



Key Findings of the Roundtable Discussion

Towards Better Implementation of the UN CRC through its Third Optional Protocol on a Communications Procedure

Tuesday, 30 April 2019, Palais des Nations, Geneva, Switzerland

Content

Background and aims of the Roundtable Discussion	2
The Optional Protocol to the UNCRC on a Communications Procedure at a glance	3
Ratification experiences and challenges	7
National implementation of child rights through the OPIC	8
Looking ahead - Strategies for the promotion of the universal ratification of the OPIC	11
Annex.....	15

Background and aims of the Roundtable Discussion

The Third Optional Protocol to the Convention on the Rights of the Child (UNCRC) on a Communications Procedure (OPIC), which celebrates this year the 5th anniversary of its entry into force, sets out an individual and inter-State complaints procedure, as well as an inquiry procedure for child rights violations. It allows children from States parties to the Protocol to bring communications (complaints) about violations of their rights directly to the UN Committee on the Rights of the Child (Committee). Individual communications are subject to admissibility criteria under article 7 of the Option Protocol, which includes the exhaustion of domestic remedies. The exhaustion of such remedies is not required for the submission of an inquiry request.

Since 14 April 2014 – the entry into force of the Optional Protocol – 44 States have ratified the OPIC and 19 have signed but not yet ratified it. The Committee has been receiving individual communications through the Petitions Section of the Office of the High Commissioner for Human Rights (OHCHR) and has started to conduct inquiries into allegations of grave or systematic violations of human rights through the Groups in Focus Section. By April 2019, when the Roundtable discussion took place: the Committee had registered 83 individual communications and adopted 16 decisions on the latter communications, including four decisions on the merits, eight decisions on admissibility and four discontinuances; it had 67 pending cases; and it was starting the follow-up process for its first decisions. The Committee had also discontinued three inquiries and concluded one concerning Chile. The report concerning the latter was published in June 2018.

The OPIC is the most recent Optional Protocol establishing a communications procedure within the UN Treaty Body system. It builds on and expands the existing highest standards from other treaties and therefore bears huge potential to strengthen the implementation of the UNCRC and the realisation of children's rights on the ground. The OPIC is, first and foremost, a unique tool that States should use to strengthen their legal systems for the protection of child rights.

However, the potential of the Protocol to trigger broader change in national legislation and systems for effective remedies and reparation can only be achieved if more States ratify it to make this mechanism accessible to children on a broader global scale, and if States implement the Committee's Views and recommendations. Some States have expressed immediate support for this instrument, while others have shown hesitation and reservations about the Committee's capacity to handle the additional workload created by the OPIC. Some States have reviewed their national justice systems before ratifying the OPIC, while others are waiting to assess the outcomes of the first individual communications examined by the Committee to better understand the impact of the Committee's recommendations on their obligations.

Purpose of the Roundtable Discussion

On the occasion of the 5th anniversary of the entry into force of the OPIC and the 30th anniversary of the UNCRC, the Office of the Special Representative of the Secretary-General on Violence against Children, the Committee on the Rights of the Child, the Office of the High Commissioner for Human Rights and Child Rights Connect co-organized a closed and informal Roundtable Discussion with selected States and partners to promote States' ratification of the OPIC and increase understanding of its added value to the realization of children's rights. The Permanent Missions of the Slovak Republic and the Federal Republic of Germany to the United Nations and other international organizations in Geneva sponsored the event. The aims of the Roundtable Discussion were to:

- Identify good practices with regard to ratification processes and implementation of the OPIC;

- Discuss difficulties encountered in the process of ratification and implementation and possible solutions;
- Build more solid and evidence-based arguments about the benefits of the OPIC on a national level, in particular for States; and
- Build and strengthen partnerships and joint action around advocacy for OPIC ratification and effective implementation.

The Optional Protocol to the UNCRC on a Communications Procedure at a glance

Coming into being, drafting and negotiation of the text

On 19 December 2011, the United Nations General Assembly unanimously adopted the OPIC, which was opened for signature and ratification on 28 February 2012 and entered into force on 14 April 2014.

During the 10th anniversary of the Convention in 1999, the Committee considered initiating discussions on an Optional Protocol to the UNCRC providing a mechanism for individual communications to ensure the availability of legal remedies at the international level. Much earlier than that, at the time of the drafting of the UNCRC, the need for such a procedure was raised by civil society. However, the idea of putting in place a complaint procedure for child rights violations was resisted for many years. Until 2011, communications procedures had been established for all international core human rights treaties but the UNCRC and its two Optional Protocols.

June 2009 officially marked the start of the UN process for the drafting of the OPIC, as the first resolution containing the idea of the new Protocol was presented to the Human Rights Council during its 11th regular session by Slovakia. Human Rights Council resolution 11/1 (2009) established an Open-ended Working Group to “explore the possibility of elaborating an optional protocol to the Convention on the Rights of the Child to provide a communications procedure complementary to the reporting procedure under the Convention”. In March 2010, the Council requested the Chairperson of the Working Group to prepare, in ten working days, a proposal for a draft optional protocol to be used as a basis for negotiations, taking into account the views expressed and inputs provided during the first session of the Working Group and giving due regard to the opinions of the Committee on the Rights of the Child and, where appropriate, of the relevant United Nations special procedures and other experts. The draft prepared included some innovative provisions to take into account the special status of children and the specific obstacles that they may face when seeking remedies and reparation. In particular, the draft included a compulsory collective communications mechanism that would allow national human rights institutions (NHRIs), child ombudspersons and non-governmental organisations (NGOs) with ECOSOC status to submit communications regarding “grave or systematic violations” without identifying individual victims.

