



UNIVERSITETI I EVROPËS JUGLINDORE
УНИВЕРЗИТЕТ НА ЈУГОИСТОЧНА ЕВРОПА
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ПРАВЕН ФАКУЛТЕТ
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THESIS:

Optional Protocol to the Convention on the Rights of the Child on
a Communications Procedures with special reference to the role of
the Committee on the Rights of the Child according to the Protocol

CANDIDATE:

Katerina (Koneska) Tankosikj

MENTOR:

Prof. D-r Bekim Nuhija

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Abbreviations

CEDAW - Convention on the Elimination of All forms of Discrimination against Women
CEDOW Committee - Committee on the Elimination of Discrimination against Women
CERD Committee - Committee on the Elimination of Racial Discrimination
CRC, UN CRC – Convention on the Rights of the Child
CRC Committee – Committee on the Rights of the Child
CRIN - Child Rights International Network
HRC - Human Rights Committee
ICCPR - International Covenant on Civil and Political Rights
ICEFRD - International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR - International Covenant on Economic, Social and Cultural Rights
ILO - International Labor Organization
NGOs - Non-governmental organizations
NHRIs- National human rights institutions
OHCHR - Office of the High Commissioner for Human Rights
OPAC - Optional Protocol to the CRC on the involvement of children in armed conflict
OPIC - Optional Protocol to the CRC on the Communication Procedure
OPSC - Optional Protocol to the CRC on the sale of children, child prostitution and child pornography
UN – United Nations
UN Doc. – United Nations Document
UNICEF – United Nations International Children’s Emergency Fund
Сл. Весник – Службен весник

Abstract

Every day, we are witnessing the increasing violations of children's rights. This inevitably requires a firmly established structure for the protection of their rights, both on national and international level. Therefore, there is a certain need to explain and protect children's rights. The need for protection of the children's human rights can be met only if more studies are prepared on this topic. That is the primary reason why this thesis seeks to review the alternative models for promotion and implementation of children's rights.

We can state that the adoption and entry into force of the Third Optional Protocol to the Convention on the Rights of the Child is a significant step forward in protecting the children's rights at the international level. Moreover, it is expected that its State parties will be more committed to children's rights and create better conditions for their protection because the main goal is to encourage countries to create national legislation, functional institutions and mechanisms for its better implementation.

I especially want to emphasize that the hypotheses of the thesis have been confirmed. The Third Protocol's adoption has strengthened that position. This is clearly visible from the large number of complaints submitted to the Committee. The Committee's role is to be a higher instance of child rights protection and act in exceptional cases. Therefore, a lot needs to be done at the national level, especially in regard to the representatives of the institutions that are the main stakeholders in this circle of children's rights protection.

Despite several identified shortcomings that have also been confirmed by some authors and child rights experts as well, the benefit brought by this Protocol is far greater and more significant. Some of the identified weaknesses of this mechanism and recommendations for their possible overcoming are listed in the thesis's conclusion. The recommendations are structured in two parts which refers to the international and national level.

I believe that this study will be useful for all the professionals who work on children rights and experts of other profiles like social workers, psychologists, pedagogues, health workers, etc. I really hope it will be an interesting topic for the NGOs' representatives dealing with the children's rights as well as for the national and local authorities participating in the child rights policies creation.

I can conclude with the well-known saying that "this is a small step for the international law, but a big one for defenders of children's rights, and especially for children as rights holders."

INTRODUCTION

Every day, we are witnessing the increasing violations of the children's rights. This inevitably requires a firmly established structure for the protection of their rights, both nationally and internationally.

The main aim of this thesis is to gain a complete picture of international mechanisms that guarantee the implementation of children's rights, such as those aimed to monitor and supervise the states in obtaining the obligations undertaken by signing the United Nations (UN) Convention on the Rights of the Child (CRC) and its Optional Protocols. Particular emphasis will be placed on the Third Optional Protocol to the CRC on the communication procedure (OPIC) which introduces the institute of inter-state complaint and institute on individual complaint that the citizens can submit against their own state.

In the case of children's rights violation, this Protocol provides an opportunity for a single child or his/her representative to demand their rights at the UN level. Several preconditions need to be met, and one of the main preconditions is that they first must have exhausted all remedies in their respective country. To get a clearer picture of this mechanism, all the conditions that need to be met will be explained in detail in this thesis.

Since the text of the optional protocol is based on experience gained with the complaints procedure in other Conventions, a separate chapter will be dedicated to it. Its framework follows the orientation of existing complaints procedure in the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Elimination of All forms of Discrimination against Women (CEDAW). I will elaborate three cases submitted to the international treaty bodies which are connected with the children's rights. (Case Fatma Yildirim v Austria; case CP and his son MP v Denmark; case Waldman v. Canada).

From a legal perspective in order to analyze the current international law regarding children's rights and international law that can be used in the case of protection of children's rights, the thesis refers to treaties, declarations, guidelines, general comments, decisions (views) of the Committee on the Rights of the Child and other committees, the opinions of child rights specialist and experts, the opinions of interest groups as expressed on websites, reports and publications for the general public by international and national non-governmental organizations.

The sources with high standing in the work were the following major sources: The United Nation Convention on the Rights of the Child, the Third Optional Protocol to the Convention on the Rights of the Child on a communications procedure; Documents issued by the Committee on the Rights of the Child.

Another major source for this study were the opinions of various authors dealing with children's rights, which actively participated in giving comments in the adoption process of the OPIC. Interviews with child rights defenders and lobbyists were conducted to obtain relevant information of the possible weaknesses of the OPIC and what can be done to improve its implementation.

This Optional Protocol proposed way of protecting children's rights relies firstly on the given possibility to submit individual communications to the CRC treaty bodies. Secondly, it provides opportunity for inquiry procedure, and thirdly, it gives a possibility for sending inter-state communications. Therefore, this thesis will answer the following central questions: Does the adoption of the Optional Protocol to the CRC on the communication procedure strengthen the CRC?; Will the act of allowing children or their representatives to address directly an independent international body make the countries more responsible and more committed in terms of children's rights respect?; - What is the real power of the international bodies and the general international children's rights law substantially and / or is it legally binding to influence the countries as separate entities in international law?

Therefore, going by Chapters, the following issues will be addressed: The introduction chapter will summarize the study, present the context of the topic, the motivation for undertaking this work, and the importance of the study.

In the first chapter, a brief overview of the evolution of international legislation in children's rights will be given. The adoption of the CRC as an internationally legally binding document has become the most widely accepted and ratified Convention represents a major turning point in the development of children's rights as human rights. Furthermore, I will introduce the Committee on the Rights of the Child (CRC Committee) which is a guarantee for implementation of the CRC, foreseen with the CRC. I will then present the composition of the Committee, the principles of its work and its primary purpose, which is about monitoring the situation of children's rights in

countries signatories of the CRC. Several of the methods used by the Committee in the children's rights situation monitoring (as considering the reports submitted by the State parties and alternative reports filed by non-governmental organizations) will be briefly presented. This chapter will be summed up by reviewing the needs for further strengthening of the CRC by expanding the Committee role.

The second chapter will show the possibilities offered by the existing UN Committees regarding the individual complaints. And will answer the question of the need for establishment of an international three-stage mechanism for supervision of the obligations taken by the State parties. It will also include analysis of three cases connected to the children and their rights submitted to the other UN Committees, to show the need for an introduction of a new mechanism for protecting of children's rights internationally.

In the third chapter will be summarized the preparations for the adoption of the Third Optional Protocol, consultations that are made, the observations of the Committee members, experts and representatives from state institutions and non-governmental organizations. Then it will be presented the current status of the Protocol, the number of countries which signed and ratified it, the preparatory activities of the Committee for an adequate answer to the new task.

The fourth chapter will give a detailed review of the Protocol and its provisions. It begins with an overview of the general provisions of the Committee and continues with presentation of the individual communication by stages of the whole procedure of individual complaint. This chapter will be concluded with the final provisions of the Protocol by emphasizing the necessity of international assistance and cooperation to enable the best possible implementation of the Convention and the Optional Protocol to the Convention.

In the conclusion, I will summarize all the knowledge gathered during the reviewing of this issue and the key aspects of having this type of an international instrument, as well as all measures and actions to be taken by the State parties to ensure smooth implementation of it. This is a major step forward in equal treatment of children's rights which is confirmed by the High Commissioner for Human Rights in the UN Navi Pillay after the adoption of this Protocol "Kids can now join the other rights

holders which are empowered to file a complaint about violation of human rights to international institutions."

CHAPTER I

1. International Convention on the Rights of the Child (CRC) with an overview of the provisions that deal with the issue regarding the Committee on the Rights of the Child

1.1. The evolution of international legislation in the field of children's rights

From a legal standpoint in order to analyze the current international children's rights law, it is crucial to follow the processes of development in the international scene relating to children's rights in general and international systems for their protection in particular, starting with initial legal regulation of children's rights. The process until the adoption of the UN Convention on the Rights of the Child¹ (the CRC; the Convention) as the highest international legal document was lengthy and quite difficult. Throughout history, there had been several attempts to point out children as a special right-holder group, and thus children's rights from the rest of the human rights corpus. Many historical events took place before, as well as the adoption of some other agreements and documents where, directly or indirectly, the rights of children were discussed. The following are the key steps that have been taken in the past and led to the adoption of the Convention². Some of them, from today's point of view, are not a great achievement, but we need to review and analyze them in the historical context in which they occurred and we can conclude that although the process was slow and difficult, it was still progressive. Therefore, it is important to note that even though implementing the child rights approach has started, it is still in development and needs to be supplemented and improved. In that direction, the main documents that marked the evolution of the children's rights legal regulation are listed below.

With the end of the First World War in 1918, the many lost lives, many dead children, millions of homeless children and children left without their families; it was a serious alarm to undertake measures to preserve the world order, and especially to help children as hope for a better future. Consequently, in 1923, Eglantyne Jebb founded the world's first children's organization called Save the Children, and her vision was to protect the rights of children around the world. All children - whoever they are, wherever they are - have the right to a healthy, happy and fulfilling life.³

¹Convention on the Rights of the Child. U.N. Doc. Ch IV_I; VOL-1. 1989.

² Office of the United Nations High Commissioner for Human Rights. "Legislative History of the Convention on the rights of the child". Volume I. 2007. Pg. 3-26

³Save the Children. Article "Our Founder: Eglantyne Jebb the Woman Who Started Save the Children".

Available at: <https://www.savethechildren.org/us/about-us/why-save-the-children/eglantyne-jebb>

The beginnings of the children's rights protection at the international level⁴ should be found in the first Declaration of the Rights of the Child adopted by the League of Nations in 1924. This is a short document containing only five principles and it was the first international instrument explicitly acknowledging children's rights.⁵ This document also known as the Geneva Declaration of the Rights of the Child was drafted by Eglantyne Jebb, founder of Save the Children Fund. This declaration stipulates that all people owe children the right to: the means of their development; special support in times of need; economic freedom and protection against exploitation.⁶

In 1946, after the Second World War, the UN General Assembly established the International Children's Emergency Fund, UNICEF, which targets children worldwide.⁷ This body has been established to respond to a special need⁸ - of a special target group. Two years later, the United Nations General Assembly adopted the Universal Declaration of Human Rights⁹, which states that mothers and children are entitled to right of 'special care and assistance' and 'social protection'.¹⁰

In 1959 the United Nations General Assembly adopted the Declaration of the Rights of the Child¹¹ which contains ten basic principles, where children are presented as a particularly vulnerable group. But given the fact that this is a legally non-binding document without a supervisory mechanism, this declaration is only a statement of good faith.¹²

In 1966, with the International Covenant on Civil and Political Rights¹³ and the International Covenant on Economic, Social and Cultural Rights¹⁴ (ICESCR), the UN member states voted to uphold equal rights - including education and protection - for all children.

⁴ S. Detrick et al, *The United Nations Convention on the Rights of the Child: A Guide to the Travaux Préparatoires*, Dordrecht/Boston/London, 1992, pg. 19

⁵ Office of the United Nations High Commissioner for Human Rights. "Legislative History of the Convention on the rights of the child". Volume I. 2007, pg.3

⁶ Geneva Declaration of the Rights of the Child. Adopted on 26th of September, 1924, League of Nations

⁷ UNICEF Founded. History. Available at: <https://www.history.com/this-day-in-history/unicef-founded>

⁸ D.W. Bowett, "The Law of International Institutions". The London Institute of World Affairs. New York/London. 1963. Pg. 61

⁹ Universal Declaration of Human Rights.

¹⁰ Wouter Vandenhoe, Gamze Erdem Türkelli and Sara Lembrechts. "A Commentary on the Convention on the Rights of the Child and its Protocols" Chapter "Introduction: Three Decades of Children's Rights Law". Edward Elgar Publishing. 2019. pg. 2, paragraph I.04

¹¹ Declaration of the Rights of the Child, U.N. Doc. A/4354.

¹² S. Detrick et al, *The United Nations Convention on the Rights of the Child: A Guide to the Travaux Préparatoires*, Dordrecht/Boston/London, 1992. pg.19

¹³ International Covenant on Civil and Political Rights. U.N.Doc.

¹⁴ International Covenant on Economic, Social and Cultural Rights. U.N.Doc.

In 1973, the International Labor Organization (ILO) adopted Convention 138, which sets the age of 18 as the minimum age for employment that may be dangerous to the health, safety or morals of a person.¹⁵

In 1979, celebrating the 20th anniversary of the Declaration of the Rights of the Child (adopted in 1959), the UN General Assembly declared 1979 the International Year of the Child.¹⁶

A few years later were adopted the UN Standard Minimum Rules for the Administration of Juvenile Justice¹⁷, which describes in details the principles of a justice system and the treatment of detained children.

