Germany, Italy, Luxembourg, Maldives, Mali, Montenegro, Morocco, Peru, Portugal, Serbia, Slovakia, Slovenia, Spain and Uruguay, signed the third OP at the official UN ceremony held on 28 February 2012. This event marked the start of the ratification process of the third OP.

Since the official ceremony, two additional States have signed the OP: Malta (18 April 2012) and the former Yugoslav Republic of Macedonia (23 May 2012).

The OP needs to be ratified by ten States to enter into force.

It is crucial that we keep the momentum going and ensure a rapid entry into force of the OP.

In addition, since the OP will only apply to those States that have ratified it, we need to join our efforts to ensure that it is accepted by all States and thus provides an international remedy for all children around the world.

⁵ In June 2009, the HRC adopted a first resolution (A/HRC/RES/11/1) establishing an "Open-ended Working Group" (OEWG) to explore the possibility of elaborating a new communications procedure for the CRC.

⁶ In December 2009, the OEWG held a three day meeting (the meeting was initially scheduled to last for five days but had to be shortened) during which State representatives, UN agencies, independent experts, NGOs and other actors discussed different aspects of an OP. For the full report of the session and the submissions made by the experts, see www2.ohchr.org/english/bodies/hrcouncil/OEWG/1stsession.htm For an account of the session day by day, see www.crin.org/resources/infoDetail.asp?ID=21261&flag=event

⁷ In March 2010, the HRC adopted a Resolution (A/HRC/RES/13/3) changing the *mandate* of the OEWG from simply 'considering' the need for an OP to actually drafting the procedure. The Resolution also requires the Chairperson to prepare an initial draft of the OP for the next meeting.

⁸ 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.

⁹ To read the resolution, go to: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/RES/17/18

¹⁰ To read the UNGA resolution and final text of the OP, go to: www.un.org/Docs/asp/ws.asp?m=A/RES/66/138

Key dates of the OP3 CRC campaign¹¹	
1999	<ul style="list-style-type: none"> Upon the 10th anniversary of the CRC, the <i>Committee</i> on the Rights of the Child decided to “consider initiating discussions on an <i>Optional Protocol</i> to the <i>Convention</i> providing a <i>mechanism</i> for individual communications, to ensure the availability of legal remedies at the international level with regard to the <i>Convention</i>” and encouraged “States parties to support its efforts in this respect”.¹²
2006	<ul style="list-style-type: none"> A group of child rights organisations initiated a campaign for a new OP to the CRC establishing a communications procedure to ensure the availability of legal remedies for children at the international level.
2008	<ul style="list-style-type: none"> The campaign was established as a Working Group of the NGO Group for the CRC (NGO Group WG). Founding organisations include: Child Rights Information Network (CRIN), European Network of Ombudspersons for Children (ENOC), Global Initiative to End All Corporal Punishment of Children, Kindernothilfe, Plan International, Save the Children Norway, Save the Children Sweden, Save the Children UK, SOS Villages International, World Organisation against Torture (OMCT) and World Vision International. An international petition was launched.¹³
2009	<ul style="list-style-type: none"> The NGO Group WG started an important awareness raising campaign to mobilise support from UN <i>Member States</i> as well as NGOs and UN experts both in Geneva and at national level through expert meetings, joint statements at the UN Human Rights Council (HRC) and lobbying in Geneva and in capitals. Thanks to the coordination of efforts at both national and international levels, a ‘<i>core group of friendly States</i>’ was formed and backed the idea of proposing a new OP to the HRC. In June 2009, the HRC established a first “Open-ended Working Group” (OEWG) to “explore the possibility of elaborating” a new OP to the CRC. The NGO Group WG presented a joint written submission explaining the added value of such an OP and calling States for the elaboration of this new instrument. The OEWG met during five days in December 2009.
2010	<ul style="list-style-type: none"> In March 2010, the OEWG presented its report to the HRC and the HRC decided to extend the <i>mandate</i> of the OEWG to elaborate a new OP. The Chairperson of the OEWG prepared a proposal for a draft to be the basis of the negotiation and circulated it in September 2010. The NGO Group 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 the NGO Group WG delivered joint oral statements on each item discussed.
2011	<ul style="list-style-type: none"> Following the first round of negotiations, the Chairperson put together a revised draft OP and circulated it in January 2011. The NGO Group 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 the NGO Group 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
2012	<ul style="list-style-type: none"> In February 2012, an official ceremony opened the third OP to signature and ratification by UN Member States.