Based on the deliberations of the Working Group, a revised text was prepared. The most significant changes to the text included: a new structure dividing the Protocol into four parts; new provisions to improve children’s access to and protection under the different procedures established by the Protocol; a provision to prevent the manipulation of children by their representatives; and a change in the nature and scope of the collective communications mechanism, which became an optional (“opt-in”) mechanism limited to “recurring violations which affect multiple victims”.

During the second round of negotiations, the pressure to finalise the text by the end of the session became more and more acute. Indeed, it was not at all certain that the mandate of the Working Group – limited

to ten days – would be renewed. The text of the draft Optional Protocol was therefore the product of a compromise, on which the Working Group agreed by consensus after an intense and thorough effort by all parties involved. The text contained most provisions discussed, but suggested the deletion of the provision allowing collective communications, required the Committee to review the reasonableness of steps taken when considering alleged violations of economic, social and cultural rights, and removed the article prohibiting reservations.

Key provisions of the Optional Protocol to the UNCRC on a Communications Procedure

The OPIC is divided in four parts: I) General provisions (articles 1-4); II) Communication procedure (articles 5-12); III) Inquiry Procedure (articles 13-14); and IV) Final Provisions (articles 15-24).

The instrument takes into consideration the specificities of the UNCRC and the special rights of children, who are the primary beneficiaries of the new procedures. Thus, it establishes, for instance that the Committee shall be guided by the principle of the best interests of the child and shall have regard to the rights and views of the child (**article 2**) and that it will guarantee child-sensitive procedures and that safeguards will be introduced to prevent the manipulation of the child by those acting on his/her behalf (**article 3**).

❖ *The Individual Communications Procedure*

The individual communications procedure provides the Committee with the competence to examine individual communications, 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 the Convention on the Rights of the Child and/or its first two Optional Protocols, the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography (OPSC) and the Optional Protocol to the Convention on the involvement of children in armed conflict (OPAC). For the Committee's competence to apply, the State must also be a party to the latter instrument(s) (**article 5**) and the individual communication must meet the admissibility requirements of **article 7**. In particular, the Committee shall consider a communication inadmissible when all available domestic remedies have not been exhausted. A communication shall also be deemed inadmissible when the alleged violation(s) occurred prior to the entry into force of the OPIC for the State party concerned; when the same matter has been examined by another procedure of international investigation or settlement; or when it is not sufficiently substantiated. The Committee has established in its jurisprudence that its assessment of facts and evidence is not meant for it to act as a fourth instance or appellate court.

Admissibility requirements explain why 70% of the communications received by the Committee do not make it to registration. By April 2019, the Committee had received more than 300 individual communications, of which only 83 were registered. Of the latter, [16 decisions](#) were adopted, including [four decisions on the merits](#), eight decisions on the admissibility and four discontinuances. The Committee has received follow-up responses on three of the four cases where it found violations of the Convention. These responses, as well as some of the discontinuance decisions, have reported the impact that this procedure has had in triggering individual and structural changes to improve the enjoyment of the rights of the child¹.

¹ During the 82nd session of the Committee, the State responses to the Views *3/2015 I.A.M. v Denmark*, *11/2017 N.B.F. v Spain* and *12/2017 C.E. v Belgium* will be published in its Follow up progress report on individual communications.

At its 62nd session (2013), the Committee adopted [rules of procedure](#) for the OPIC. At its 70th session (2015), the Committee adopted [working methods](#) to deal with communications received under OPIC – which were revised in 2017 – as well as a [model form for filing a communication](#).

The Committee publishes a table summarizing the cases pending for its review on its website in an attempt to favour transparency and allow for third party interventions. As of April 2019, the Committee had 67 pending cases.²

The Optional Protocol contemplates protection measures to ensure that individuals under States parties' jurisdictions are not subjected to any human rights violation, ill-treatment or intimidation as a consequence of bringing communications or other forms of cooperation with the Committee pursuant to OPIC (**article 4**). Similarly, in exceptional circumstances, and to avoid possible irreparable damage to the victim or victims of the alleged violations, the Optional Protocol allows for the Committee to transmit to the State party concerned, at any time after the receipt of a communication and before a determination on the merits has been reached,³ a request for its urgent consideration that the State party takes necessary interim measures (**article 6**). The request of interim measures does not imply a determination on admissibility or on the merits of the communication. 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.

The Committee may 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 (**articles 9 and 12(3)**).

After examining a communication, the Committee transmits its Views on the communication, together with its recommendations, if any, to the parties concerned (**article 10(5)**). The latter have to submit their response, including information on any action taken and envisaged in the light of the Views and recommendations of the Committee, as soon as possible and within six months (**article 11(1)**). States parties are also invited to submit further information about any measures taken in response to the Committee's Views or recommendations or implementation of a friendly settlement agreement, in the State parties' subsequent reports under article 44 of the Convention, article 12 of the OPSC, or article 8 of the OPAC, where applicable (**article 11(2)**).

❖ *The Inter-State Communications Procedure*

The Committee can also receive and consider Inter-State communications in which a State party claims that another State party is not fulfilling its obligations under the Convention and/or the first two Optional protocols to which the other State is party, provided that the States parties have recognized the competence of the Committee to do so, which can be done at any moment (**article 12**).

❖ *The Inquiry Procedure*

Under **article 13**, if the Committee receives reliable information indicating grave or systematic violations by a State party of rights set forth in the Convention, the OPSC or the OPAC, the Committee can invite the State party to cooperate in the examination of the information, as well as to submit observations without

² See "Table of Pending Cases" at: <https://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIndex.aspx>

³ Interim measures may also be requested at any time during the procedure and before the Committee reaches a determination on the merits of an inter-State communication or on the findings of an inquiry (CRC/C/62/3, Rule 7.1 of the Rules of procedure under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure).

delay with regard to the information concerned (**article 13(1)**). An inquiry can also be initiated at the own initiative of the Committee.⁴

The Committee can review States parties under article 13 provided the latter have not made a declaration withdrawing recognition of the Committee's competence under article 13, applicable with respect to the rights set forth in some or all of the instruments listed in article 13(1) (**article 13(7)**).