For a turning point in international legislation in the children's rights field, we can freely say that it is 1989 when the Convention on the Rights of the Child¹⁸ was adopted by the UN General Assembly and is widely accepted as a milestone in the achievement of human rights, recognizing the roles of children as social, economic, political, civic and cultural actors.¹⁹

One of the most valuable international non-governmental think tank organization for the children's rights, Child Rights International Network (CRIN)²⁰ was formally established in 1995. During its work, this organization has built a global network for children's rights and their mission is based on the UN CRC.

In 1999, the ILO adopted the Worst Forms of Child Labor Convention²¹, calling for an immediate ban and elimination of any form of work that could harm the health, safety or morals of children.

In 2000, the UN General Assembly adopted two Optional Protocols to the CRC²², obliging member states to prevent children from engaging in hostilities and to raise the minimum age of persons

¹⁵International Labor Organization. C138 - Minimum Age Convention. 1973 (No. 138).

¹⁶ UN General Assembly. International Year of the Child. 18 October 1979. A/RES/34/4.

¹⁷United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules). U.N.Doc.

¹⁸ UN Convention on the Rights of the Child. U.N.Doc. A/RES/44/25

¹⁹Sahovic, Vuckovic, Nevena. "Prava deteta i Konvencija o pravima deteta". Jugoslovenski centar za prava deteta, 2001, pg.22

²⁰Child Rights International Network (CRIN). <https://home.crin.org/>

²¹ C182 - Worst Forms of Child Labor Convention. 1999 (No. 182).

²² Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. U.N.Doc. A/RES/54/263. and Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. U.N.Doc. A/RES/54/263.

involved in armed conflicts to 18 years and to protect every child from exploitation²³ (child sale, child prostitution and child pornography). In 2002, at a UN Special Session dedicated on Children, child-delegates addressed the General Assembly for the first time. The World Agenda for Children has been adopted, which sets out specific goals for improving the outlook for children in the next decade.

In 2011, the third Optional Protocol to the Convention on the Rights of the Child on a communications procedure was adopted²⁴. According to this Optional Protocol on Communication Procedures, a complaint about a violation of the rights of the child can be lodged to the Committee on the Rights of the Child as well as the Committee can undertake an inquire procedure by itself. This instrument has given additional influence to the CRC in the international human treaty bodies system. Detail interpretation of the OPIC provisions will be presented later in the study.

It is significant to mention that the whole process of international legal regulation, was accompanied by international children's rights movements which are characterized as a great deal of ambition and optimism.²⁵

Finally, we ought to mention that there are many regional instruments that regulate children's rights, but they will not be analyzed in this study, because the focus is on the international documents and mechanisms.

1.2. Convention on the Rights of the Child as an internationally legally binding instrument for children's rights

As stated above, after ten years of negotiations, the Convention on the Rights of the Child was adopted on the 20th of November 1989 and entered into force on the 2nd of September 1990. As early as 1979, the Polish delegation proposed to the UN General Assembly the adoption of an international agreement on protecting rights of the child and submitted the first draft text of the

²³ Vučković, Šahović, Nevena. "Eksploatacija dece s posebnim osvrtom na Fakultativni protokol uz Konvenciju o pravima deteta o prodaji dece, dečjoj prostituciji i dečjoj pornografiji". Centar za prava deteta, Beograd, 2006, pg.25 and 26

²⁴ Optional Protocol to the Convention on the Rights of the Child on a communications procedure. UN Doc. A/RES/66/138.

²⁵ Van Bueren, Geraldine. "The International law on the rights of the child". Fordham International Law Journal Volume 19, Issue 2, 1995. Pg. 833

CRC²⁶. After that, the Commission for Human Rights formed a working group in which 80 countries took part, and the proposed text with certain amendments served as the main basis for the CRC.

This Convention differs significantly from previous international instruments relating to the rights of the child in many aspects. One of the most important features is that the convention is legally binding on the member states, unlike most of the previous documents which are declarative and not legally binding. Another important feature from the point of view of the child is that he/she is no longer seen as an object of his/her parents, but as a subject of his/her own rights. With one word, we can say that the CRC is the backbone in the international child rights organism and a strong ground for creation of additional international standards for children's rights. Later in this paper, we will explain how the other three protocols derived from the foundations of this convention, especially the third protocol which gives additional force to the convention itself.

And as one of the most famous child rights specialists from the Balkan region, Nevena Vuckovic Sakovic says, that "This legally binding instrument has become the common language used when speaking of children anywhere in the world."²⁷

The Convention on the Rights of the Child is the most widely accepted international document that is legally binding and has a total of 196 State parties, only the United States of America has signed it since 1995, but has not ratified it. The last to accede to the Convention were Somalia and South Sudan in 2015.²⁸

²⁶ S. Detrick et al, *The United Nations Convention on the Rights of the Child: A Guide to the Travaux Préparatoires*, Dordrecht/Boston/London, 1992, pg.20, 21 and 31

²⁷ *The Rights of the Child in International Law*, written by Nevena Vučković-Šahović, Jaap E Doek, and Jean Zermatten
Nevena Vuckovic Sahovic is children's rights attorney, former member of the CRC Committee for two mandates

²⁸ UN Treaty Collection. Status of the Convention on the Rights of the Child, Available at:
https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en

Not all member states have accepted the provisions of the Convention unconditionally; some have made declarations²⁹ and reservations³⁰ on some of the provisions.³¹ From my point of view, this fact is especially important because it indicates the imbalance in the international human rights system (the states at one site and the citizens on the other site). Despite the declarative commitments of the State parties' officials and the given ceremonial statements that they fully support the children, State governments are still not ready to completely accept all the obligations that come with accessing such a document.

The Republic of North Macedonia is also a member to this Convention, by succession³² to the international treaties from SFRY³³ (succession of the successor state to the treaties of the predecessor state) or former Yugoslavia had signed and ratified the Convention on the 26th of January 1990³⁴, and North Macedonia (NM) as a successor country inherits all international agreements signed and ratified by SFRY. It is important to emphasize, that pursuant to Article 118 (International treaties ratified in accordance with the Constitution are part of the internal legal order and cannot be changed by law) of the Constitution of the Republic of Macedonia³⁵, the provisions of the CRC and its Optional Protocols are directly applicable in the legislation³⁶, including by the

²⁹ Sometimes states make "declarations" as to their understanding of some matter or as to the interpretation of a particular provision. Unlike reservations, declarations merely clarify the state's position and do not purport to exclude or modify the legal effect of a treaty. Usually, declarations are made at the time of the deposit of the corresponding instrument or at the time of signature. More information at: *Treaty Handbook*; Prepared by the Treaty Section of the Office of Legal Affairs. 2012. pg.16

³⁰ A reservation is a declaration made by a state by which it purports to exclude or alter the legal effect of certain provisions of the treaty in their application to that state. A reservation enables a state to accept a multilateral treaty as a whole by giving it the possibility not to apply certain provisions with which it does not want to comply. Reservations can be made when the treaty is signed, ratified, accepted, approved or acceded to. Reservations must not be incompatible with the object and the purpose of the treaty. Furthermore, a treaty might prohibit reservations or only allow for certain reservations to be made. [Arts.2 (1) (d) and 19-23, Vienna Convention of the Law of Treaties 1969]; More information at: *Treaty Handbook*; Prepared by the Treaty Section of the Office of Legal Affairs. 2012. pg.12

³¹ UN Treaty Collection. Status of the Convention on the Rights of the Child, Available at:

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

³² Vienna Convention on the Law of Treaties from 1969 and The Vienna Convention on Succession of States in respect of Treaties from 1978

³³ Баић Сања, „Практикум за меѓународно јавно право-општи део“, Правни факултет, Нови Сад, 2007, р. 97, 105, 270, 310

³⁴ Закон за ратификација на Конвенцијата за првата на детето, Службен весник на Социјалистичка Република Југославија, бр. 15/1990 - Службен весник на Република Македонија, 1993.

³⁵ Publication: "Constitution of the Republic of Macedonia, amendments to the Constitution I - XXXII", Official Gazette of the Republic of Macedonia. Page 55. Edition 2011. Available at: [http://www.slvesnik.com.mk/content/Ustav % 20na% 20RM% 20-% 20Macedonian% 20-% 20FINALEN% 202011.pdf](http://www.slvesnik.com.mk/content/Ustav%20na%20RM%20-%20Macedonian%20-%20FINALEN%202011.pdf)

Устав на Република Македонија од 17.11.1991, и амандманите на Уставот I-XXXII, Сл. весник на Република Македонија бр. 52/91; 1/92; 31/98; 91/01; 84/03; 107/05; 3/09 and 49/11).

³⁶ Дескоска Рената., „Европеизација во системот на правдата“, Зборник од научна расправа одржана во Скопје на 10 декември 2007 година., „Еволуција на уставниот систем на Република Македонија во пресрет на

national courts³⁷, which, over time, should enable the creation of a consistent case law. When referring to the CRC implementation in the NM, it is necessary to mention that a comparative analysis was conducted about the relations between the domestic legislation in NM and the CRC, identify the areas of convergence and divergence were identified, and recommendations were made to improve the legal framework for children in NM.³⁸

We can notice an obvious progress in the international child rights legislation. The 1924 Declaration had five articles, the 1959 Declaration had ten articles, and the Convention has a total of 54 articles, of which 40 articles refer to substantive rights, and the remaining provisions refer to implementation process. This convention defines general obligations for states, which means that states have an obligation to provide pre-conditions for every child under their jurisdiction to exercise its rights.

A detailed catalog of children's rights has been established by the CRC. Within the Convention children have a set of economic, social, cultural, civil and political rights.³⁹ In addition to the basic rights that belong to all human beings, there are some specific children's rights which make the CRC a unique document. This is done in order to guarantee children additional rights that belong them due to their specific position. The Convention, in Article 1, defines the term *"child" as any human being under the age of 18, unless national law is attained at the age of majority earlier.*

The rights of children in the convention are much more than just a catalog of rights, but a reflection of the obligations that states are willing to take on children. States express this readiness by signing the Convention and assuming the obligation by ratifying it.⁴⁰

The Convention consists of a Preamble and three parts. The Preamble refers to what is stated in the UN Charter and other international human rights instruments emphasizing the child-centered

усвојувањето на уставниот договор на Европската унија“, Македонска академија на науките и уметностите. Скопје, 2008, стр. 126

³⁷ Георгиевски, Сашо. „Примена на меѓународното право во уставниот поредок на Република Македонија“, Зборник на Правниот факултет „Јустинијан Први“- Скопје, во чест на проф. д-р Евгени Димитров, 1999, р. 486-490

Георгиевски Сашо., „Интернализација на меѓународното право во правниот поредок на Република Македонија“, стр.5 и 6

³⁸ Давитковски, Борче., Бужаровска, Гордана. Калаџиџиев, Гордан., Мицковиќ, Дејан. и Груевска-Дракулевски, Александра. „Компаративен преглед на законодавството во Република Македонија и Конвенцијата за правата на детето“. Скопје: Министерство за правда на Република Македонија. (2010)., pg. 5 - 380

³⁹ Jones Phil and Walker Gary, "Children's Rights in Practice", SAGE Publications, London, 2011, pg.5

⁴⁰ Sahovic, Vuckovic, Nevena. "Prava deteta i Konvencija o pravima deteta". Jugoslovenski centar za prava deteta, 2001, pg.27

approach.⁴¹ The first part of the Convention contains a list of rights recognized to the child, but also several provisions which oblige the States parties to respect the highest standards in this field, as internationally, and nationally.⁴² The second part contains provisions that regulate the establishment and operation of the Committee on the Rights of the Child as a special treaty body. The provisions of the third part regulate the technical issues as signing, ratification, accession, entry into force, reservation, amendment, cancellation and deposit of this international agreement.

Moreover, the rights articulated in the CRC are consistent with the developmental needs of the children. Guided by this, Bronfenbrenner described an ecological model of development that allows for understanding of how the full realization of children's rights would benefit not only the development of individual child but also of society.⁴³ This indicates that children are not isolated individuals, but that they are part of society and that is how we should treat them.

The individual rights defined by the Convention can be structured in several groups, such as: civil and political rights; family environment and alternative child care; basic health and social care rights; rights to education, leisure, recreation and cultural activities; and the rights of children in special situations (refugee children, children in armed conflict, the right to protection against sexual, economic and other exploitation, the rights of children belonging to minority groups, etc.). Notwithstanding all the divisions of rights, it is good to recall the principle of indivisibility of rights, which is especially evident when considering the exercise of an individual child right in practice. Children's rights are indivisible and holistic and should not be seen separately or in isolation from each other.⁴⁴

In addition to enumerated rights, the Convention proposes a series of important, perhaps even radical, guiding principles.⁴⁵ It is based on four basic principles, namely:

⁴¹ United Nations. The Universal Declaration of Human Rights. U.N. Doc.

