

Ratify OP3 CRC

INTERNATIONAL COALITION FOR THE OPCRC
ON A COMMUNICATIONS PROCEDURE

Information OP3 CRC

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Benoit Van Keirsbilck

Defence for Children International - Belgium

Centre interdisciplinaire des droits de l'enfant

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OPCRC



What is a communication procedure?

- ❖ The Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (OP3 CRC) is **an international human rights treaty** that allows children, groups of children or their representatives, who claim that their rights have been violated by their State **to bring a communication, or complaint**, before the UN Committee on the Rights of the Child.
- ❖ It's a *quasi-judicial* mechanism

How will OP3 CRC work?

- WHO** = **Child victims** (individuals or groups) **or their representatives**
- HOW** = Submit a complaint **after exhaustion of effective domestic remedies**
- WHAT** = Alleging the **violation of rights guaranteed** under the CRC, OPSC and/or OPAC **by a State party to that treaty and to OP3 CRC**
- WHERE** = To the **Committee** on the Rights of the Child

Key provisions of OP3 CRC

Articles 2 & 3 – General principles to be followed by the Committee

- ❖ The Committee shall interpret the provisions of the OP in a way that it ensures the best interests and the right of the child to be heard.
- ❖ Its new 'Rules of Procedure' must guarantee child-sensitive Procedures.
- ❖ The Committee has the power to decline to examine any communication that would be contrary to the child's best interests.

Key provisions of OP3 CRC

Article 5 – Individual communications

If the communication is submitted by a representative of a victim(s), the representative must:

- show the consent of the victim(s), or
- justify that it was not possible to get consent

Key provisions of OP3 CRC

Article 7 – Admissibility requirements

A communication is admissible if it is:

- Written
- Not anonymous
- Violation did not occur before the entry into force of the OP, except if continuous violation
- Domestic remedies have been exhausted, except if ineffective or unduly prolonged
- Submitted within one year of final decision, except if impossible

Key provisions of OP3 CRC

Article 13 – Inquiry procedure for grave or systematic violations

- ❖ Additional, optional mechanism (opt-out)
- ❖ Open to any actor (not only to victims)
- ❖ Reliable information indicating grave or systematic violations
- ❖ No need to exhaust domestic remedies
- ❖ Confidential but information is transmitted to the State concerned
- ❖ Possibility of country visit, with the consent of the State

Where are we now?

28 February 2012: the Protocol was open to signature and ratification by UN Member States

As of 7 June 2013, **36 States signed the Protocol** and **6 States** (Thailand, Gabon, **Germany**, Bolivia, Albania and Spain) **ratified** it.

OP3 CRC needs to be ratified by ten countries to enter into force, and it will only enter into force in the States that have ratified it.

Why is OP3 CRC important?

- ❖ It **strengthen** the monitoring mechanism of the CRC (only UN treaty without such a mechanism)
- ❖ It gives more **power** to the Committee and a bigger capacity to ensure the monitoring of the CRC
- ❖ It allows the Committee to develop **international jurisprudence** and provide authoritative **interpretation** of the CRC provisions and states obligations

Why a state should ratify OP3?

It shows the real committment
of the State **to take children's
rights seriously**

Why a state should ratify OP3?

- ❖ All state (but three) have ratify the CRC (so, are committed to **respect, protect and fulfill** all children's right
- ❖ Ratifying OP3 is **in line** with this commitment
- ❖ It **strengthen** the monitoring mechanism (which should be the aim of the State)
- ❖ The OP3 **doesn't create new rights**, it just guarantees a better implementation of the existing ones
- ❖ The CRC is the **only UN Treaty without** such a mechanism
- ❖ It's complicate to ask other States to ratify if Europe doesn't

Is it complicate to ratify?

- ❖ It **doesn't need a lengthy and thorough analysis** : it is similar to all other communications procedure
- ❖ It doesn't create as such **new obligations** to the State party
- ❖ Since the State has ratified the CRC (and other UN treaties and probably other communications mechanisms), it's the logical consequence of it

Aim of OP3?

- ❖ The aim of the OP3 **is NOT to bring as many cases** as possible to the Committee!
- ❖ It is to **complete** the monitoring mechanism of the CRC at international level (and within the country - encourage States to look, evaluate, improve, equip, make accessible their national mechanism)
- ❖ It's also to look for a **friendly settlement** of a case

Consequences of the ratification?

- ❖ Each State should **analyse, assess and strengthen** the mechanisms at NATIONAL level to give NATIONAL remedies to children's rights violations
- ❖ They should assess the **legal status** of a child towards the justice system
- ❖ They should ensure that children (all children under their jurisdiction) receive **information** about these mechanisms and the OP3
- ❖ They should include the OP3 into the **training** of all professionals working with children

Consequences (II)?

- ❖ Each State should put in place mechanisms **to support children exercising their right to complain** (at national and international level)
- ❖ Guarantee a free, easy and child friendly **access to legal** aid for children exercising their right to complain
- ❖ States should also support the UN to ensure it's capacity to comply with this new mission (in particular the Secretariat of the Committee and the **Complaint Procedure Unit of the UN**)

Are there risks?

- ❖ It is unlikely the Committee shall be **overwhelmed** with complaints
- ❖ The mechanism will be left on the sidelines if it does not **receive the means to operate** (financial and human resources)
- ❖ In such a case, children will be **disillusioned** if they find that the promises are not kept
- ❖ The **length** of the procedure
- ❖ The **ineffectiveness** of the procedure if States don't implement the decision of the Committee

But the biggest “*risk*” is to improve the respect of children’s rights

Views of a field worker?

- ❖ Ratification has an important **symbolic significance**
- ❖ Ratification reaffirms States **commitment** towards children's rights
- ❖ Civil society will have an **important role to play** in informing children and supporting in their complaints

Final thoughts ?

❖ One will have to make choices between all international mechanisms when it comes to help a child to complain at international level :

- ECHR (individual complaints under the European Convention on Human Rights)
- European Court of Justice
- European Committee of Social Rights (ECSR) for collective complaints
- Other Treaty bodies (Civil rights, Non discrimination,...)
- CAT, CPT,...
- Working group on arbitrary detention