To initiate inquiry procedures for grave or systematic violations, exhaustion of domestic remedies is not required, nor is the identification of the victims.

After having carefully reviewed and taken 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 will decide whether or not to pursue with the inquiry. If it does, it designates one or more of its members to conduct an inquiry and to report urgently to the Committee (**article 13(2)**).

The cooperation of the State party shall be sought at all stages of the inquiry, which is conducted confidentially (**article 13(3)**). Where warranted, and with the consent of the State party, the inquiry may include a visit to the territory of the State party concerned (**article 13(2)**), the modalities for which are defined with the State.⁵

The findings of the Committee together with any comments and recommendations are incorporated in a report transmitted to the State party (**article 13(4)**), which then has six months to submit its observations to the Committee (**article 13(5)**). The report is then made public.

Similar to **article 11** in relation to the communications procedure, **article 14** lays out follow-up measures to the inquiry procedure, which can lead to constructive initiatives between the State and the Committee.

As of April 2019, the Committee has received six requests to conduct an inquiry, two of which have been discontinued, two of which are undergoing and one that has been concluded concerning Chile.⁶

Role of the Committee

When making recommendations to States parties based on the information received pursuant to articles 44 and 45 of the Convention on the Rights of the Child, and more generally through regular dialogue with States, the Committee plays an active role encouraging non-States-parties to the OPIC to ratify the instrument. Regular communication and strong cooperation between the Committee and States also allows for the Committee to advise and provide technical assistance in the national implementation of child rights.

Being a quasi-judicial body, however, the role of the Committee goes beyond providing technical assistance. In the event that the Committee finds that a State party has violated its obligations under the Convention or its substantive Optional Protocols, it will make recommendations on the remedies for the alleged victim(s), such as, inter alia, rehabilitation, reparation, financial compensation, guarantees of non-repetition, requests to prosecute the perpetrator(s), which can have far-reaching

⁴ CRC/C/62/3, Rule 31 of the Rules of procedure under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

⁵ Ibid, Rule 38.

⁶ Report of the inquiry procedure conducted in Chile under article 13 of the Optional Protocol to the CRC on a Communications Procedure: https://www.ohchr.org/Documents/HRBodies/CRC/CRC_C_CHL_INQ_1.pdf

effects. In certain cases, the Committee may also recommend that the State party take legislative, institutional or any other kind of general measures to avoid the repetition of such violations, thus addressing possible structural causes of the violations.

The Committee monitors the follow-up of its adopted Views by requesting States to submit a written response including information on any action taken to implement the Views, through the Rapporteurs on Follow up to Views, who will report to the Committee on any follow-up information at each session and propose a Progress Report on follow-up to individual communications. The Committee will also follow up on the implementation of recommendations contained in the Views through the reporting procedure pursuant to article 44 of the Convention.

Ratification experiences and challenges

Five years since the entry into force of OPIC, 44 States have ratified the instrument and 19 have signed, but have yet to ratify it. Experiences of ratifications and challenges encountered along the way vary across countries and regions.

Some States that were involved in the drafting and adoption process of the OPIC ratified the instrument very quickly, such as Thailand in 2012 and Slovakia in 2013. Other States that were equally supporting the drafting process experienced delays in ratifying it due to a shift in their domestic political agenda that deprioritized the ratification of the instrument. Slovenia ratified the OPIC in 2018, although it had signed it in 2012. The awareness raising and advocacy by public officials, civil society and the media, who all saw in the instrument an opportunity to strengthen the national judicial system, were key to advance the ratification process of the OPIC.

In some States where Governments were initially reluctant to ratify the OPIC, the Parliament played a key role in cooperation with civil society. Indeed, Switzerland was able to ratify the instrument in 2017 after having passed a motion known as “Amherd” and organizing an expert meeting on the justiciability of economic, social and cultural rights, which was the Governments’ main concern relating to the OPIC. The Amherd motion claimed that, as the host country of the Human Rights Council, the Office of the High Commissioner for Human Rights and the Committee on the Rights of the Child, Switzerland should take the OPIC seriously and start the ratification process as soon as possible “for the sake of credibility of its human rights policy”, among others. This is a positive example of a Parliament overcoming the lack of government enthusiasm to ratify OPIC by promoting expert and multi-stakeholder debates.

Some States are remaining attentive to the evolving jurisprudence of the Committee on the OPIC in order to better assess the impact of the Committee’s recommendations on their obligations, before moving forward with ratification. For others, being a State party to the OPIC allows for States to play an active role in shaping the Committee’s jurisprudence.

However, the vast majority of States seem to not have OPIC ratification among their priorities, as they are unaware of or do not fully understand the instrument. Indeed, more information on the OPIC as well as the functioning and reach of its mechanisms are needed for States and all the key actors making the ratification possible, such as parliamentarians, public officials, the media and civil society, including children.

Key findings:

- The OPIC is still largely unknown and/or misunderstood, and therefore it is imperative to develop and widely disseminate more accessible information;
- Ratification of international instruments is dependent on political contexts and priorities, so that timing is important;
- States can be persuaded to ratify provided that the instrument is supported by key stakeholders such as civil society, including children, Ombudsmen, parliamentarians, public officials and the media;
- Debates and expert meetings are influential in creating awareness and buy-in;
- States across the world share similar concerns when it comes to ratifying the OPIC, thus it is essential to create spaces for States to exchange experiences;
- Civil society may also share concerns or challenges in advocating for the ratification of OPIC, thus it will also be important to share advocacy experiences among civil society;
- Collection and use of good practices related to the implementation of the OPIC can inform and strengthen arguments for ratification, in order to demonstrate that the OPIC brings positive impact at the national level.