⁴² Шаховић, Вучковић, Невена. „Права детета у међународним документима“. Заштитник грађана: Повереник за заштиту равноправности. Београд, 2011, pg. 22 and 23

⁴³ Butler, Clark. "Child Rights: The Movement, International Law and Opposition". Perdue University Press, 2012, pg.46

⁴⁴ Falch-Eriksen, Asgeir. and Backe-Hansen, Elisabeth. "Human Rights in Child Protection: Implications for Professional Practice and Policy". Sandberg, Kirsten. "Children's Right to Protection Under the CRC". Palgrave Macmillan, Switzerland, 2018, pg.15

⁴⁵ Van Bueren, Geraldine. "The International law on the rights of the child". Fordham International Law Journal Volume 19, Issue 2, 1995. Pg. 832

- principle of non-discrimination (Article 2) - *all children have equal rights regardless of race, color, sex, language, religion, political and other beliefs, national, ethnic or social origin, property status, disabilities or other status of the child, his/her parents or legal guardians*
- the principle of the best interest of the child (Article 3) - *in all proceedings concerning the child, his/her best interest will be taken into consideration*
- the right to life, survival and development (Article 6) - the state must provide them for every child, and to the maximum extent possible and
- the right to child participation (Article 12) - *the right of the child to express himself/herself about all things and procedures that refer to him/her and that his/her opinion to be taken into account according to his/her age and maturity*

These principles are a precondition for the realization of all other rights in the Convention and they are necessary in the realization of the rights of children, i.e. before any special right is considered, these principles are always started first. Given the importance and scope of these principles, and in order to provide the best possible interpretation of their meaning, the Committee has prepared general comments⁴⁶ on each of the principles and they are available on its website.

For the needs of this study, it is important to highlight that, although child participation and taking into account children's opinions are guiding principles in the CRC, children are not included in the preparation process of the CRC text.⁴⁷ The development of the UNCRC and related laws policies or practices were created by adults.⁴⁸ We can freely say that this is one of the major negative remarks to the whole process.

In order to mitigate this negative remark, many non-governmental organizations supported by UNICEF were looking for various solutions. Thus, to be closer and more easily accessible to children as a leading target group, child-friendly versions of the CRC are being prepared.

⁴⁶ So far, there are 25 general comments on different topics. They are available at:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11

⁴⁷ S. Detrick et al, The United Nations Convention on the Rights of the Child: A Guide to the Travaux Préparatoires, Dordrecht/Boston/London, 1992, pg. 23

⁴⁸ Jones Phil and Walker Gary, "Children's Rights in Practice", SAGE Publications, London, 2011, pg. 44

1.3. Committee on the Rights of the Child as a guardian of the implementation of the CRC

An international agreement would remain a "dead letter on paper" if it is not implemented in practice, hence, the establishment of an appropriate system of protection of rights is essential. The agreements themselves establish bodies to which the State parties report on how they implement the provisions of the international agreement in practice. Due to oversight of the implementation and observance of guaranteed rights, the Convention provides the establishment of a Committee on the Rights of the Child. The Committee was formed and started with his work in 1991.⁴⁹ The importance and role of this Committee is illustrated by the fact that the entire second part of the Convention on the Rights of the Child (Articles 43 to 45)⁵⁰ is devoted to the composition of the Committee, the way it works, the functions of the Committee, the responsibilities that have the member states to the Committee etc.

According to Paulo David, former Secretary of the Committee on the Rights of the Child, the Committee is an exceptional challenge.⁵¹ The Committee, as an international expert body with a mandate to monitor the progress of states in this area, demonstrates that children remains a major challenge for all countries and other actors, including parents, teachers, NGOs and professional groups.⁵²

It is clear from the Convention that States parties cannot transfer responsibility for the violation of children's rights or the prevention of their exercise to parents/guardians. Although the responsibility is primarily with the parents, it is not exclusive, i.e., if the parents are not able to exercise parental rights, then the state should provide appropriate assistance (Article 18).⁵³ Thus, it is clear that it is necessary for the states to be under monitoring and to follow the commitment of its institutions,

⁴⁹In early 1991, a meeting of representatives of States parties to the Convention on the Rights of the Child was convened for the first election to its monitoring body: The Committee on the Rights of the Child. Some 40 candidates had been nominated for the 10 seats. The experts elected on this first occasion came from Barbados, Brazil, Burkina Faso, Egypt, Peru, the Philippines, Portugal, the former Soviet Union, Sweden and Zimbabwe. Six were women, four men. They represented a variety of professional backgrounds, including human rights and international law, juvenile justice, social work, medicine, journalism and governmental and non-governmental work. Fact Sheet No.10 (Rev.1), The Rights of the Child

⁵⁰UN Convention on the Rights of the Child. U.N.Doc. (Art.43, 44, 45)

⁵¹David. Paulo. "Implementing the Rights of the Child Six Reasons Why the Human Rights of Children Remain a Constant Challenge". International Review of Education. 2002, 48(3/4), pg.259-263.

⁵²Ibid

⁵³ UN Convention on the Rights of the Child, Art.18

how they treat children and family members, what capacities they have, whether they follow the obligations undertaken by the Convention, whether act in the best interest of the child, etc.

The state has the primary responsibility for exercising the children's rights of all children under its jurisdiction. The international law controls states in the children's rights exercise through an established mechanism, and that is the Committee on the Rights of the Child. Some of the human rights are still treated as issues that fall within the exclusive competence of states and therefore often oppose the establishment of a strong international system,⁵⁴ which we will see below when we look in more detail at the Third Optional Protocol on Communication Procedures. However, we should keep in mind that international mechanisms for the protection of human rights (hence children's rights) are established and run by the countries themselves.

It is also very important to underline that the implementation of human rights treaties is impinged upon by the limited powers of treaty-monitoring bodies and the absence of effective enforcement mechanisms. This is most evident in the lack of an enforcement mechanism that allows for the adjudication of individual complaints.⁵⁵

1.4. Composition and functioning of the Committee

1.4.1. Composition of the Committee

According to Art. 43 of the Convention, the Committee *was established to monitor the progress made by the States parties in fulfilling the obligations undertaken with the ratification, accession or acceptance of the CRC. The committee is composed of 18 members with high moral status and recognized competencies in the field of children's rights (experts in international law, medicine, sociology and education.)*. The procedure for their election/re-election shall be conducted by the Secretary-General, who shall convene a meeting of the States Parties at which the members of the Committee shall be elected from a list of persons nominated by their States.⁵⁶ The selection takes into account the geographical representation / distribution, as well as the principle of the main legal

⁵⁴Sahovic, Vuckovic, Nevena. "Prava deteta i Konvencija o pravima deteta". Jugoslovenski centar za prava deteta, 2001, pg.29

⁵⁵Lundy, Laura. Kilkelly, Ursula. Byrne, Bronagh. and Kang, Jason. "The UN Convention on the Rights of the Child: a study of legal implementation in 12 countries". UNICEF, 2012, pg.19

⁵⁶UN Convention on the Rights of the Child, pdf (Art.43, 3).

systems.⁵⁷ The members of the Committee are elected for a period of 4 years. They have the right to be re-elected once again if they are nominated by their national countries.

In this part, it is worth to point out that the Republic of North Macedonia had its own representative in elections of members of the Committee in 2010, who unfortunately was not elected to be part of this most prestigious body in the children's rights area at the international level.⁵⁸

Initially the Committee had 10 members, but later in the course of work it was realized that there was a need for more members and with Resolution 50/155 of the 22nd of December 1995, the General Assembly made a decision of the Conference of States Parties amending the Convention, in Art. 50 and the number of members of the Committee is increased to 18.

The members of the Committee, although elected by the representatives of the member states, are not *delegates to the states but act in the name of personal capacity* (Article 43, paragraph 2). They do not represent the government of the country of origin or any other organization to which they belong or are members. Their mandate derives from the principles and provisions of the Convention and they are personally responsible for their work in the Committee in front of the children around the world. In the event that a member of the Committee dies, resigns or declares that for any other reason he or she is unable to perform the role of a member of the Committee, the nominating State Party shall be invited by the Secretary-General to appoint another expert from among its citizens to perform this role for the remainder of the term.⁵⁹

The Committee meets in Geneva, Switzerland⁶⁰, three times a year for a period of four weeks: three weeks of plenary session with State representatives, followed by one week of pre-sessional working group meetings (pre-session), with UN agencies, Non-governmental organizations (NGOs), and children, to prepare for upcoming sessions.

⁵⁷Ibid, Art.43,2

⁵⁸General Assembly. HR/5045, States Parties to Child Rights Convention Elect Nine Candidates as Members of Monitoring Committee in Single Secret Ballot.

⁵⁹ Convention on the Rights of the Child. Committee on the Rights of the Child. Rules of procedure. CRC/C/4/Rev.5; Rule 15.

⁶⁰ Ibid, Rule 4

Committee Secretariat - The work of Committee is supported by a small permanent Secretariat at the Office of the High Commissioner for Human Rights in Geneva. The Secretariat is responsible for providing support and advice to the Committee in all its areas of work.⁶¹

1.4.2. Manners and principles of work of the Committee

The Committee adopts Rules of procedure⁶² for its work, which defines in detail and set out the manner of work of the members of the Committee, as well as the functions and competencies of the Committee. The Rules of procedure is composed of three parts which are briefly presented below:

*Part One, General Rules*⁶³ - where the Committee's meetings are determined, regular and special; venue of the sessions; agenda and what it must contain; Committee members - it is defined exactly when the mandate begins and ends; the responsibilities of the members of the Committee, once again emphasizing independence and impartiality; as well as defining the Formal Declaration given by each member before taking office; internal procedures in the Committee for selection of certain roles of members such as Chair, Vice-Chair, Rapporteur; the responsibilities of the Secretariat, which administratively assists the members of the Committee, are precisely defined; Official and working languages of the Committee; Records and Distribution of reports and other official documents of the Committee; procedural rules that are applied during the work of the Committee, such as voting, taking the floor, time limit, etc.; the obligation to report the Committee to the General Assembly is also defined, where the Committee is obliged to submit a report on its activities every two years.

*Second part - Functioning of the Committee*⁶⁴ - in this part are elaborated Art. 44 and 45 of the Convention which define the obligation of the states to regularly inform the Committee on the Rights of the Child, thus elaborating the manner of submission and content of the reports by the member states, the presence of the states at the presentation of the reports, submission of additional reports and information at the request of the Committee; how the Committee may invite specialized agencies to report on a particular area or to participate with an expert council; the manner of preparation and content of Suggestions and general recommendations on a State party's report; as

⁶¹ Ibid, Rules (29-33)

⁶²Convention on the Rights of the Child. Committee on the Rights of the Child. Rules of procedure. CRC/C/4/Rev.5,

⁶³Ibid, Rules (1 - 69)

⁶⁴Ibid, Rules (70 - 80)

well as the Committee may prepare general comments based on the articles and provisions of the Convention with a view to promoting its further implementation and assisting States parties in fulfilling their reporting obligations.

Part Three - Final Provisions⁶⁵ which refer to the fact that these rules of procedure may be amended by a decision of the Committee, without prejudice to the relevant provisions of the Convention.

In addition to this Rules of procedure which is the pillar of the committee members' work, the Committee has adopted and prepared a number of other documents and guidelines for action, such as: a periodic report, - general comments⁶⁶ where it gives a more detailed interpretation of the articles and provisions of the Convention or comments on topics that are relevant in a given historical situation. The Committee also organizes Days of General Discussions on a particular topic each year.⁶⁷

The Committee on the Rights of the Child, after the adoption of the three Optional Protocols to the CRC, becomes an oversight body besides to the Convention and these Optional Protocols, i.e. the Optional Protocol to the CRC on the sale of children, child prostitution and child pornography⁶⁸, the Optional Protocol of Children in Armed Conflict⁶⁹, and the Third Optional Protocol on Communication Procedures.

In last chapter, we will elaborate the role of the Committee within the Third Optional Protocol on communication procedures with special reference to the complaints procedure. All the Committee's features presented above will get even more important when we consider Committee's role in OPIC implementation.

1.5. Committee as a part of the mechanism to monitor and control the fulfillment of the obligations by the State parties to the CRC and its Optional Protocols

⁶⁵Ibid, Rules (80-81)

⁶⁶So far, the Committee has prepared 25 General comments for different issues and are available at:

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=11

⁶⁷Summary of the General discussions is available at:

<https://www.ohchr.org/EN/HRBodies/CRC/Pages/DiscussionDays.aspx>

⁶⁸Optional protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography. U.N. Doc.

⁶⁹Optional protocols to the Convention on the Rights of the Child on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography. U.N. Doc.

Each of the legally binding international human rights instruments has a wide range of monitoring mechanisms. Within the UN framework these mechanisms are often called treaty bodies. Treaty bodies are established by the provisions of the treaties they monitor.⁷⁰

The treaty bodies are the committees of independent experts, and they do a number of functions aimed at monitoring how the treaties are being implemented by their State parties.⁷¹ They are provided with substantive and administrative assistance from the Office of the High Commissioner for Human Rights – OHCHR.⁷²

As we stated above, in order to supervise the application of children’s rights provided by CRC, the Convention also includes a monitoring mechanism in a form of the Committee on the Rights of the Child.

The Convention provides that the CRC Committee may consider reports prepared by the State parties⁷³ as well as by other relevant actors as UN agencies, NGOs, representatives from the academic area etc. Namely, the State parties have an obligation to submit an initial report, within two years from the moment of subjective entry; regular reports, periodically every five years; and extraordinary reports if requested by the Committee. In addition, like others international committees for human rights protection, the Committee makes general comments which interpreting the CRC provisions in more detail.