¹¹ To find all the documents submitted throughout the OP3 CRC discussion and negotiation process and the reports of the Open-ended Working Group’s meetings, go to : www2.ohchr.org/english/bodies/hrcouncil/OEWG/

¹² See www.ohchr.org/EN/HRBodies/CRC/Documents/Recommandations/ten.pdf p.14

¹³ For further information, see <http://www.crin.org/petitions/petition.asp?petID=1007>

FACTSHEET 2 – Explanation of the key provisions of the third Optional Protocol

Article 1 – Competence of the Committee on the Rights of the Child	
The Protocol	<p>“1. A State party to the present Protocol recognizes the competence of the Committee as provided for by the present Protocol.</p> <p>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.</p> <p>3. No communication shall be received by the Committee if it concerns a State that is not a party to the present Protocol.”</p>
What it means	<p>For the Committee to be able to receive a communication:</p> <ul style="list-style-type: none"> ○ 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 new <i>Optional Protocol</i> on a communications procedure (OP3 CRC)
In practice	<p>If the State concerned has not ratified the OP3 CRC = no communication can be brought against it</p> <p>If the State concerned has ratified the OP3 CRC = communications can only allege the violation of rights under the Convention on the Rights of the Child (CRC), the Optional Protocol on the sale of children, child prostitution and child pornography (OPSC) or the Optional Protocol on the involvement of children in armed conflict (OPAC), provided that the State has ratified those instruments (Article 1 read in conjunction with Article 5 OP3 CRC).</p> <ul style="list-style-type: none"> ➤ If the State concerned has ratified the OP3 CRC, the CRC and the OPSC, communications can only be brought about violations of the rights guaranteed under the CRC and the OPSC, but not under the OPAC. ➤ If the State concerned has ratified the OP3 CRC, the OPSC and the OPAC, communications can only be brought about violations of the rights guaranteed under the OPSC and the OPAC, but not under the CRC.

Articles 2 and 3 – General principles guiding the functions of the Committee and new Rules of procedure

<p>The Protocol</p>	<p>“Article 2 - General principles guiding the functions of the Committee In fulfilling the functions conferred on it by the present Protocol, the <u>Committee shall be guided by the principle of the best interests of the child</u>. It shall also have <u>regard for the rights and views of the child</u>, the views of the child being given due weight in accordance with the age and maturity of the child.”</p> <p>“Article 3 - Rules of procedure 1. The Committee <u>shall adopt rules of procedure</u> 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 <u>in order to guarantee child-sensitive procedures</u>.</p> <p>2. The Committee shall include in its rules of procedure safeguards to <u>prevent the manipulation of the child</u> by those acting on his or her behalf and <u>may decline to examine any communication that it considers not to be in the child’s best interests.</u>”</p>
<p>What it means</p>	<p>The Committee shall interpret the provisions of the OP3 CRC in a way that it ensures the best interests and the right to be heard of the child. To that end, the new <i>rules of procedure</i> that the Committee will develop regarding the new communications procedure must guarantee child-sensitive procedures.</p> <p>In addition, the Committee has the power to decline to examine any communication that would be contrary to the child’s best interests. For example, communications which aim is to defend the child’s representative’s interests rather than the child’s best interests.</p>
<p>In practice</p>	<p>The Committee has just started its work on new <i>rules of procedure</i> regarding the new communications procedure. The aim of these <i>rules of procedure</i> will be to implement the provisions of the OP3 CRC in a child-sensitive way. The NGO Group for the CRC will coordinate inputs from civil society and children and submit them to the Committee in due course.</p>

Article 5 – Individual communications

The Protocol	<p>“1. Communications may be submitted <u>by or on behalf of an individual or group of individuals</u>, within the jurisdiction of a State party, <u>claiming to be victims of a violation by that State party</u> of any of the rights set forth in any of the following instruments to which that State is a party:</p> <ul style="list-style-type: none"> (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. <p>2. Where a communication is submitted on behalf of an individual or group of individuals, this shall be <u>with their consent unless the author can justify acting on their behalf without such consent.</u>”</p>
What it means	<p>A communication can be submitted by:</p> <ul style="list-style-type: none"> ○ A victim ○ A group of victims ○ A representative of a victim ○ A representative of a group of victims <p>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.</p> <p>The communication has to allege the violation of rights guaranteed under the CRC, the OPSC and/or the OPAC by a <i>State party</i> to the OP3 CRC, provided that the State concerned has ratified the instruments invoked (see explanation under Article 1 OP3 CRC).</p>
In practice	<p>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:</p> <ul style="list-style-type: none"> ➤ 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. <p>In such cases, the representative will have to explain in the communication why s/he cannot get the consent of the victim. When deciding whether the representative is entitled to submit a communication on behalf of a child victim without his/her consent, the Committee will have to determine whether the communication is in the child’s best interests or not (Article 5 read in conjunction with Article 2 and Article 3.2).</p>