National implementation of child rights through the OPIC

The ratification of the OPIC is not the end but the beginning of a “learning process”, as States parties may have to set up procedures and/or identify focal points to deal with incoming communications from the Committee. In the case of Spain, the unexpected high amount of communications received has led to the development of a special procedure to deal with them, as well as a functional and operational structure. The created structure is composed of various ministries, the Public Prosecutor’s Office and the national border police, and it gathers information on the Committee’s individual communications. Similarly, Spain has been faced with the challenge to put in place additional human resources very quickly given the obligation to deal with communications in an expeditious way. This experience has revealed that it is important for States parties to the OPIC to anticipate and to have standard operating procedures in place to effectively respond to possible incoming communications.

To ensure the successful implementation of the OPIC at the national level, strong cooperation between the State party and the Committee is crucial. Collaboration between the Committee and Chile was key to ensure a successful inquiry procedure, including a visit to the country by members of the Committee in January 2018. Despite the fact that, the inquiry concluded that grave and systematic violations to the rights of the child had occurred over the last 40 years in Chile; the State decided to publish the outcome report out of its own volition, and actually did so prior to the Committee’s publication. Similarly, the transparency and good predisposition of the Committee to meet and exchange information with States parties can help the smooth and speedy examination of individual communications.

With regard to States’ performance in implementing the Committee’s Views, internal challenges should be taken into account as States can have limited capacities, resources and/or complex mechanisms slowing the process of implementation and any associated reform. Children’s Ombudspersons, National Human Rights Institutions and multi-stakeholder platforms such as the National Commission on the Rights of the Child of Belgium,⁷ can play an important role in supporting governments to overcome some of the internal challenges through cooperation. The direct communication between National Human Rights Institutions, Children’s Ombudspersons and the Committee is also essential as it enables an effective assessment and

⁷ The National Commission on the Rights of the Child – Belgium is a multi-stakeholder platform gathering both governmental and non-governmental actors. This unique structure allows for inputs that are nourished by various viewpoints in the aim to foster a greater child rights effectiveness.

development of relevant Views by the Committee based on first-hand information of the reality faced by children on the ground. While engaging in the reporting process of the Committee and in supporting the State in its implementation of the recommendations of the Committee on the Rights of the Child, NHRIs can help ensure the realization of child rights at the local level. The Children Ombudsman of Chile, for example, was created as a result of the inquiry procedure conducted between 2017 and 2018. It has a key role in monitoring Chile's compliance with the Committee's recommendations regarding the protection of children in alternative care. While the OPIC mechanisms can only be triggered when domestic remedies have been exhausted, NHRIs and Children Ombudspersons can also play an important role in supporting child victims and facilitating the provision of domestic remedies. Thus, these institutions play a key role in ensuring child rights, and the support as well as the independence of these organizations should be strengthened and guaranteed.

The use of mechanisms provided by the OPIC can assist States in identifying internal issues of concern, helping them take concrete action to address them. In this regard, for example, the role of civil society in Spain was crucial to raise awareness on the problems regarding the procedure of age assessment of unaccompanied migrant children and the need for it to be amended. Similarly, the Committee's inquiry procedure in Chile helped the State to address the situation of children and adolescents deprived of a family environment who are in residential care centres. The OPIC mechanisms can also promote internal discussions on children's rights, which can be of a transversal nature and touch upon different competencies (both institutionally and substance-wise). For instance, while the request for an inquiry procedure in Belgium was not taken up by the Committee, it provided the opportunity to have an internal intergovernmental/inter-ministerial debate on the issue of street-connected children, especially children of Roma origin, resulting in concrete measures taken by the Government to improve the situation. Further, the only case in which the Committee adopted Views concerning Belgium led to the adoption of individual, as well as structural, measures in the country.

The role of civil society as the main user of the OPIC mechanisms is very important, and its participation in the implementation of the OPIC should be encouraged by States and NHRIs. In this regard, ensuring effective access to existing mechanisms of the OPIC is key for the implementation of this Protocol. Particularly, OPIC processes should be more child-friendly and accessible to children. Their knowledge, understanding and access to the mechanisms should be specifically ensured, including through the development of procedures and safeguards for the effective participation of children and child-friendly materials.

The knowledge that children have about the existence of the OPIC, its objectives and the way in which it can be used are key factors to reach a correct implementation of the instrument. Indeed, the fact that children can directly communicate with the Committee under this Protocol moves away from previous adult centrism in childhood issues. This implies accelerating certain processes so that children may directly request their protection, which is particularly important in a situation of a discrepancy between what the child wants and what the adult thinks is in the child's best interest. In addition, the possibility to educate children about this Protocol implies the need to contemplate, at a general level and for everyone, an education with a human rights approach from initial education, and also in all areas of educational, formal and informal training.

Removing obstacles for the effective access to OPIC mechanisms⁸

The experience of civil society organizations working for the effective implementation of child rights in Belgium through the OPIC shows that certain obstacles should be removed for victims and their representatives to effectively access its mechanisms:

- **Financial barriers.** Financial barriers (such as the translation of documents and access to legal professionals, etc.) can limit the accessibility of OPIC mechanisms. In this regard, the extension of legal aid for these mechanisms is indispensable and must be planned for proper implementation. Measures should also be explored to overcome other financial barriers such as translation costs.
- **Lack of knowledge or understanding of the OPIC mechanisms.** The effective implementation of OPIC requires proper information on the existence, functioning and reach of its mechanisms. Children themselves, as well as their parents or guardians, must be adequately informed of their available options in the event of a violation of children's rights, including national and international mechanisms such as the OPIC communication procedure.
- **Lack of support to children victims of human rights violations.** Professionals working with children, particularly social workers and/or legal professionals, should also be duly informed and trained about the OPIC mechanisms. In addition to allowing them to use the mechanisms, proper information on the mechanisms is a necessary prerequisite for them to be able to properly support children who are victims of violations of their rights.