The main aim of the monitoring mechanism is to ensure that the treatise’s provisions are implemented effectively. Monitoring mechanisms are very important because they have also to foster the transparency and accountability of the State parties.⁷⁴ Therefore, on a long term, treaty bodies strive to strengthen the different aspects of the State parties’ capacity aiming to fulfil their commitments and obligations. We can freely say that they aim to equip the State parties with all means necessary to achieve real and concrete improvement in this area.⁷⁵ Monitoring also implies

⁷⁰OHCHR Library. “Manual on Human Rights Monitoring”. Chapter 3. “Human Rights Monitoring, Fact-Finding and investing by the United Nations”

⁷¹The United Nations Human Rights Treaty System. Fact Sheet No. 30/Rev.1. New York and Geneva. 2012. pg. 21

⁷²More about the role of OHCHR is available at <https://www.ohchr.org/EN/AboutUs/Pages/WhatWeDo.aspx>

⁷³Convention on the rights of the Child, Art. 44

⁷⁴OHCHR Library. “Manual on Human Rights Monitoring”. Chapter 3. “Human Rights Monitoring, Fact-Finding and investing by the United Nations”. pg. 13

⁷⁵Concluding observations of the Human Rights Committee: Netherlands. 27/08/2001. UN Doc. CCPR/CO/72/NET, para. 10.

*(only the Subcommittee on Prevention of Torture)

the right of individuals to complain and seek a remedy. Based on the previously said, we can say that the Committee's main monitoring functions are:

- Consideration of State parties' reports;
- Consideration of individual complaints or communications;
- Inquiries procedures; and
- Country visits*

Speaking about monitoring, we have to outline that some authors have a much broader vision about monitoring. One of the most famous children's rights lawyer, specializing in the CRC, Bruce Abramson, interprets the monitoring very extensive. He says "We must monitor ourselves, as well as governments, attitudes as well as behavior". There is a strong "need to monitor our rhetoric and our attitudes".⁷⁶

For the needs of this thesis, I will focus on the monitoring tools as interpreted in the CRC. For that reason, in this chapter we will present the first monitoring function of the Committee on the Rights of the Child (consideration of State parties' reports). The other two monitoring functions will be elaborated in the chapter four of this thesis.

The primary mandate of all treaty bodies, except the Subcommittee on Prevention of Torture, is to review the reports submitted periodically by State parties detailing how they are applying the treaty provisions at national level.⁷⁷ In addition to the State party's report, treaty bodies may receive information on a country's human rights situation from other sources, such as national human rights institutions, United Nations agencies, other intergovernmental organizations, national, regional and international civil society organizations, academia and the media.

Based on the constructive dialogue established with the State parties, the committees then adopt concluding observations (concerns and recommendations), intended to provide the reporting States with practical advice and encouragement on further steps to implement the rights contained in the respective treaties. The treaty bodies generally seek to make their recommendations as concrete and practical as possible.

⁷⁶ Abramson, Bruce. "The Invisibility of Children and Adolescents: The Need to Monitor our Rhetoric and our Attitudes". Eugeen Verhellen (ed.), 1996, pg.393

⁷⁷The United Nations Human Rights Treaty System. Fact Sheet No. 30/Rev.1. New York and Geneva. 2012, pg. 21

Having in mind the previously said, the treaty bodies issue guidelines to assist States with the preparation of their reports, draft general comments interpreting the treaty provisions and organize discussions on themes related to the treaties. Most treaty bodies may consider complaints or communications from individuals alleging that their rights have been violated by a State party, provided that State has opted into this procedure. Some may also conduct inquiries and consider inter-State complaints.

The system of periodic reporting established within the context of all major international human rights instruments is the central element in monitoring the full and effective national implementation of international human rights standards. The reports submitted to independent expert bodies are expected to provide comprehensive information on the measures taken by a government to fulfil its commitments resulting from the ratification of or accession to a particular human rights convention.

Furthermore, the Committee on the Rights of the Child may receive reports on a country's child rights situation from other sources, including United Nations agencies, other intergovernmental organizations, national human rights institutions (NHRIs), non-governmental organizations (NGOs), professional groups and academic institutions. Hence, the Committee provides a specific plenary session to hear submissions from United Nations agencies and NGOs views. It should be noted that some of the issues raised by these organizations may be incorporated in the list of issues and questions that Committee members ask the State delegation. Taking into the consideration all available information, in the examination process, the CRC Committee adopts a set of recommendations, called Concluding Observations, reflecting the main points in the complex process of evaluation of a State Party's progress in implementing the CRC.⁷⁸

1.5.1. Reporting by States

As we stated above, the primary mandate of the Committee is to review the reports submitted by State parties in accordance with the treaties' provisions.⁷⁹ This means that each State party that accept the CRC and the Optional Protocol thereto, through ratification, accession or succession,

⁷⁸ Vučković, Šahović, Nevena. "The CRC Committee and Child Dignity ". *Facta Universitatis Series: Law and Politics* Vol. 13, No 2, 2015, pp. 87 – 98, pg. 92

⁷⁹Ibid, pg.21

undertake the legal obligation to implement the rights set out in the Convention and protocols. One of the obligations is to submit reports to the Committee as a treaty body on how the children's rights are being implemented in the national systems. The Committee can only receive or consider reports concerning countries which have ratified or acceded to the CRC and/or the Ops. Before the adoption of the Third Optional Protocol, the only possible CRC monitoring tool were the reports of the State parties submitted to the Committee on the Rights of the Child.

To examine the progress made by States in fulfilling their obligations under CRC and its Optional protocols, the Committee meets three times a year for a period of four weeks each time: three weeks of plenary session with State representatives, followed by one week of pre-session working group meetings (pre-session), with UN agencies, NGOs, NHRIs and children, to prepare for upcoming sessions. The Committee's approach is engagement of States parties in a constructive dialogue with a view to obtaining an accurate assessment of the situation of children in the State under review, and making recommendations of how the State can further work to fulfil its obligations with regard to child rights. Based on the constructive dialogue established with the State parties, the committees then adopt concluding observations (concerns and recommendations), intended to provide the reporting States with practical advice on further steps to implement the rights contained in the respective treaties.⁸⁰ In the regular reviewing of state reports, the Committee has developed a practice of emphasizing the identification of obstacles to the full realization of children's rights⁸¹ and gives concrete and practical recommendations to overwhelm them.

For the needs of this study, it is important to mention that the CRC fails to consistently bind in fact the action of State parties that fail to submit reports in the required time frames, that submit inappropriate reports, or that do not seriously attempt to follow the committee's recommendations.⁸²

The following Chart has been prepared by the Committee on the Rights of the Child and shows the standard reporting procedure cycle.⁸³

⁸⁰OHCHR Library. "Manual on Human Rights Monitoring". Chapter 3. "Human Rights Monitoring, Fact-Finding and investing by the United Nations". pg. 5

⁸¹ Arts, Karin. "Coming of Age in a World of Diversity? An Assessment of the UN Convention on the Rights of the Child". International Institute of Social Studies, The Hague, 2010, pg. 17

⁸² Butler, Clark. "Child Rights: The Movement, International Law and Opposition". Perdue University Press, 2012, pg.3

⁸³<https://www.ohchr.org/EN/HRBodies/CRC/Pages/ReportingProcedure.aspx>

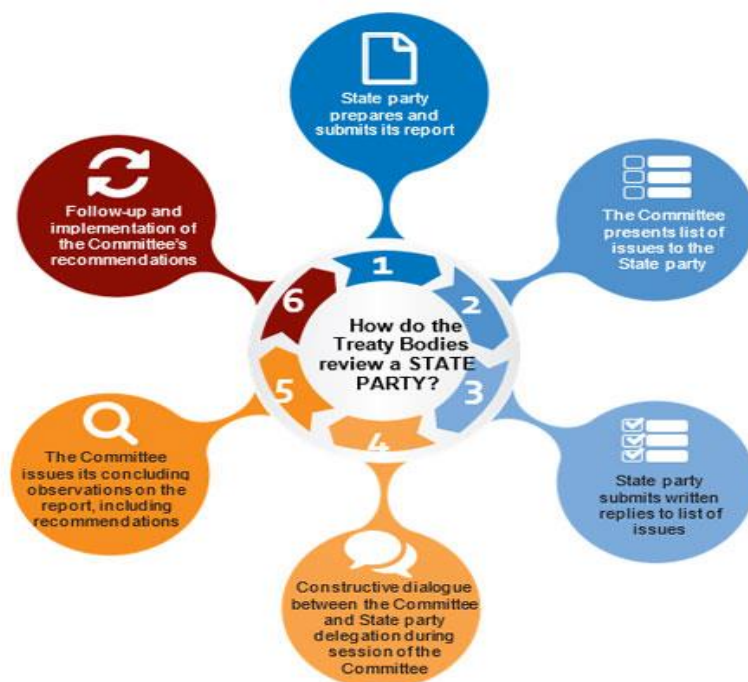


Chart 1. Standard reporting procedure

Source: Web site of the Committee on the Rights of the Child

According to the article 44 of the CRC, after the adoption of this Convention, each State party is obliged to submit an Initial Report on how the CRC is implemented in practice with special reference to the taken measures by the states implementing the Convention. This Initial Report shall be submitted two years after the adoption of the Convention. The member states are then obliged to prepare Periodic reports every five years in which they will provide information on how the provisions of the Convention are being implemented, what measures they have taken, etc. The CRC Committee shall review each report and addresses its findings and recommendations to the State party in the form of 'concluding observations'.

In order for the Member States to have a clearer picture of what these reports should contain, the Committee on the Rights of the Child has prepared and adopted Guidelines on the form and content of the initial report⁸⁴ and of the periodic reports⁸⁵ as well.

⁸⁴General Guidelines regarding the form and content of Initial Reports to be submitted by States parties under article 44 of the Convention on the Rights of the Child. UN Doc. CRC/C/5. 1991.

⁸⁵Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by States parties under article 44 of the Convention on the Rights of the Child. UN Doc. CRC/C/58/Rev.3. 2015.

Like the CRC, States that ratify one or both OPs are required to submit an initial report two years after its entry into force in the State concerned and every five years thereafter. An initial OPAC or OPSC report is a separate document from the CRC State party report. After the review of the initial OP report, the Committee will adopt a set of Concluding Observations for each OP. Periodic OP reports should be combined with the State party report on the CRC to produce one integrated report. At the end of the review of an integrated State party report on the CRC, the OPAC and/or OPSC, the Committee will adopt one set of Concluding Observations covering all the treaties covered by the report. The Committee endeavors to facilitate the production of a focused set of recommendations, avoiding too much repetition of standard recommendations.⁸⁶

This process of State party report preparing enables the state to conduct a comprehensive assessment of how the CRC is being implemented in practice by analyzing national legislation, policies, strategies and plans as well as the activities being implemented.⁸⁷ The Committee always emphasizes that the process of preparing this report should be participatory which means that state institutions should consult all non-governmental actors such as national and international NGOs, the ombudsman, including children. Non-state actors can give their views, opinions, recommendations, statistics, etc. However, in the end it is the state that decides what will be included in the state report.

All documents prepared by the State parties or the Committee, as part of the reviews, are public documents and are available at the web page of the Committee on the rights of the child.⁸⁸

1.5.2. Reporting by non-governmental organizations - alternative reports

Together with international instruments and national legislation and institutions, non-governmental organizations (NGOs) are an integral component of the system of promotion and protection of human rights.⁸⁹ NGOs gained their international legal recognition with the United Nations Charter of 1945⁹⁰, and after that many NGOs received the consultative status in UN on the promotion of

⁸⁶ Invernizzi, Antonella. and Williams, Jane. "The Human Rights of Children: From Visions to Implementation" Ashgate, 2011, Chapter 4

⁸⁷ Bergman, Theytaz, Laura. and Myers, Lisa. "The Reporting Cycle of the Committee on the Rights of the Child; A Guide for NGOs and NHRIs". Child Rights Connect. 2014, pg.7

⁸⁸ Committee on the Rights of the Child. Web page <https://www.ohchr.org/en/hrbodies/crc/pages/crcindex.aspx>

⁸⁹ Цветковски, Цветан. „Човекови права – Извори, институции и процедури“, Скопје, 1999, стр. 145

⁹⁰ Ibid

human rights.⁹¹ One of the most popular networks NGO for child rights 'Child Rights Connect' holds special ECOSOC consultative status at the United Nations. They do strengthening the UN human rights system to be a better apparatus for accountability, protection and promotion of children's rights. To make this possible, Child Rights Connect supports the CRC Committee, with the development of child-centered procedures. This network has a very strategic role in the CRC reporting cycle and individual complaints processes in the framework of the OPIC. Parts of their findings and researches will be presented in this work, as well.

According to Kirsten Sandberg, Chairperson of UN Committee on the Rights of the Child, the Committee is dependent on the work done by NGOs, national human rights institutions (NHRIs) and children in monitoring the implementation of the CRC. In order to have clear view on the situation faced by children on the ground, the Committee needs information on the situation from different sources. NGOs, NHRIs and children are crucial in this respect, along with UNICEF and other UN bodies. In their work, NGOs use various methods and strategies, and one of the most common is to compile reports and submit them to international forums as well as to submit complaints to international human rights institutions.⁹²

The Committee does not have specific procedures and capacities to follow up the implementation of its recommendations. Therefore, there is a particular need for organizations and people within the State party to monitor the government and its undertaken activities to implement the Committee's concluding observations. In many countries, NGOs, NHRIs and children play in active role in the reporting process.

There is no official name for the reports prepared and submitted by non-governmental organizations. Several terms are commonly used as: 'alternative report', 'complementary' or 'supplementary' report. The only term which is no longer used is 'shadow report' as it can have negative connotations, which can compromise the legitimacy of the report.⁹³ Within this thesis, we will use the term 'alternative report'.