Article 6 – Interim measures

The Protocol	<p>“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 <u>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.</u></p> <p>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.”</p>
What it means	<p>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 <i>complainant</i>.</p> <p>The Committee can request the <i>State party</i> against which a communication has been submitted to take interim measures, such as the suspension of judicial or administrative decisions (e.g. deportation of illegal migrants), until it makes a final decision on the substance of the communication. This is to prevent actions that cannot later be undone.</p>
In practice	<p>If you file a communication and would like the Committee to consider requesting interim measures, you should clearly state this in your communication.</p> <p>States have no obligation to comply with the Committee’s request. However, 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.</p>

Article 7– Admissibility of a communication

The Protocol	<p>“The Committee shall consider a communication inadmissible when:</p> <ul style="list-style-type: none"> (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 <u>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.</u>”
What it means	<p>There are two major stages in a communications procedure: the “admissibility” stage and the “merits” stage. Before the Committee examines the details and substance of the communications it receives, it will first consider whether the communication meets the requirements of the procedure.</p> <p>If it considers the communication to be “admissible”, it will then move it to the “merits” stage during which it will examine the violations alleged. If the communication fails to meet the admissibility requirements, the merits of the case will not be considered and the communication will be dismissed.</p> <p>Article 7 lists the admissibility requirements for a communication to be admissible under the new OP3 CRC. It is worth noting that Art. 7(h) is not a standard provision of other communications procedures and was directly inspired from Article 3 OPICESCR¹⁴.</p>
In practice	<p>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 <i>treaty</i> 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 in conjunction with Articles 2 and 3).</p>

¹⁴ The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OPICESCR) was the latest communications procedure to be drafted by the UN before the OP3 CRC. As of 30 May 2012, 40 States have signed the Protocol, of which 8 have ratified it. It will enter into force three months after the tenth ratification.

Articles 8 and 10 – Transmission and Consideration of communications

The Protocol	<p>“Article 8 - Transmission of the communication</p> <p>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 <u>as soon as possible</u>.</p> <p>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 <u>as soon as possible and within six months.</u>”</p> <p>“Article 10 - Consideration of communications</p> <p>1. The Committee shall consider communications received under the present Protocol <u>as quickly as possible</u>, in the light of all documentation submitted to it, provided that this documentation is transmitted to the parties concerned.</p> <p>2. The Committee shall hold closed meetings when examining communications received under the present Protocol.</p> <p>3. <u>Where the Committee has requested interim measures, it shall expedite the consideration of the communication.</u></p> <p>4. When examining <u>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.</u> 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.</p> <p>5. After examining a communication, the Committee shall, <u>without delay</u>, transmit its views on the communication, together with its recommendations, if any, to the parties concerned.”</p>
What it means	<p>These articles provide the steps the Committee shall follow when it receives a communication that is <i>prima facie</i> (ie. at first sight) admissible, and in particular the different time lines of the procedure.</p> <p>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”).</p> <p>Article 10 also provides special requirements in two cases: 1) when the Committee has requested interim measures (see Article 6 OP3 CRC), it shall prioritise that communication, and 2) if the communication alleges violations of economic, social or cultural rights, the Committee shall use a specific standard of review taking into account the “reasonableness of the steps taken by the State Party in accordance with article 4” of the CRC.</p>
In practice	<p>The language of Article 10 para. 4 was directly taken from Article 8 para. 4 OPICESCR. Its added value is still unclear since the Committee will have to refer to Article 4 of the CRC to determine States’ obligations regarding economic, social or cultural rights anyway.</p>

Article 9 – Friendly settlement

The Protocol	<p>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.</p> <p>2. An agreement on a friendly settlement <u>reached under the auspices</u> of the Committee closes consideration of the communication under the present Protocol.</p>
What it means	<p>This article allows the resolution of a communication through a friendly settlement, ie. 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.</p>
In practice	<p>It is not clear whether the Committee shall make available its good offices upon the request of a party, or whether it could proactively seek the resolution of a communication through a friendly settlement.</p> <p>While this article is based on the language of Article 7 OPICESCR, 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 need to be further defined by the Committee in its <i>rules of procedure</i> or practice.</p>