Key findings:

- OPIC's ratification is not the end but the beginning of a "learning process", where procedures might have to be set up and/or focal points identified at national level for the State to deal effectively with incoming communications. The allocation of responsibilities for each of the focal points involved should be done in advance, thematically and should be known by the competent bodies in the area of childhood and adolescence.
- States parties to the OPIC should anticipate and be prepared to handle communications that could be received. The officials in charge must have the necessary technical knowledge to respond to the requirements arising from the Committee, as this will also allow them to properly address the Committee's recommendations.
- Strong cooperation between the State party and the Committee, as well as transparency and availability of information from the Committee, are crucial to ensure the successful implementation of the OPIC at the national level. For example, while the publication of guidelines on interim measures was a good step forward, more information should be made available on the functioning of the Committee, including with regards to the criteria used for "filtering" communications or accepting requests for inquiries.
- The engagement, as well as the direct and informal communication, between the Committee and States parties should be strengthened to facilitate direct and frequent cooperation on individual communications and inquiries.
- While it is in the State's own interest to collaborate with the Committee, it is important to keep in mind that reacting to communications/requests for additional information is time and resource intensive for States.

⁸ This section summarizes a submission made by DCI-Belgium to Child Rights Connect following the Roundtable Discussion.

- The role of Children’s Ombudspersons and NHRIs is crucial as they support States in implementing the Committee’s recommendations while monitoring and assessing State compliance. They are also instrumental in supporting child victims and facilitating the provision of domestic remedies. Support for these institutions should be strengthened.
- States should deal with reparations in an integral way (going beyond economic reparation).
- The OPIC mechanisms can be very helpful in drawing States’ attention to certain internal, including more structural, issues as well as in helping them to take concrete action to address them, going beyond measures taken at the level of individual cases.
- The role of civil society as users and supporters of the OPIC mechanisms is very important and its participation in the implementation of the OPIC should be encouraged by States and NHRIs.
- Children’s access to the mechanisms should be assured. OPIC processes should be more child-friendly and accessible to children through appropriate information, procedures and safeguards.
- The Committee should produce graphics and material on OPIC that can be easily used by civil society, including children. Ombudspersons should contribute to the dissemination of these materials through their work with civil society or in their advisory councils, both for individual communications and in inquiries.
- As Views and decisions on individual communications by treaty bodies are proliferating, attention will have to be paid to coherence between the different bodies, including with respect to decisions of regional courts.

Looking ahead - Strategies for the promotion of the universal ratification of the OPIC

Currently, just 20% of the States having ratified the Convention on the Rights of the Child have ratified the OPIC. The large majority (80%) of States parties to the OPIC are from Latin America or Europe. More than half (54%) of OPIC States parties are from the European region.⁹ Why is ratification of the OPIC relevant for ensuring children’s rights? What are the best strategies to promote and achieve universal ratification of the OPIC? What should be the roles of different actors such as States, NHRIs, academia and civil society, including children?

Why is ratification of the OPIC relevant for ensuring children’s rights?

- **Strengthening children’s protection and ensuring the fulfillment of their rights.** Ratifying the OPIC has a positive impact on strengthening children’s protection and ensuring the fulfillment of their rights.
- **Children as actors of their own protection.** Allowing children to use this individual communications procedure gives them a chance to stand up for their rights, to be actors of their own protection and, thereby, agents of change. It fulfils’ their right to participation and to express their views that should be given due weight in accordance with their age and maturity, in compliance with article 12 of the Convention.
- **An individual complaint mechanism meant for children and responding to their specific needs.** The OPIC mechanism does not concern human rights in general (such as regional human rights conventions) but covers all of children’s rights, which will ensure them better protection against rights violations, with a specific Committee composed of children rights experts who shall be

⁹ Please refer to the Annex for graphs and charts.

guided by the principle of the best interests of the child and shall have regard to the rights and views of the child. Importantly, the OPIC covers not only violations of the UNCRC but also of the OPAC and the OPSC.

- **A route towards remedying existing injustices and acts of discrimination against children.** The Optional Protocol provides a route towards remedying existing injustices and acts of discrimination against children, who – simply because they are children – do not have the same means of challenging violations of their human rights as adults do.
- **Enhances accountability of States parties to the UNCRC, OPAC and OPSC.** The Protocol enhances the accountability (which complements the periodic reporting procedure) of States parties to the UNCRC and its substantive protocols by making effective remedies and reparation available at an international level for cases where domestic mechanisms have either failed to provide this for the violation of children’s rights, or such mechanisms do not exist.
- **Relative fast redress.** In comparison to other international complaints mechanisms, the OPIC can provide relative fast redress to victims of human rights violations, as two years is currently the average time for the Committee to adopt a View on an individual communication.
- **Complementary to the Committee’s reporting procedure.** Following examination of initial reports, States only report to the Committee every five years, and the reporting procedure has to review progress on implementing the full range of rights under the Convention. A communications procedure requires a focused review of particular legislation and/or policy or practice causing, or potentially causing, violations. It enables the Committee to provide illuminating Views and recommendations interpreting the obligations of the Convention and its Optional Protocols.
- **More constructive approach.** Given that cooperation between the Committee and States being an essential component of OPIC implementation, ratifying the OPIC offers States the opportunity to be in contact with the Committee on a more regular and informal way, as opposed to what is foreseen in the CRC reporting process. OPIC brings about a constructive and flexible approach to implementing child rights, particularly through the friendly settlement mechanism and flexibility in terms of the remedies the Committee can recommend.
- **Being part of an on-going dialogue between regional and international human rights mechanisms.** As regional and international mechanisms are more and more integrated and cross-referring, it is an advantage for States parties to the OPIC to become an active part of that dialogue as well as to influence the Committee’s jurisprudence.