⁹¹ D.W. Bowett. "The Law of International Institutions". The London Institute of World Affairs. 1963. Pg.60

⁹² Цветковски, Цветан. „Човекови права – Извори, институции и процедури“, Скопје, 1999, стр. 149

⁹³Bergman, Theytaz, Laura. and Myers, Lisa. "The Reporting Cycle of the Committee on the Rights of the Child; A Guide for NGOs and NHRIs". Child Rights Connect. 2014, page 8

Since most of the State reports are focused on legislation, they do not provide sufficient information of the measures taken for enforcement of the CRC in the practice as well as challenges and obstacles in the process of its implementation.⁹⁴ That is primary reason why the Committee is interested in receiving alternative reports which should provide information on areas where the State party report is incomplete, incorrect or misleading.⁹⁵ Therefore, the alternative reports should identify gaps and underline challenges in the implementation of legislation, programmes and policies. It is up to the NGOs and NHRIs to decide what type of report to prepare based on their capacity, resources and expertise, as well as their perception of the most useful contribution to the Committee's understanding of the situation in the State at the time of the review. The reporting process should be a catalyst for strengthening state – NGO partnership.⁹⁶

Since the Committee members are under time pressure to familiarize themselves with the relevant issues in a State, it very useful to receive one comprehensive report from a representative coalition of NGOs that deals with all the clusters of the CRC.⁹⁷ Most bodies have introduced such cooperation in the development of their working methods, whereas only the CRC and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families explicitly provide a legal basis.⁹⁸

Preparing and sending a joint report as a NGOs' coalition gives more representativeness and credibility of the NGO submission as well as provide an opportunity for broader engagement of the national child rights stakeholders in the reporting process.⁹⁹ It is important to note that the alternative reports' information are used as a pool of sources for the Committee members and help them to develop an overall understanding of the situation of children in the country. Therefore, the Committee developed a guideline for instructions about the structure and the content of alternative reports in order to assist the NGOs in the process of alternative report preparation. According to this NGO Guide Submission, the alternative reports should include the following key elements: Situation analysis; Comments on the State report; Concrete examples.

⁹⁴ Ibid

⁹⁵ Ibid, page 9

⁹⁶ Invernizzi, Antonella. and Williams, Jane. "The Human Rights of Children: From Visions to Implementation" Ashgate, 2011, Chapter 4

⁹⁷ Ibid, page 9

⁹⁸ Hobe. Stephan "Human Rights, Role of Non-Governmental Organizations". Oxford Public International Law. 2019. pg.19

⁹⁹ Center for Civil Initiative. "Basic Handbook for Human Rights". Prilep, 2003. pg.53

Child participation in reporting process - In its General Comment no. 12, 'The Right of the Child to be Heard', the Committee officially recognized the role of child-led organizations and children's representatives in the reporting process. The General Comment states that: "the Committee welcomes written reports and additional oral information submitted by child organizations and children's representatives in the monitoring process of child rights implementation by States parties, and encourages States parties and NGOs to support children to present their views to the Committee."¹⁰⁰

In recent years, children have taken an increasingly active role in the reporting process of the CRC. Children's views have been mostly incorporated in the main alternative reports; however, children are increasingly preparing their own submissions for the Committee.¹⁰¹ Children should be encouraged and supported to express their views and give opinions about how the CRC is implemented at national level.

In this context, it is important to say that in 2010, for the first time, the children from North Macedonia prepared their 'Alternative report on the State of Children's Rights in Macedonia – from children's perspective'¹⁰². Moreover, they presented it in front of the Committee's members on a separate session in February 2010.

1.5.3. Considering the necessity to expand the jurisdiction of the Committee on the Rights of the Child

Prior to OPIC, the CRC was the only international human rights convention which does not have a complaint procedure. This was a serious matter of discrimination against children and weakens effective implementation of the CRC.¹⁰³

Bruce Abramson also confirms that the Committee's primary monitoring tools are: its reporting guidelines and the States' implementation reports; a primary evaluating tool is the "dialogue"

¹⁰⁰General Comment No. 12 (2009);

¹⁰¹Bergman, Theytaz, Laura. and Myers, Lisa. "The Reporting Cycle of the Committee on the Rights of the Child; A Guide for NGOs and NHRIs". Child Rights Connect. 2014, pg.17

¹⁰² The First Children's Embassy in the World Megjashi. "Alternative report on the State of Children's Rights in Macedonia – from children's perspective" 2009.

¹⁰³ Human Rights Council, Briefing meeting, Geneva, June 2008

between the Committee and the State; and the Concluding Observations is the Committee's assessment report.¹⁰⁴ It is obvious that one of the most powerful monitoring tools is missing.

Some experts go a step forward in the suggested mechanisms for children's rights protection. They believe that protection of children's rights by means of expanding the jurisdiction of the CRC Committee is insufficient, and pay particular attention to the need and possibility that a specialized court for children's rights be formed¹⁰⁵ on the regional or the international level. So on that way that the protection of children's rights would be appropriate and effective.

The extended mandate of the CRC Committee does not intend to bypass the State parties but on the contrary it seeks to strengthen and supplement the national and regional mechanisms. The tendency is not to take the role of national institutions, but to encourage them to work and act in the best interest of children.

Hence, we can conclude that the competence expanding of the CRC Committee is more than necessary and expected.

¹⁰⁴ Abramson, Bruce. "Resources for Children: Responsibility of States", Day of Discussion, Committee on the Rights of the Child, 21 Sept. 2007, Palais Wilson, Geneva (pg. 7)

¹⁰⁵ Hrabar, Dubravka. "The Establishment of a European Court for the Rights of the Child as a New Contribution to the Area of Freedom, Security and Justice. "Zbornik Pravnog fakulteta u Zagrebu, vol. 64, br. 2, 2014, pg. 181, 191 and 193
Dubravka Hrabar in her article suggested that a specialized court for children's rights should be formed within the European Court, so that the protection of children's rights would be appropriate and effective on EU level.

CHAPTER II

2. A brief overview of some of the United Nations' Committees responsible for reviewing individual complaints and their utilization for cases related to children's rights

Within the UN system, there are nine human rights protection instruments which set international standards for the protection and promotion of human rights to which States can subscribe by becoming a party.¹⁰⁶ These treaties are:

1. The International Covenant on Economic, Social and Cultural Rights¹⁰⁷ (ICESCR) – This covenant was adopted in 1966 together with the Covenant on Civil and Political Rights and entered into force a decade later, in 1976. The Covenant's complaint mechanism is established by its Optional Protocol¹⁰⁸, which was adopted on the 10th of December 2008.¹⁰⁹

2. The International Covenant on Civil and Political Rights¹¹⁰ (ICCPR), adopted in 1966, covers a wide range of civil and political rights. Two Optional Protocols supplement the Covenant, the first Optional Protocol, of 1966, provides for a right to individual petition.

3. The International Convention on the Elimination of All Forms of Racial Discrimination¹¹¹ (ICEFRD) was adopted in 1965 and entered into force in 1969. The aim is to overcome and completely eliminate all forms of racial discrimination.

4. The Convention on the Elimination of All Forms of Discrimination against Women (CEDOW)¹¹² was adopted in 1979 and entered into force in 1981. The Convention's complaint mechanism is established by its Optional Protocol, which was adopted on the 6th of October 1999.

5. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was adopted by the United Nations in 1984 and entered into force in 1987.¹¹³ The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading

¹⁰⁶ United Nations Human Rights Office of the High Commissioner. "The United Nations Human Rights Treaty System". Fact Sheet No. 30/Rev.1. 2012. page 1; Available at:

<https://www.ohchr.org/documents/publications/factsheet30rev1.pdf>

¹⁰⁷ International Covenant on Economic, Social and Cultural Rights. UN Doc.

¹⁰⁸ Raičević, Nebojša. "Fakultativni protokol uz Međunarodni pakt o ekonomskim, socijalnim i kulturnim pravima. Zaštita ljudskim i manjinskih prava u evropskom pravnom prostoru". Tematski zbornik radova, Niš, 2011, pg. 371 – 389

¹⁰⁹ United Nations Human Rights Office of the High Commissioner. "Individual Complaint Procedures under the United Nations Human Rights Treaties". Fact Sheet No. 7/Rev.2. 2013. page 21

¹¹⁰ The International Covenant on Civil and Political Rights. UN Doc.

¹¹¹ International Convention on the Elimination of All Forms of Racial Discrimination. UN Doc.

¹¹² Convention on the Elimination of All Forms of Discrimination against Women entered into force 3 September 1981, Office of the High Commissioner for Human Rights

¹¹³ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art.1

Treatment or Punishment adopted in 2002 and entered into force in 2006, provides for a system of regular visits by international and national mechanisms to prevent torture and other cruel, inhuman or degrading treatment or punishment of people who are deprived of their liberty.

6. Convention on the Rights of the Child as the first treaty dealing comprehensively with the rights of children was adopted in 1989 and came into force in 1990. Although, both the ICCPR (art. 24) and the ICESCR (art.10) provide that children are entitled to any special measures of protection that they require as children, the CRC sets out these standards in significantly more details. This convention is the most widely ratified document within the UN (only one country has not ratified it). States parties are obliged to take appropriate legal, administrative and other measures in order to fully implement the children's rights protected by this Convention.

The Optional Protocol on a communications procedure was adopted by the General Assembly in December 2011 and entered into force in 2014. It establishes the right to individual petition, inquiries and inter-State complaints.

7. The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families was adopted in 1990 and entered into force in 2003.

8. The Convention on the Rights of Persons with Disabilities was adopted in 2006 and entered into force in 2008.

9. The International Convention for the Protection of All Persons from Enforced Disappearance was adopted in 2006 and entered into force four years later.¹¹⁴

The application of the human rights treaties is monitored and supervised by the following committees¹¹⁵:

- The Committee on the Elimination of Racial Discrimination (CERD Committee), the first treaty body established, has reviewed the application of the International Convention on the Elimination of All Forms of Racial Discrimination since 1969.
- The Committee on Economic, Social and Cultural Rights was created in 1985 to carry out the functions of the Economic and Social Council under the International Covenant on Economic, Social and Cultural Rights.

¹¹⁴International Convention for the Protection of All Persons from Enforced Disappearance; Art.1

¹¹⁵ More about the Committees see at: The Core International Human Rights Instruments and their monitoring bodies <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>

- The Human Rights Committee (HRC) was created in 1976 to review the application of the International Covenant on Civil and Political Rights.
- The Committee on the Elimination of Discrimination against Women (CEDOW Committee) has reviewed the application of the Convention on the Elimination of All Forms of Discrimination against Women by its State parties since 1981.
- The Committee against Torture, created in 1987, reviews the application of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
- The Committee on the Rights of the Child has, since 1991, reviewed the application of the Convention on the Rights of the Child, as well as its Optional Protocols relating to the involvement of children in armed conflict and to the sale of children, child prostitution and child pornography, by their State parties.
- The Committee on Migrant Workers held its first session in March 2004 and reviews the application of the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.
- The Committee on the Rights of Persons with Disabilities, established in November 2008, held its first session in February 2009.
- The Committee on Enforced Disappearances was created in June 2011 following the entry into force on the 23rd of December 2010 of the International Convention for the Protection of All Persons from Enforced Disappearance.

If we closely review the human rights treaties stated above, it can be concluded, that prior the OPIC, the CRC Committee was the only treaty body for human rights protection at the universal level without jurisdiction to consider individual petitions and inter-state communications. In the absence of a particular international mechanism for individual complaints of violation of children's rights, other international human rights mechanisms were used in which some connection to children's rights could be found. The effectiveness of these instruments has been questioned by some scholars who emphasized that monitoring mechanisms are inherently weak and that the instruments primarily serve promotional or socializing functions.¹¹⁶ Hence, if this statement is correct, then one

¹¹⁶Keith, Linda Camp 'The United Nations International Covenant on Civil and Political Rights: Does It Make a Difference in Human Rights Behavior?' Journal of Peace Research, 1999, pg. 95

of the first raised questions is linked to the children's position in that system. It is much more difficult for children to use these instruments.

Additionally, even the children and their representatives can use the mechanisms established under other international instruments to pursue many of their rights, those instruments do not cover, separately or together, the full range and detail of rights in the CRC. Thus, researches confirmed that they were very little used by the children and their representatives. During the negotiation regarding the text of the OPIC, some delegates pointed out that the number of international cases involving children is significantly low. Marcus Schmidt from OHCHR Petitions Secretariat indicated that only 2 to 2.5 percent of cases considered by the UN human rights treaty bodies were brought by or on behalf of children.¹¹⁷

One of the main inconsistencies in the CRC regime is that it failed to establish a complaints procedure.¹¹⁸ Therefore, it has been repeatedly emphasized that it is necessary to improve the mechanism for monitoring and supervision of children's rights implementation and the experiences from other international instruments should be the basis for preparing the Optional Protocol.

Hence, in the chapter, I will elaborate cases submitted to the international treaty bodies which are in some way connected with the children's rights. There will be presented three cases before the other human rights treaties as examples of individual complaints procedures. Two are successful, and one is rejected as inadmissible. All presented cases involving children either as victims or victims and applicants at the same time.