Article 13 - Inquiry procedure for grave or systematic violations

The Protocol	<p>“1. If the Committee receives <u>reliable information</u> indicating <u>grave or systematic violations</u> 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.</p> <p>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.</p> <p>3. Such an inquiry shall be conducted <u>confidentially</u>, and the cooperation of the State party shall be sought at all stages of the proceedings.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>7. <u>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.</u></p> <p>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.”</p>
What it means	<p>The inquiry procedure is a <i>mechanism</i> allowing the Committee to investigate allegations of grave or systematic violations of CRC, OPSC and/or the OPAC by a State party to these instruments, if the State concerned has ratified the OP3 CRC and accepted its inquiry procedure.</p> <p>The inquiry procedure is an optional mechanism: paragraph 7 allows States parties to the OP3 CRC to “opt-out” from the inquiry procedure by way of declaration, while paragraph 8 allows States Parties that opted-out to withdraw that declaration.</p> <p>If the Committee receives reliable information indicating grave or systematic violations of children’s rights, it can decide to conduct an inquiry confidentially but will have to transmit the information it receives to the State concerned. Any visit to the State concerned requires the consent of that State.</p>
In practice	<p>The inquiry procedure defers from the communications procedure as it does not require victims or representatives of victims to allege the violation. There are no “admissibility requirements”, which means that the source of information could request the Committee to keep its identity confidential. In return, the inquiry procedure is optional and needs the cooperation of the <i>State party</i> at each stage of the procedure.</p>

Annex: Text of the Optional Protocol

Optional Protocol to the Convention on the Rights of the Child on a communications procedure

The States parties to the present Protocol,

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

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

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

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

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

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

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

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

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

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

Have agreed as follows:

Part I

General provisions

Article 1

Competence of the Committee on the Rights of the Child

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

Article 2

General principles guiding the functions of the Committee

In fulfilling the functions conferred on it by the present Protocol, the Committee shall be guided by the principle of the best

interests of the child. It shall also have regard for the rights and views of the child, the views of the child being given due weight in accordance with the age and maturity of the child.

Article 3

Rules of procedure

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

Article 4

Protection measures

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

Part II

Communications procedure

Article 5

Individual communications

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

Article 6

Interim measures

1. At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may transmit to the State party concerned for its urgent consideration a request that the State party take such interim measures as may be necessary in exceptional circumstances to avoid possible irreparable damage to the victim or victims of the alleged violations.
2. Where the Committee exercises its discretion under paragraph 1 of the present article, this does not imply a determination on admissibility or on the merits of the communication.

Article 7

Admissibility

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

Article 8

Transmission of the communication

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

Article 9

Friendly settlement

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

Article 10

Consideration of communications

1. The Committee shall consider communications received under the present Protocol as quickly as possible, in the light of all documentation submitted to it, provided that this documentation is transmitted to the parties concerned.
2. The Committee shall hold closed meetings when examining communications received under the present Protocol.
3. Where the Committee has requested interim measures, it shall expedite the consideration of the communication.
4. When examining communications alleging violations of economic, social or cultural rights, the Committee shall consider the reasonableness of the steps taken by the State party in accordance with article 4 of the Convention. In doing so, the Committee shall bear in mind that the State party may adopt a range of possible policy measures for the implementation of the economic, social and cultural rights in the Convention.

5. After examining a communication, the Committee shall, without delay, transmit its views on the communication, together with its recommendations, if any, to the parties concerned.

Article 11 **Follow-up**

1. The State party shall give due consideration to the views of the Committee, together with its recommendations, if any, and shall submit to the Committee a written response, including information on any action taken and envisaged in the light of the views and recommendations of the Committee. The State party shall submit its response as soon as possible and within six months.

2. The Committee may invite the State party to submit further information about any measures the State party has taken in response to its views or recommendation or implementation of a friendly settlement agreement, if any, including as deemed appropriate by the Committee, in the State party's subsequent reports under article 44 of the Convention, article 12 of the Optional Protocol on the sale of children, child prostitution and child pornography or article 8 of the Optional Protocol on the involvement of children in armed conflict, where applicable.

Article 12 **Inter-State communications**

1. A State party to the present Protocol may, at any time, declare that it recognizes the competence of the Committee to receive and consider communications in which a State party claims that another State party is not fulfilling its obligations under any of the following instruments to which the State is a party:

- (a) The Convention;
- (b) The Optional Protocol to the Convention on the sale of children, child prostitution and child pornography;
- (c) The Optional Protocol to the Convention on the involvement of children in armed conflict.