What are the best strategies to promote and achieve universal ratification of the OPIC?

❖ *Advocacy to States*

A possible strategy to increase the number of States parties to the OPIC could be to first approach States that have expressed an interest and commitment to the instrument but who have not yet ratified it. It is important to better understand the reasons behind the lack of ratification and identify the real obstacles. Targeted information on the OPIC’s mechanisms then has to be developed. The current 19 signatories, that are mostly from East Europe and West Africa, should be approached, as well as the States that were involved in the drafting and negotiation of the OPIC, part of the so called “core group”.

Some of the avenues for best approaching States includes:

Through the Committee on the Rights of the Child and its established procedures. Where applicable, the Committee encourages States to ratify the OPIC during a State party’s periodic review. A number of States have ratified the OPIC either in the build up to their review by the Committee or in the immediate follow-up to the review. Timing can therefore play an important role when promoting increased ratification of

the instrument. Other meetings, such as the Committee's annual informal meeting with States every January, are also important for the Committee to call for the ratification of the OPIC. While the group of experts remain at the disposal of States, it should help promote a better understanding among States on the OPIC, especially on how the process works (including the cooperative and constructive nature of the OPIC), the various opportunities for States to engage with the Committee on specific communications or inquiries and the evolving jurisprudence of the Committee (for example, through periodic updates and summaries of trends). States should also approach the Committee to request further information as well as assistance in implementing its Views and recommendations.

NHRIs. National Human Rights Institutions and Children's Ombudspersons should play a leading role in advocating for OPIC ratification. The European Network of Ombudspersons for Children (ENOC), a not-for-profit association of independent children's rights institutions from 34 countries within the Council of Europe, supports its members in advocating for ratification of the OPIC at the national level. In particular, and as only 17 out of the 34 countries have ratified the OPIC, the ENOC has helped raise awareness of the issue in its public reports, as well as the reports to the Committee in the context of the reporting procedure. Communication between NHRIs and Children's Ombudspersons at all levels is key for the regional institutions such as the ENOC to act as a platform helping identify and understand the barriers to ratification in different countries as well as to share good practices among its members. Regular communication between NHRIs, Children's Ombudspersons and States is also key to ensure that a dialogue on the ratification of the OPIC can take place and that a strategy to overcome possible challenges can be adopted.

Academia. Academics are instrumental for producing knowledge and building expertise on the OPIC. Research should enhance advocacy and capacity building on the OPIC. The University of Leiden, for example, has created the [Children's Rights Observatory](#), an open access information hub around the OPIC which includes summaries of the adopted Views of the Committee on the Rights of the Child and the general inquiry carried out in Chile. Yet, for the Leiden Children's Rights Observatory to have an impact, it needs to respond to specific needs at the practical level. In this sense, academics from the University have invited all persons to comment on how to further develop the Observatory according to their needs. The contribution of the academia can also go far beyond observatories - which are an invaluable initiative - and generate specific knowledge for children to use the OPIC, including by directly submitting individual communications to the Committee.

Children. In some States, children who participated in the State reporting process have started to advocate for their respective countries to ratify the OPIC. As the main beneficiaries of the instrument, their advocacy efforts - including in the State reporting process to the Committee - for ratification of the OPIC, as well as for better implementation of child rights, should be encouraged and supported by all relevant stakeholders, States, the Committee, the UN in general, Children's Ombudspersons and NHRIs, and civil society.

Civil society. Civil society organizations also play a fundamental role in promoting the ratification of the OPIC through advocacy and awareness-raising activities, by supporting the capacity building of stakeholders, providing third party interventions in the review of individual communications and inquiries, facilitating the sharing of national experiences, and supporting the effective participation of children. Their important role should be supported and recognized.

❖ *Advocacy by States*

States parties to the OPIC could join efforts to promote universal ratification and increase the visibility of the instrument. This could be done during international fora such as the Universal Periodic Review and the

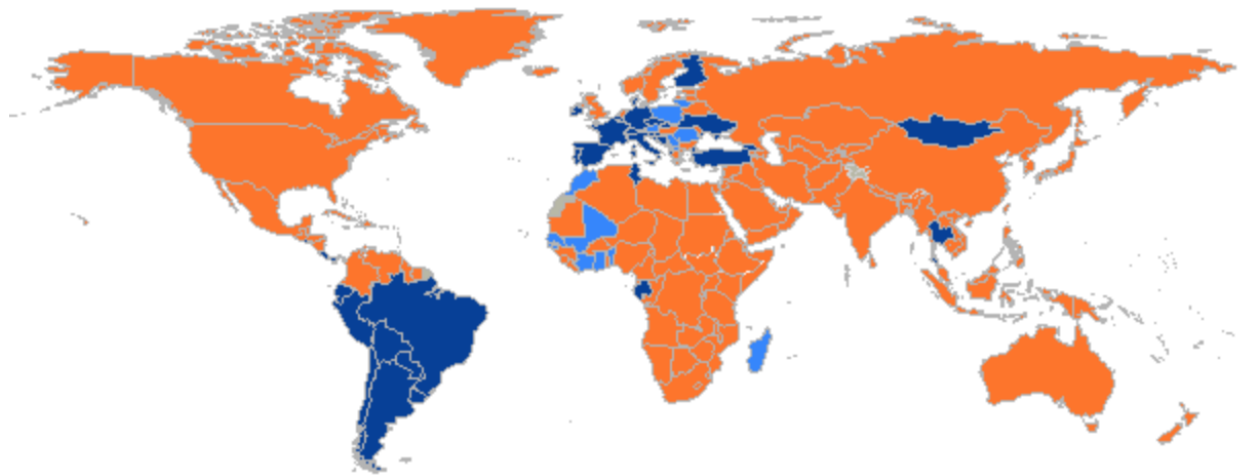
High-level Political Forum on Sustainable Development (HLPF). In particular, as this year's HLPF will review the Sustainable Development Goals (SDGs) relevant to children, including SDG 16, it could be an opportunity to sensitise States on the OPIC. The momentum of the 30th anniversary should also be used to urge States to recommit to the Convention by ratifying the OPIC.