M. Langford and S. Clark in their analysis of cases¹¹⁹ found approximately 40 children's rights cases before the Human Rights Committee and one each to the Committee on the Elimination of Discrimination against Women and the Committee on the Elimination on Racial Discrimination. Further, in their analysis, it is noted that the cases brought before the HRC are classified under several themes: disappearances, custody cases, deportation, religious education, death row, and

¹¹⁷ Human Rights Council. "Report of the 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". A/HRC/13/43; paragraph 78

¹¹⁸ Arts, Karin. "Coming of Age in a World of Diversity? An Assessment of the UN Convention on the Rights of the Child". International Institute of Social Studies, The Hague, 2010, pg.24

¹¹⁹ Langford, Malcolm. and Clark, Sevda. "The New kids on the Block, A Complaints Procedure for the Convention on the Rights of the Child. Nordic Journal of Human Rights Vol. 28 No. 3-4; 2010, pg. 384

imprisonment.¹²⁰ They also pointed to other HRC cases where children would be directly affected by the decision which can be confirmed by a case brought by parents regarding their right to educate their children according to their religious beliefs. One of those cases is the case Waldman versus Canada¹²¹ (1999) which will be reviewed in this thesis.

The other relevant case brought before the CERD Committee was CP and his son MP v Denmark¹²² (Communication No. 5/1994). This case was about racial discrimination and brought by a father on behalf of his son, aged 15 at the time of events. The Committee decided that the case was inadmissible on two grounds: that there were no provisions identified by the author for complaint and the remedy was seen to fall outside the scope of the Convention as the author requested a criminal retrial.

The only communication brought by a child applicant to the CEDAW Committee (and brought on behalf of an adult applicant) is the case Fatma Yildirim (deceased) v Austria¹²³ (Communication No. 6/2005). This complaint is interesting by procedural aspect because a six-year-old child, two of her siblings with an NGO support brought the case on behalf of their deceased mother. This is the only complaint brought by a child applicant to the CEDAW Committee. This case is presented in detail in this thesis, as well.

2.1. First Optional Protocol to the International Covenant on Civil and Political Rights¹²⁴

The First Optional Protocol to the International Covenant on Civil and Political Rights is an international treaty establishing an individual complaint mechanism for alleged violations of the provisions stipulated in the ICCPR. It was adopted by the UN General Assembly on the 16th of December 1966, and entered into force on the 23rd of March 1976. As of November 2020, it had 3 signatories and 116 states parties.¹²⁵

¹²⁰ Ibid

¹²¹ Communication No. 694/1996, CCPR/C/67/D/694/1996

¹²² Communication No. 5/1994, U.N. Doc. CERD/C/46/D/5/1994 (1995)

¹²³ Communication No. 6/2005; U.N. Doc. CEDAW/C/39/D/6/2005 (2007)

¹²⁴ First Optional Protocol to the ICCPR, Art.1

¹²⁵ UN Treaty Collection, Status of the First Optional Protocol to the ICCPR, Available at: <https://indicators.ohchr.org/>

A State Party to the Covenant that becomes a Party to the present Protocol recognizes the competence of the HRC to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of any of the rights set forth in the Covenant. No communication shall be received by the HRC if it concerns a State Party to the Covenant, which is not a Party to the present Protocol.

The OP to ICCPR has established several stages in the complaint procedure; and they are listed and shortly explained below.

1. Submission of the Complaint - Usually the complaint is submitted by the individuals who claim that any of their rights stated in the Covenant have been violated. However, it may be submitted on behalf of a victim in case he/she is unable to do so.¹²⁶

2. Transmission to the State Party concerned – The HRC shall consider inadmissible any communication under the present Protocol which is anonymous, or to be incompatible with the provisions of the Covenant.¹²⁷ A communication is only admissible if all available domestic remedies have been exhausted (unless they are unreasonably prolonged)¹²⁸ and the same matter is not being examined under another international procedure.¹²⁹

3. Admissibility Decision - The HRC considers the information received by both parties in its admissibility decision. Usually, the HRC conducts one combined examination on admissibility and on the merits. The State party concerned is then asked to submit information or written statements clarifying the matter and any remedy that may have been provided by the state within six months.¹³⁰

4. Examination on the Merits - The HRC considers the information submitted by the parties concerned in closed meetings.¹³¹ The HRC's decision (formally called view) is forwarded to parties, the State Party concerned and the individual.¹³² In case the HRC find out a violation of the ICCPR, it will urge the State party to provide sufficient remedies which could mean the compensation and rehabilitation of the victim, law reform or changes in the existing policies and practices.

5. Follow-up Mechanism - The follow-up-mechanism is not contained in the Optional Protocol, but it is mentioned in the Human Rights Committee's Rules of Procedure (Rule 95).¹³³

¹²⁶ First Optional Protocol to the ICCPR, Art.1

¹²⁷ Ibid, Art. 3

¹²⁸ Ibid, Art. 5, paragraph 2 b)

¹²⁹ Ibid, Art. 5, paragraph 2 a)

¹³⁰ Ibid, Art. 4

¹³¹ Ibid, Art. 5, paragraph 3

¹³² Ibid, Art.5, paragraph 4

¹³³ Human Rights Committee. Rules of procedure of the Human Rights Committee. CCPR/C/3/Rev.11;

Within six months, the State party concerned shall submit to the HRC written information on the measures taken to implement the HRC's views. Information related to follow-up to the committees' views and recommendations is not confidential and the meetings during which this information is discussed are public.¹³⁴ The HRC includes information on its follow-up activities in its annual report.¹³⁵

6. Interim Measures - The question of interim measures in cases where the victim is in danger of suffering irreparable damage is addressed in Rule 94 of the Rules of Procedure. The HRC may request the State party to take interim measures to protect the victim without implying a determination of the on the admissibility or the merits of the communication.¹³⁶

All these complaint procedure stages will be reviewed through the case study *Waldman v. Canada* which will be elaborated further in this chapter.

2.2. Human Rights Committee established under the ICCPR and its jurisdiction

The ICCPR establishes a HRC as a monitoring treaty body. The composition, role and competence of this Committee are defined in Section 4 of the Covenant. Thus, this HRC is composed of 18 members, citizens of the States parties to this Covenant who must be persons of high moral character and recognized competence in the field of human rights. Most Committee members (past and present) have a legal background, whether from the judicial bench, as a practitioner or in academia.¹³⁷

In order to ensure highest standards of conduct, the HRC has adopted ethical guidelines for the guidance of its members. (CCPR/C/3/Rev.7)

Provisional rules of procedure were initially adopted by the Committee at its first and second sessions and subsequently amended at its third, seventh and thirty-sixth sessions. At its 918th meeting, on 26 July 1989, the Committee decided to make its rules of procedure definitive, eliminating the term "provisional" from the title. The current version of the rules was adopted at the Committee's 3567th meeting during its 124th session.

¹³⁴ OHCHR. "Individual complaint procedures under the United Nations Human Rights Treaties". Fact Sheet No. 7/Rev.2. pg. 11

¹³⁵ Human Rights Committee. Rules of procedure of the Human Rights Committee. U.N.Doc. CCPR/C/3/Rev.11; Rule 106

¹³⁶ Ibid, Rule 94

¹³⁷The Human Rights Committee. "Civil and Political Rights: The Human Rights Committee". Fact Sheet No. 15 (Rev.1). Pg.12 and 13.

The Four Monitoring Functions of the Committee – The HRC’s competence is to supervise and monitor the implementation of ICCPR provisions by States parties. In effecting its monitoring and supervisory functions, the HRC has four key tasks briefly presented below:¹³⁸

- Examination of Reports Submitted by States Parties – First, all States parties are required to submit an initial report and regular periodical reports to the Committee on how the rights are being realized in the practice. The Committee reviews the reports and addresses its findings and recommendations to the State party in the form of "concluding observations"¹³⁹.
- Adoption of General Comments on Articles of the Covenant – Second, the Committee elaborates its interpretation of the content of human rights provisions, known as general comments on thematic issues, which are designed to assist States parties by providing details regarding their substantive and procedural obligations.
- Consideration of Individual Complaints Under the Optional Protocol - Third, the HRC receives and considers individual complaints under the Optional Protocol made by individuals who claim violations of their Covenant rights by a State party.
- Assessment of Inter-State Complaints - Fourth, the HRC has jurisdiction to consider certain complaints made by a State party that another State party is not respect the obligations recognized under the Covenant.

2.3. Case of individual communication before the Human Rights Committee

- Case Waldman v. Canada¹⁴⁰

Waldman v. Canada (Communication No. 694/1996) is a case decided by the UN Human Rights Committee in 1999. The case is interesting for this study because children were directly affected by the decision. This case was brought by parents on behalf of their children regarding the right to educate their children according to their religious beliefs.

¹³⁸ Ibid, Pg. 14 and 15

¹³⁹ Human Rights Treaty Bodies - Glossary of technical terms related to the treaty bodies; Concluding information - The observations and recommendations issued by a treaty body after it has considered a State party’s report. Concluding observations refer both to the positive aspects of a State’s implementation of the treaty and to areas of concern, where the treaty body recommends that further action needs to be taken by the State.

¹⁴⁰Communication No. 694/1996, U.N. Doc. CCPR/C/67/D/694/1996 [1999]

*Description of the case*¹⁴¹ - The author of the communication is Mr. Arieh Hollis Waldman, a Canadian citizen residing in the province of Ontario. He claims to be a victim of a violation of articles 26, and articles 18(1), 18(4) and 27 combining with article 2(1). He is a father of two school-age children and a member of the Jewish faith who enrolls his children in a private Jewish school. In the province of Ontario Roman Catholic schools are the only non-secular schools receiving full and direct public funding. Other religious schools must fund through private sources, including the charging of tuition fees. In *Waldman v Canada*, an Ontario Jewish man challenged the legality of Catholic school funding in Ontario before the UN HRC.¹⁴²

On the other hand, Canada as a State party has argued that no discrimination has happened, since the privileged treatment of Roman Catholic schools is stipulated in the Constitution. As Roman Catholic schools are incorporated in the public school system, the differentiation is between private and public schools, not between private Roman Catholic schools and private schools of other denominations.¹⁴³

Committee's decision - The UN HRC has decided that funding of only Roman Catholic schools in Ontario is discriminatory under the ICCPR. The HRC found that the exclusive funding of only Roman Catholic schools in Ontario violated Article 26 of the ICCPR (prohibition of discrimination).¹⁴⁴ The HRC found that the special status of Catholic schools violated Article 26 of the ICCPR.¹⁴⁵ The HRC noted that the fact that a distinction is set down in the Constitution does not make it reasonable and objective. The distinction was made in 1867 to protect the Roman Catholics in Ontario. The HRC further stated that the presented material by the State party does not show that members of the Roman Catholic community are now in a disadvantaged position compared to those members of the Jewish community that wish to secure the education of their children in religious schools. Accordingly, the HRC rejects the State party's argument that the preferential treatment of Roman

¹⁴¹ Ibid

¹⁴² Pardy, Bruce. "Does Constitutional Protection Prevent Education Reform in Ontario?". *Fraser Research Bulletin*. 2016. pg. 6.

¹⁴³ Human Rights Committee/ Communication N^o 694/1996; *Waldman v. Canada*; UN Doc. CCPR/C/67/D/694/1996 (5 November 1999); paragraph 10.3

¹⁴⁴(see *Arieh Hollis Waldman v. Canada*, Communication No. 694/1996, U.N. Doc. CCPR/C/67/D/694/1996 [5 November 1999]), retrieved January 26, 2015 at www1.umn.edu/humanrts/undocs/session67/view694.htm

¹⁴⁵ Article 26 reads: "All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as ... religion ..."

Catholic schools is nondiscriminatory because of its Constitutional obligation.¹⁴⁶ In this context, the HRC observes that the Covenant does not oblige States parties to fund schools which are established on a religious basis. However, if a State party chooses to provide public funding to religious schools, it should make this funding available without discrimination.

Based on this, the HRC concluded: Providing funding for the schools of one religious group and not for another must be based on reasonable and objective criteria. In the present case, the HRC concludes that the material before it does not show that the differential treatment between the Roman Catholic faith and the author's religious denomination is based on such criteria. Consequently, there has been violation of the author's rights under article 26 of the Covenant to equal and effective protection against discrimination.¹⁴⁷

From a legal aspect, the previously presented case is significant because it is an example of successfully conducted case before international human rights treaty body. This case should be a lesson learned for the up-coming cases within the OPIC.

2.4. Convention on the Elimination of All Forms of Discrimination against Women¹⁴⁸

The CEDOW Convention was adopted by the UN General Assembly on the 18th of December 1979 and entered into force on the 3rd of September 1981 after being ratified by twenty State parties. Until today, it has been signed and ratified by 187 countries, including the Republic of North Macedonia.¹⁴⁹ This convention guarantees the right of all women to be free from discrimination and lays down obligations for State parties designed to ensure the legal and practical enjoyment of that right. The Convention also established the CEDAW Committee, which, until the adoption of the Optional Protocol in 1999, had more consultative and advisory role. The CEDOW's structure was designed on that of the ICERD, but contained a number of innovations, reflecting developments in

¹⁴⁶Human Rights Committee. Communication N° 694/1996; Waldman v. Canada; UN Doc. CCPR/C/67/D/694/1996 (5 November 1999); paragraph 10.4

¹⁴⁷ Human Rights Committee. Communication N° 694/1996; Waldman v. Canada; UN Doc. CCPR/C/67/D/694/1996 (5 November 1999)

¹⁴⁸Convention on the Elimination of All Forms of Discrimination against Women, UN Doc.