2. The Committee shall not receive communications concerning a State party that has not made such a declaration or communications from a State party that has not made such a declaration.

3. The Committee shall make available its good offices to the States parties concerned with a view to a friendly solution of the matter on the basis of the respect for the obligations set forth in the Convention and the Optional Protocols thereto.

4. A declaration under paragraph 1 of the present article shall be deposited by the States parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter that is the subject of a communication already transmitted under the present article; no further communications by any State party shall be received under the present article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State party concerned has made a new declaration.

Part III

Inquiry procedure

Article 13 **Inquiry procedure for grave or systematic violations**

1. If the Committee receives reliable information indicating grave or systematic violations by a State party of rights set forth in the Convention or in the Optional Protocols thereto on the sale of children, child prostitution and child pornography or on the involvement of children in armed conflict, the Committee shall invite the State party to cooperate in the examination of the information and, to this end, to submit observations without delay with regard to the information concerned.

2. Taking into account any observations that may have been submitted by the State party concerned, as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State party, the inquiry may include a visit to its territory.

3. Such an inquiry shall be conducted confidentially, and the cooperation of the State party shall be sought at all stages of the proceedings.

4. After examining the findings of such an inquiry, the Committee shall transmit without delay these findings to the State party concerned, together with any comments and recommendations.
5. The State party concerned shall, as soon as possible and within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.
6. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2 of the present article, the Committee may, after consultation with the State party concerned, decide to include a summary account of the results of the proceedings in its report provided for in article 16 of the present Protocol.
7. Each State party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it does not recognize the competence of the Committee provided for in the present article in respect of the rights set forth in some or all of the instruments listed in paragraph 1.
8. Any State party having made a declaration in accordance with paragraph 7 of the present article may, at any time, withdraw this declaration by notification to the Secretary-General of the United Nations.

Article 14

Follow-up to the inquiry procedure

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

Part IV

Final provisions

Article 15

International assistance and cooperation

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

Article 16

Report to the General Assembly

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

Article 17

Dissemination and information on the Optional Protocol

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

Article 18

Signature, ratification and accession

1. The present Protocol is open for signature to any State that has signed, ratified or acceded to the Convention or either of the first two Optional Protocols thereto.

2. The present Protocol is subject to ratification by any State that has ratified or acceded to the Convention or either of the first two Optional Protocols thereto. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. The present Protocol shall be open to accession by any State that has ratified or acceded to the Convention or either of the first two Optional Protocols thereto.

4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General.

Article 19

Entry into force

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.

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

Article 20

Violations occurring after the entry into force

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

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

Article 21

Amendments

1. Any State party may propose an amendment to the present Protocol and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States parties with a request to be notified whether they favour a meeting of States parties for the purpose of considering and deciding upon the proposals. In the event that, within four months of the date of such communication, at least one third of the States parties favour such a meeting, the Secretary-General shall convene the meeting under the auspices of the United Nations. Any amendment adopted by a majority of two thirds of the States parties present and voting shall be submitted by the Secretary-General to the General Assembly for approval and, thereafter, to all States parties for acceptance.

2. An amendment adopted and approved in accordance with paragraph 1 of the present article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States parties that have accepted it.

Article 22
Denunciation

1. Any State party may denounce the present Protocol at any time by written notification to the Secretary-General of the United Nations. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

2. Denunciation shall be without prejudice to the continued application of the provisions of the present Protocol to any communication submitted under articles 5 or 12 or any inquiry initiated under article 13 before the effective date of denunciation.

Article 23
Depositary and notification by the Secretary-General

1. The Secretary-General of the United Nations shall be the depositary of the present Protocol.

2. The Secretary-General shall inform all States of:

- (a) Signatures, ratifications and accessions under the present Protocol;
- (b) The date of entry into force of the present Protocol and of any amendment thereto under article 21;
- (c) Any denunciation under article 22.

Article 24
Languages

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States.

GLOSSARY OF KEY TERMS

COMMITTEE: See under **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' – the person or party bringing a case, for example a child who has had his/her rights breached.

COMPLAINT PROCEDURE: See under **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 (CRC, adopted 1989; entered into force 1990): Convention setting forth a full spectrum of civil, cultural, economic, social and political rights for children. The USA 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 CRC.

COVENANT: See under **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.

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

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

QUASI-JUDICIAL: Having to do with powers that are to some extent judicial, for example human rights commissions may have quasi-judicial powers.

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

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

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

TREATY: See under **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.