Creating a Group of Friends on the OPIC, or utilizing the existing Group of Friends on the Rights of the Child (led by Germany and Slovenia), might also be an option to foster political will for ratification. In this regard, the Convention against Torture Initiative (CTI) offers an example of a State-led initiative created in 2014 to promote the universal ratification and full implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). Led by the governments of Chile, Denmark, Fiji, Ghana, Indonesia and Morocco, the CTI is a unique cross-regional ten-year initiative aiming to achieve universal ratification of the UNCAT by 2024 and supporting States through capacity building and technical advice to implement the Convention. Supported by a full-time secretariat in Geneva and a multi-stakeholder group of friends and experts, the CTI has worked successfully in achieving the ratification of 12 more States to the Convention. Promoting a better understanding of the Convention by addressing some existing misperceptions, as well as providing coordinated and sustained support through legal and technical advice and assistance to States, has proven crucial to raise the number of States parties to the UNCAT. CTI has been working with States both bilaterally and multilaterally, including through in-country visits and regional seminars, using a constructive, "no name, no shame" approach. Yet, while the close State-to-State dialogue and confidential way of working of the CTI has proven successful, UNCAT ratification has not necessarily been always coupled with States' recognition of the competence of the Committee against Torture to receive and review individual communications (UNCAT, article 22) and some States have also opted out of the inquiry procedure (UNCAT, article 20). Bearing this in mind, and given that the OPIC provides for a communications procedure, a ratification campaign for the OPIC could perhaps be more successful if framed more broadly as promoting children's rights at the domestic level and adoption of all of the Protocols, in line with the implementation of SDGs 16(2) and 16(3) (prohibition of violence and torture against children and promotion of equal access to justice for all).

Annex

Status of ratifications

As of 14 April 2019, five years since the entry into force of the Optional Protocol, 44 States have ratified the OPIC, 19 have signed but not yet ratified it, and 135 have taken no action.



Country Status

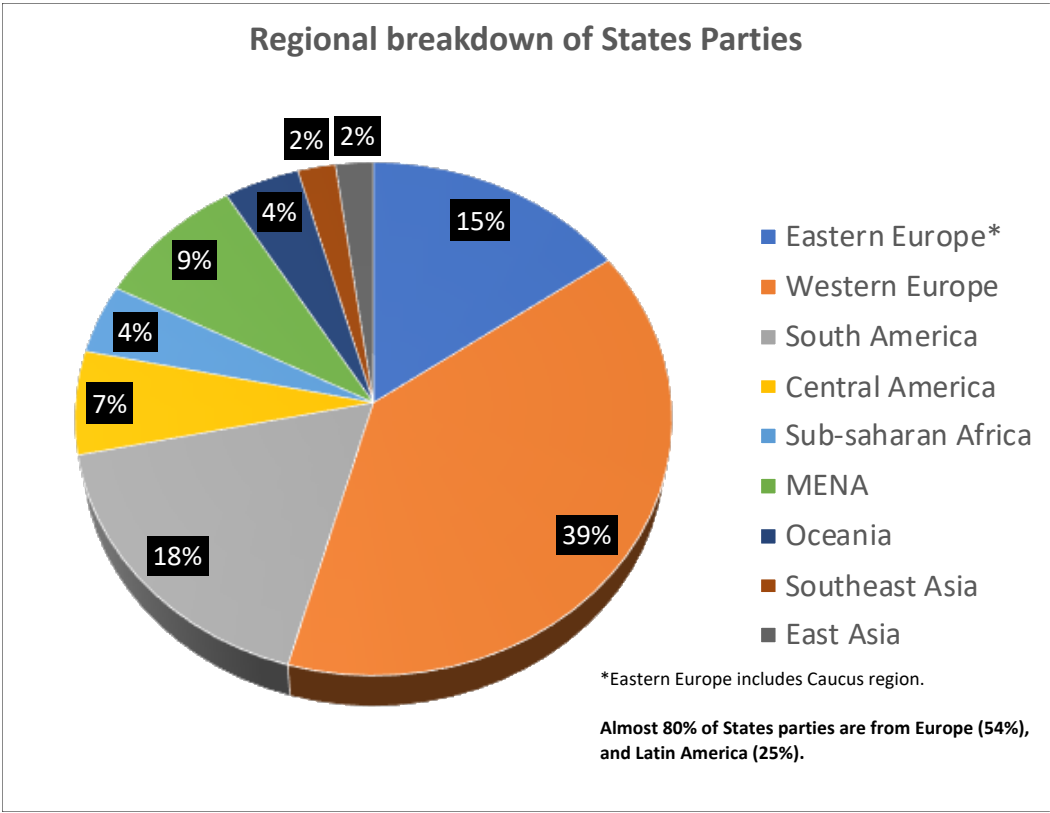
 State Party (44)  Signatory (19)  No Action (135)

Source: OHCHR, <http://indicators.ohchr.org/>

>>

Breakdown of States parties

The large majority (80%) of States parties are currently from Latin America or Europe. More than half (54%) of OPIC States parties are from the European region. What accounts for the low ratification rates in other parts of the world?