¹⁴⁹Status of ratification of the Convention on the Elimination of All Forms of Discrimination against Women

<https://indicators.ohchr.org/>

the 15 years since the latter had been adopted.¹⁵⁰ The Convention is consisted of six parts with a total of 30 articles.

The Convention's complaint mechanism is established by its Optional Protocol, which was adopted on the 6th of October 1999. It is a separate treaty open to State parties to the Convention. This protocol provides two mechanisms for the protection of the rights of women and girls guaranteed by the CEDOW Convention, the procedure for submitting an individual complaint (Communication Procedure) and the investigation procedure (inquiry procedure).

States that have become a party to the Optional Protocol recognize the competence of the CEDOW Committee -a panel of 23 independent experts that meets three times a year—to receive complaints from persons within their jurisdiction alleging violations of their rights under the CEDOW.¹⁵¹

The Republic of North Macedonia is also one of the countries that has signed and ratified the CEDAW, and it's Optional Protocol. As a State party to this treaty, it is obligated to take all appropriate measures to eliminate all forms of discrimination against women and girls by any person, organization or enterprise, across its territory. When we talk about the relations between the North Macedonia and the CEDAW Committee, it is important to mention that the first individual communication has been submitted to the Committee on 25th of May 2019 and now the CEDAW Committee is expected to deliver its final decision and opinion in due course. The case, which has been identified as suitable for submission before the CEDAW Committee, was previously led before the national courts, with the support of one non-governmental organization.¹⁵²

2.5. Committee on the Elimination of Discrimination against Women¹⁵³

The CEDOW Committee was established under article 17 of the Convention. The Committee's task is supervising the implementation of the Convention by States parties. This Committee has the same

¹⁵⁰OHCHR. "The United Nations Human Rights Treaty System". Fact Sheet No. 30/Rev.1. New York and Geneva; 2012; page 9

¹⁵¹OHCHR. "Individual complaint procedures under the United Nations human rights treaties". Fact Sheet No. 7/Rev.2; 2013; pg. 17

¹⁵²Helsinki Committee for Human Rights. "Manual - For application of the Optional Protocol to the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)". Skopje, 2019; pg. 7

¹⁵³Convention on the Elimination of All Forms of Discrimination against Women

monitoring functions as other human treaty bodies. The Optional Protocol to CEDAW introduces mechanisms for legal protection of the rights guaranteed with the CEDOW, and obliges State parties to do so.¹⁵⁴ Two procedural protection mechanisms have been introduced, a Communication procedure and an Inquiry procedure.

Procedure for submission of individual complaints (Communication Procedure)¹⁵⁵ - The admissibility criteria must be met in order for a Communication to be submitted to the CEDAW Committee. The admissibility criteria¹⁵⁶ are almost the same as in other international complaints mechanisms. In order to respect both the basic topic of this thesis and the page limit of the text, we will not explain them separately.

If the CEDAW Committee makes a decision that violations of rights and discrimination took place, it will provide recommendations to the authorities. The kinds of recommendations that the CEDOW Committee makes include: measures to end ongoing violations against the victim; restitution, compensation and rehabilitation for the victim; law reform and changes in policies and practices that are in violation of the Convention; steps to prevent the repetition of the violation.¹⁵⁷The Communication can be used as a legal instrument, and the complainant/s could ask the CEDOW Committee to impose interim measures against the state party, and prevent irreparable further damages.¹⁵⁸

Inquiry Procedure¹⁵⁹ - In addition to individual Communication, there is another mechanism dealing with violations and/ or cases of discrimination. If there is credible information about systemic, long-term, serious and mass violations of women's rights in a state party, there is a possibility for initiation of an Inquiry procedure. Such a procedure may be initiated ex-officio by the CEDAW Committee, or also upon a request by a third party. Requirements for an Inquiry to be submitted to the CEDAW

¹⁵⁴ Hellum Anne, Ikdahl Ingunn. "Committee on the Elimination of Discrimination Against Women (CEDAW)". Oxford Public International Law, 2019. pg.9

¹⁵⁵ Ibid, pg.25-36

¹⁵⁶Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; U.N.Doc. A/RES/54/4. 1999. Articles 2,3 and 4

¹⁵⁷OHCHR. "Individual Complaint Procedures under the United Nations Human Rights Treaties". 2013. Fact Sheet No. 7/Rev.2; pg.17

¹⁵⁸Ibid, Article 5

¹⁵⁹ Hellum Anne, Ikdahl Ingunn. "Committee on the Elimination of Discrimination Against Women (CEDAW)". Oxford Public International Law, 2019. pg.37-49

Committee are same as other international human rights documents which provide this kind of procedure.

In this context, it is interesting to note that in 2017, CSOs from the Republic of North Macedonia submitted a request for an inquiry procedure, but it was rejected by the CEDAW Committee.

2.6. Case of individual communication before the Committee on the Elimination of Discrimination against Women

- Case Fatma Yildirim (deceased) v Austria (Communication No. 6/2005)¹⁶⁰

For the purposes of this thesis, this case is very interesting and it is about a complaint that was brought before the CEDAW Committee by a six-year-old child, two of her siblings with an NGO support on behalf of their deceased mother. This is the only communication brought by a child applicant to the CEDAW Committee and brought on behalf of an adult applicant. Since the CEDAW communication procedure is used by children only once, several experts claim that CEDAW is not necessarily effective at protecting the rights of girl children.¹⁶¹

This is another argument in favor of the need to introduce a complaint procedure where children will have the main role. The case is very important as a step towards for children's rights protection on international level, therefore we will present it briefly. The case was decided by the CEDAW Committee on 6th of August 2007.

*Short description of the case*¹⁶² - Fatma Yildirim is an Austrian national of Turkish origin, married Irfan Yildirim in 2001. She already had three children from her previous marriage: two were adults, and the youngest, Melissa, was three years old. The marriage broke down during in July 2003, and Fatma Yildirim wanted to divorce but Irfan Yildirim would not agree, and threatened to kill her and her children, should she divorce him. On 4th of August, Irfan Yildirim attacked Fatma Yildirim, and threatened to kill her in person and subsequently by phone. He also came to her workplace and threatened her on a number of occasions. Fatma Yildirim reported these threats to Vienna Police, to

¹⁶⁰Case Fatma Yildirim v Austria; Communication No. 6/2005; U.N.Doc. CEDAW/C/39/D/6/2005 (2007)

¹⁶¹Langford, Malcolm. and Clark, Sevda. "The New Kid on the Block; A Complaints Procedure for the Convention on the Rights of the Child". NJHR 28:3-4 (2010), 371-400. pg.386

¹⁶² Case Fatma Yildirim v Austria; Communication No. 6/2005; Un Doc. CEDAW/C/39/D/6/2005 (2007); paragraph 2.1 – 2.14

report Irfan Yildirim for assault and for making a criminal dangerous threat. The police reported to the Vienna Public Prosecutor on duty that Irfan Yildirim had made a criminal dangerous threat against Fatma Yildirim and requested that Irfan Yildirim be detained. The Public Prosecutor rejected that request. On 26th of August 2003, Fatma Yildirim applied for a divorce, and was granted a protection order for herself and Melissa. On the 11th of September, Irfan Yildirim followed Fatma Yildirim home from work and fatally stabbed her in the street near the family's apartment.

In *Yildirim v Austria*, the authors (Vienna Intervention Centre against Domestic Violence and Association for Women's Access to Justice on behalf of their client Fatma Yildirim with her children's permission) alleged that the State failed to protect their deceased mother from her abusive former husband. The authors alleged that Austria violated articles 1 (discrimination), 2 (policy measures), 3 (guarantee of basic human rights and fundamental freedoms), and 5 (sex role stereotyping and prejudice) of the Convention by failing to take positive measures to protect the deceased's right to life and personal security.¹⁶³ They argued that women are disproportionately and negatively affected by the inappropriate prosecution and punishment of offenders in domestic violence cases, the lack of coordination between the judiciary and law enforcement officials, and the lack of training for law enforcement and judicial personnel about domestic violence.¹⁶⁴

The State party argued that the Federal Act for the Protection against Violence within the Family constitutes a highly effective system to combat domestic violence and establishes a framework for effective co-operation among various institutions.¹⁶⁵ It submitted that as Irfan Yildirim had no criminal record, did not use a weapon, appeared quiet and co-operative to the police officers who intervened, and as Fatma Yildirim had no apparent injuries; his detention would not have been proportionate.¹⁶⁶ Further to this, the State party argued that the persons who are now intervening on behalf of the victim would have been free to address the Constitutional Court on grounds that no appeal was available to Fatma Yildirim against the Public Prosecutor's failure twice to comply with the request to issue an arrest warrant, thus domestic remedies had not been exhausted.¹⁶⁷

¹⁶³Ibid, paragraph 3.1.

¹⁶⁴Ibid, paragraph 3.3.

¹⁶⁵Ibid, paragraph 4.3.

¹⁶⁶Ibid, paragraph 4.5.

¹⁶⁷ Ibid

Committees' decision - The Committee concluded that in Yildirim's case, the State should have known that the victim was in a dangerous situation, thereby creating a duty to act to protect her. The Committee also emphasizes that a woman's right to life must not be superseded by a perpetrator's right to privacy or liberty. The Committee lists a number of recommendations aimed at preventing all forms of domestic violence and providing access to protection and redress to all victims.¹⁶⁸

I will address once again the importance of a presented case for this study. Namely, it can be easily perceived that the application is made by adults (Vienna Intervention Centre against Domestic Violence and Association for Women's Access to Justice), on the child's behalf, rather than the child submitting his or her own communication. The children were very little involved in the procedure. As pointed out by Newell in relation to international and regional complaints procedures, 'it seems likely that, to date, most if not all of the cases in which children are named as applicants have in fact been initiated and pursued by adults and the named children have had very little, or no, involvement in the procedure'.¹⁶⁹

2.7. Convention on the Elimination of All Forms of Racial Discrimination¹⁷⁰

The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) is an international instrument for protection against discrimination based on race, color, affiliation and national or ethnic origin. CERD was adopted in 1965 and entered into force in 1969. The present convention as United Nation's treaty belongs to the third generation of international human rights instruments. The Convention obliges its members to eliminate racial discrimination and to promote understanding between all races¹⁷¹. As of November 2020, there were 182 States parties to the International Convention on the Elimination of All Forms of Racial Discrimination¹⁷², out of which 59 parties had made a declaration under article 14 of the Convention, recognizing the competence of the Committee to receive and consider communications from individuals or groups of individuals

¹⁶⁸Ibid, paragraph 12.3.

¹⁶⁹Newell, Peter. "Children's Use of International and Regional Human Rights Complaint/ Communications Mechanisms: Background Paper" (International Justice for Children 2007)

¹⁷⁰International Convention on the Elimination of All Forms of Racial Discrimination

¹⁷¹International Convention on the Elimination of All Forms of Racial Discrimination; Article 14 (1)

¹⁷²Status of Treaties; International Convention on the Elimination of All Forms of Racial Discrimination; Available at:

https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-2&chapter=4&lang=en

who claim to be victims of a violation by the State party concerned of any of the rights set forth in the Convention.¹⁷³

This act is the first international document of this type where some of the grounds for discrimination are specifically and directly prohibited.

2.8. Committee on the Elimination of Racial Discrimination

The Committee on the Elimination of Racial Discrimination (CERD) is a body composed of independent experts that monitors the implementation of the Convention on the Elimination of All Forms of Racial Discrimination by the State parties. One of the most important attribute of this Committee is that it was the first body created by the United Nations to monitor and review actions taken by States to fulfil their obligations under a specific human rights agreement.¹⁷⁴ Since then, based on its structure and experience, five other committees have been created: the Human Rights Committee, the Committee on the Elimination of Discrimination against Women, the Committee against Torture, the Committee on Economic, Social and Cultural Rights and the Committee on the Rights of the Child.

The Convention establishes three procedures to provide the present Committee with tools for reviewing the actions and steps taken by State parties to fulfil the Convention's provisions. The first is the requirement that all member States have to submit regular reports to CERD. A second procedure in the Convention provides for State-to-State complaints. The third procedure makes it possible for an individual or a group of persons who claim to be victims of racial discrimination to submit a complaint against their State. This may only be done if the State concerned is a party to the Convention and has declared that it recognizes the competence of CERD to receive such complaints.

The Committee also publishes its interpretation of the content of human rights provisions, known as general recommendations (or general comments), on thematic matters and organizes thematic discussions.

¹⁷³International Convention on the Elimination of All Forms of Racial Discrimination; Article 14 (1)

¹⁷⁴The Committee on the Elimination of Racial Discrimination. Fact Sheet No.12. Available at:

<https://www.ohchr.org/Documents/Publications/FactSheet12en.pdf>

In the Committee's annual report to the General Assembly, it is stated that from 1984, when the Committee has started working to 2020, the Committee had registered 70 complaints concerning 17 States parties. Of those, 3 communications were declared admissible, 19 were declared inadmissible and 2 communications were discontinued. The Committee adopted final decisions on the merits of 36 complaints, and declared and found violations of the Convention in 20 of them. Twelve communications were pending consideration.¹⁷⁵

In regards to, inter-State communications, in 2018, the Committee received the first three such inter-State communications. It was agreed that the Committee's working group on individual communications would also deal with inter-State communications.¹⁷⁶ Under article 11 of the Convention, *if a State party considers that another State party is not giving effect to the provisions of the Convention, it may bring the matter to the attention of the Committee, by submitting a communication.*

2.9 Cases of individual communication before the Committee on the Elimination of Racial Discrimination

- Case Study – C. P. and his son M.P. v. Denmark¹⁷⁷

This case is remarkable for the study's topic because it is a very relevant case brought before the CERD Committee involved racial discrimination. It was brought by a father on behalf of his son, aged 15 at the time of events. The case was rejected by Committee on two grounds: there were no heads of dispute or provisions identified by the author for complaint and the remedy was seen to fall outside the scope of the Convention as the author requested a criminal retrial.