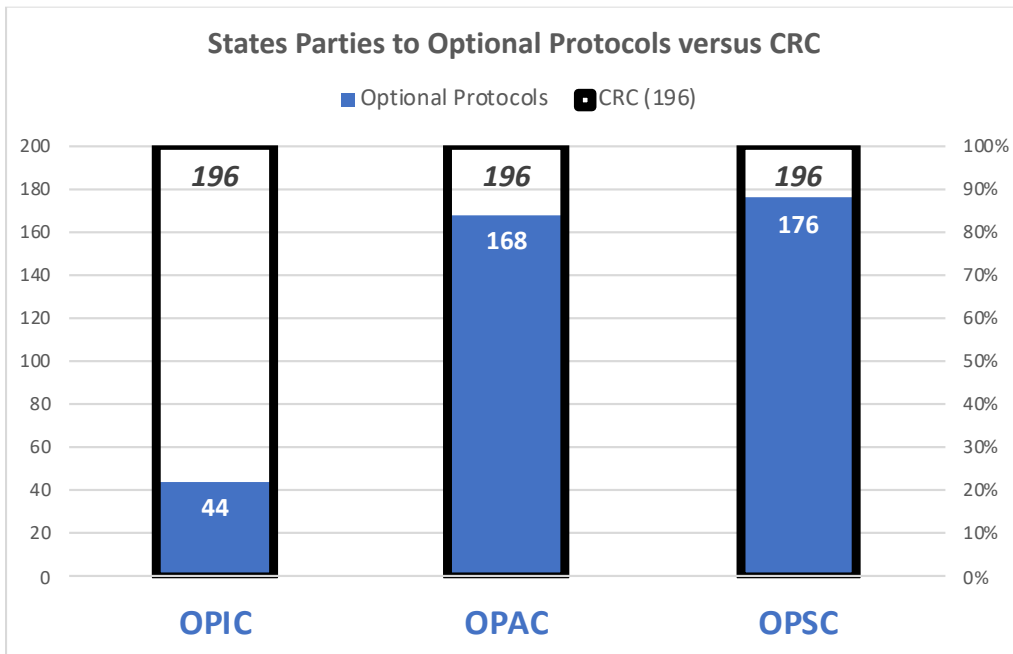


>>

The ratification of the three Optional Protocols of the Convention on the Rights of the Child vs. the Convention on the Rights of the Child

Only 20% of the States that have ratified the Convention on the Rights of the Child have ratified the OPIC. In comparison, more than 80% of the States having ratified the Optional Protocol to the Convention on the involvement of children in armed conflict (OPAC), and almost 90% of the States parties to the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography (OPSC) have ratified the Convention on the Rights of the Child.

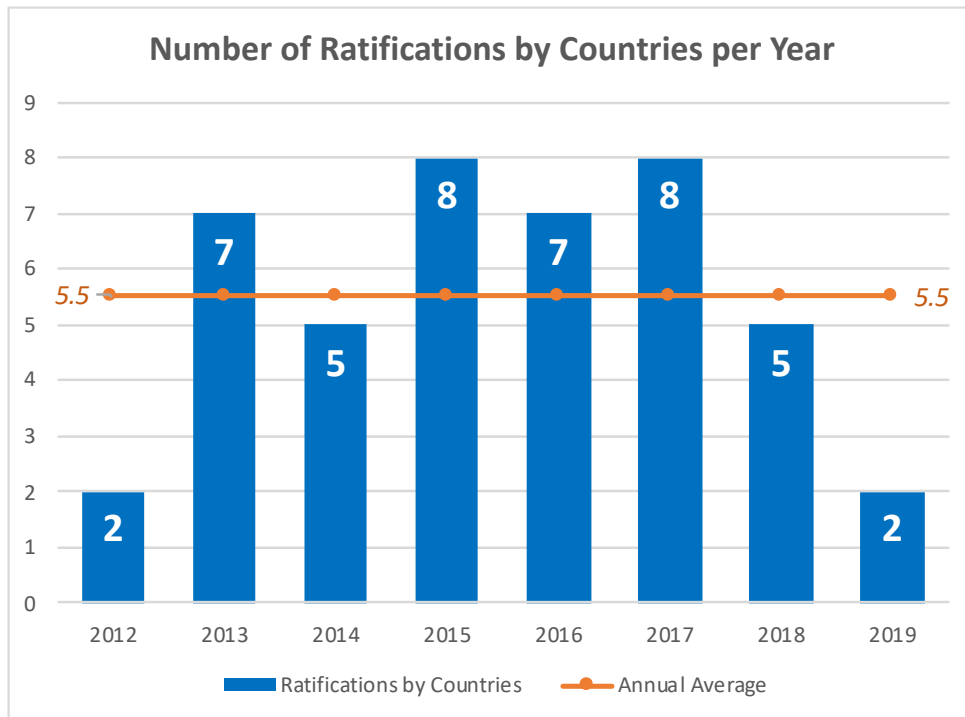
Why is the OPIC less ratified than the first two Optional protocols to the Convention on the Rights of the Child? Is it simply a question of time bearing in mind that the first two Optional Protocols were adopted almost 20 years ago? How many years will it take for at least 80% of States parties to the Convention on the Rights of the Child to have ratified the OPIC?



>>

Annual average of ratifications

The annual average of countries ratifying the instrument is 5.5, with 2015 and 2017 being the years where most States (8) have ratified the instrument so far. As in 2019 only 2 States have ratified the instrument, 3 more States would need to ratify the instrument to maintain the annual average.



Bearing in mind that 152 States parties to the Convention on the Rights of the Child have yet to ratify the OPIC, if the annual average is maintained it will take 20 years for 80% of States parties to the Convention on the Rights of the Child to ratify the OPIC, and almost 30 years for all 196 States to be parties to Third Optional Protocol.