In the case C. P. and his son M.P. v. Denmark, a complaint to the Committee on the Elimination of Racial Discrimination was lodged by C.P. and his son M.P. v. Denmark. The initial submission was made on the 13th of January 1994. The Committee met on the 15th of March 1995 and decided on

¹⁷⁵United Nations. "Report of the Committee on the Elimination of Racial Discrimination". A/75/18; paragraph 55; Available at: <https://undocs.org/en/A/75/18>

¹⁷⁶Ibid, paragraph 43

¹⁷⁷Case C.P. and his son M.P. v. Denmark, Communication No. 5/1994, U.N. Doc. CERD/C/46/D/5/1994 (1995)

the relevant complaint. The complaint was filed by C.P., and the applicant and his son are listed as alleged victims.

The author of the communication is C.P., an American citizen of African origin living in Roskilde, Denmark. He sent a communication to the Committee on the Elimination of Racial Discrimination on his behalf and on behalf of his son, stating that they (he and his son) have been victims of racial discrimination by the municipal and police authorities/authorities of Roskilde and the Danish judicial system. In his complaint, he does not refer to any specific provision of the Convention on the Elimination of All Forms of Racial Discrimination, but generally claimed that he and his son were victims of racial discrimination.¹⁷⁸

*Description of the case*¹⁷⁹ - A 15-year-old boy was attacked and racially abused by a group of young men. The four assailants were later tried and three of them were convicted of offences relating to the attack. Two of them were fined, and the third was sentenced to a 60 day suspended prison term. The public prosecutor appealed the suspended sentence and it was increased to a 40-day unconditional prison term. C. argued, on his son's behalf, that the trial was carried out with bias against his son on the grounds of his race and because the mother of one of the accused was a clerk at the District Court.

Committee's decision¹⁸⁰ - The Committee found the complaint inadmissible on the grounds that there was insufficient evidence of a violation of M's rights. The police investigated and prosecuted the attack, and when the Public Prosecutor considered the sentence too lenient, he appealed and secured a less lenient sentence. A replacement judge was also brought in from another venue to take account of the accused's mother's position within the court. Upon a review of the documentation, the Committee found no evidence that the police or judicial proceedings were tainted by racially discriminatory considerations. After careful consideration of the available documents, the Committee found that these documents did not substantiate the author's claim that either the police investigation or the judicial proceedings before the Roskilde Court or the Eastern Division of the High Court were tainted by racially discriminatory considerations. Based on that, the Committee concludes that no prima facie case of violation of the Convention has been established

¹⁷⁸Ibid, paragraph 1

¹⁷⁹Ibid, paragraph 2.1. – 2.8.

¹⁸⁰Ibid, paragraph 6.2. and 6.3.

in relation to this part of the communication, and that, therefore, the communication is equally inadmissible.

Conclusion – Based on the presented cases, it can be summarized several conclusions: Firstly, when submitting individual complaints all stated conditions should be met, i.e. the Committee will not start with a substantive reviewing if all procedural elements are not met (for instance: exhausted all available domestic remedies). Secondly, it is obvious from the case that, if there are several cases for which we want to react to the Committee, to single them out because more time and attention can be devoted to individual consideration. Thirdly, it is very important to hire a professional and devoted lawyer with full trust in him/her and in his/her professional ethics.

CHAPTER III

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

3.1. Strengthening the entire international system of human rights protection

The purpose of this Optional Protocol, inter alia, is to strengthen the international system of children's rights protection as well as the human rights protection system in general and to ensure that the best interest of the child is in the focus with due respect to the children's rights embodied in the CRC and/or both Optional Protocols thereto and all other international documents regulating child rights.

Besides this, it is expected through the third optional protocol that to the children's rights will be given concrete meaning. When applied to a person's real-life situation, the standards contained in international human rights treaties find their most direct application.¹⁸¹ The complaint mechanisms are designed to be accessible to the ordinary population. The primary intention of these mechanisms is to enable ordinary citizens to refer to a higher international body to protect their rights, which they could not protect in their domestic country because of various reasons. It is not necessary to be a lawyer or even to be familiar with legal and technical terms to bring a complaint under these treaties.¹⁸²

The establishment of a communications procedure under the CRC will contribute to strengthening child protection by providing a specific forum in which all rights and principles enshrined in the Convention would be considered by the Committee with unique, multidisciplinary expertise based on the innovative and creative manner in which the CRC was designed. Prior the OPIC, children and their representatives have had to peruse any infringements of general rights and freedoms before other UN or regional bodies, a beneficial consequence of the overlapping nature of many core treaties.¹⁸³

¹⁸¹ OHCHR. "Individual Complaint Procedures under the United Nations Human Rights Treaties". Fact Sheet No. 7/Rev.2; 2013, pg. 1

¹⁸² Ibid

¹⁸³ Freeman Michael, "The Future of Children's Rights", Brill Nijhoff, Leiden-Boston, 2014, pg.183

The adoption of the Third Optional Protocol is the last step in completing the universal system of protection of human rights, since the last of the committees; the Committee on the Rights of the Child has received powers already existent in other committees. With the adoption of the Protocol, this legal gap should be filled, due to the lack of an effective supervisory mechanism.

By its nature of law, the OPIC is a procedural document, and it introduces the possibility of considering individual complaints, interstate communications and conduction an inquire procedure for serious or systematic violation of the rights of the child.

Furthermore, the establishment of the child rights treaty bodies and the evolution of the treaty body system is one of the greatest achievements in the efforts of the international community to promote and protect child rights. The competence of the Committee to receive and consider individual communications make available a structure for the direct protection of individuals and groups, as well as the development of child rights jurisprudence. In fulfilling their essential functions in an independent manner, the treaty bodies guarantee a non-selective approach and equal emphasis on all human rights.¹⁸⁴

Through this complaint mechanism, the international community has put the children's rights on an equal basis with other human rights treaties. We have to emphasize the importance of recognizing that children have the right to appeal to an international body, if their rights cannot be protected effectively at the national level. In order to have an influence on the children's rights realization at the national level, it is necessary that children and children's rights defenders understand the offered possibilities of the OPIC and its functioning. For that purpose, there should be created opportunities for a greater access to the OPIC mechanism through child-sensitive processes. This is much related to the child rights education – availability and accessibility of information on the CRC and other human rights treaties. Human rights education to be effective must be accessible to all children, available at the language and style they understand, accessible in terms of content and culture and

¹⁸⁴ Pillay, Navanethem. "Strengthening the United Nations human rights treaty body system, A report by the United Nations High Commissioner for Human Rights". June 2012, pg. 8

adaptable to best fit the needs of the child.¹⁸⁵ If children are not aware of their rights, they will not be able to take any steps to exercise those rights.¹⁸⁶

Negotiations on the need for such a document on the international stage and the process of its preparation took more than ten years. But it should be noted, although certain people initially questioned the need for such a document, in the end everyone agreed this document is primarily needed by children and their parents/guardians/families/representatives. Or, as Malcolm Langford and Sevda Clark said, only CRC has an orphan status amongst the core treaties on this matter, and it should be changed.¹⁸⁷

It should be noted that the process of preparation and negotiation of the content of the Protocol lasted over 10 years and many stakeholders were actively involved. The whole process of OPIC preparation is explained below in this study.

3.2. Preparation of the new Protocol

The Initiative for introducing the Third Optional Protocol to the Convention on the Rights of the Child comes from the German NGO Kindernothilfe in 2002.¹⁸⁸ Although the initiative originally comes from the NGO sector, encouraged from concrete cases in practice which have shown the real need for strengthening the child rights protection and gives the opportunity for an individual complaints procedure, later the Committee on the Rights of the Child has also supported this idea. Thus, the Committee in the General Comment No. 5 (2003) which refers to General measures of implementation of the CRC stated that for rights to have meaning, effective remedies must be available to redress violations. This requirement is implicit in the Convention and consistently

¹⁸⁵ Freeman Michael, "The Future of Children's Rights", Brill Nijhoff, Leiden-Boston, 2014, pg.182, 183

¹⁸⁶ Ibid

¹⁸⁷ Langford, Malcolm. and Clark, Sevda. "The New Kid on the Block, A Complaints Procedure for the Convention on the Rights of the Child". Nordic Journal of Human Rights. Vol. 28 No. 3-4; pg. 400

¹⁸⁸ Müller, Urte. "Children as Strong Nations - Background, reasons and arguments for introducing a right of petition". Kindernothilfe.V. 2002. p.4 and 5; Available at:

https://archive.crin.org/en/docs/Children_as_Strong_as_Nations.pdf

referred to in the other six major international human rights treaties¹⁸⁹, but the Convention on the Rights of the Child, which major target group are children, does not have the same treaty. Children's special and dependent status creates real difficulties for them in pursuing remedies for breaches of their rights.¹⁹⁰

While children and their representatives can use the mechanisms established under other international instruments to pursue many of their rights, those instruments do not cover, separately or together, the full range and detail of rights in the CRC.¹⁹¹ The Committee on the Rights of the Child was the only body for monitoring the implementation of the UN Conventions or Covenants, and that it had no jurisdiction to consider individual and inter-state complaints. According to some NGOs, which have also launched a large international campaign that is gaining significant support and intensity, an absence of communications procedure in CRC was a serious matter of "discrimination against children"¹⁹², as one of the most numerous groups in the world.

Human Rights Council, on the occasion of the 20th anniversary of the adoption of the Convention, adopted Resolution 10/14 calling on effective implementation of the Convention on the Rights of the Child,¹⁹³ which would hardly have been possible without further strengthening and empowerment the Convention as international human rights treaty.

Therefore, in May 2008, a group of NGOs¹⁹⁴ sent Joint written statement to the General Assembly of the United Nations with a call to establish an open-ended Working Group of States to draft an Optional Protocol to the Convention on the Rights of the Child for the creation of a communications procedure under the Convention.¹⁹⁵

¹⁸⁹UN Committee on the Rights of the Child. General comment no. 5 (2003): General measures of implementation of the Convention on the Rights of the Child, 27 November 2003, CRC/GC/2003/5, available at: <https://www.refworld.org/docid/4538834f11.html> [accessed 3 October 2020]

¹⁹⁰Ibid

¹⁹¹ Child Rights International Network. "Third Optional Protocol: Background to the campaign", <https://archive.crin.org/en/home/law/complaints/international/crc-complaints/op3-crc-background-campaign.html>

¹⁹² Ibid

¹⁹³Human Rights Council. Resolution 10/14

¹⁹⁴ Joint written statement was submitted by International Save the Children Alliance and World Vision International, non-governmental organizations in general consultative status, and Kindernothilfe-Help for Children in Need, SOS Kinderdorf International and World Organization against Torture, non-governmental organizations in special consultative status, and Plan International, Inc., a non-governmental organization on the Roster

¹⁹⁵U.N. Doc A/HRC/8/NGO/6, 26 May 2008

On the 11th session, in June 2009, Human Rights Council adopted the resolution A/HRC/RES/11/1 with the decision to be established an open-ended working group of the Human Rights Council with a mandate „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“.¹⁹⁶ Despite the call of the NGOs for faster drafting of this Protocol and its faster adoption, the Human Rights Council, firstly order the working group to consider the need and possibility for the adoption of such an instrument. The role of this group is very crucial in the drafting process of the up-coming protocol. Therefore, a special sub-chapter in this study (4.2.1) will be dedicated to it, where the major points of its work will be addressed.

This working group met for the first time in December 2009 to talk about the need and the merits of such a mechanism which attracted presence of over 100 governments, as well as UN agencies and numerous civil society organizations. The shown interest from all relevant stakeholders speaks about the importance and the need for supervisory mechanism of the Convention on the Rights of the Child.

During the session held on the 24th of March 2010, the Human Rights Council has adopted the Resolution A/HRC/RES/13/326 with which requested the Working Group to prepare a proposal for a draft optional protocol¹⁹⁷ to be used as a basis for the negotiations, taking into account the views expressed and inputs provided during the first session of the Working Group and giving due regard to the views of the Committee on the Rights of the Child and, where appropriate, the views of relevant United Nations special procedures and other experts.

The working group respected the deadline given by the Human Rights Council and prepared the draft of the optional protocol until December 2010. Given that the approach and the process were characterized as participatory in order to include in the process as many relevant factors as possible in the period between 6th till 10th of December 2010, the working group organized a public debate¹⁹⁸. On the public debate took part representatives of many relevant stakeholders in this area, and also

¹⁹⁶Human Rights Council. Resolution 11/1

¹⁹⁷ Human Rights Council. Resolution 13/3. “Open-ended Working Group on an optional protocol to the Convention on the Rights of the Child to provide a communications procedure”. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/128/03/PDF/G1012803.pdf?OpenElement>

¹⁹⁸ Human Rights Council. U.N.Doc. A/HRC/17/36, “Report of the Open-ended Working Group on an optional protocol to the Convention on the Rights of the Child to provide a communications procedure”. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G11/134/72/PDF/G1113472.pdf?OpenElement>

a representative from the Republic of North Macedonia (in that time the Former Yugoslav Republic of Macedonia)¹⁹⁹. On this debate is discussed the draft of the optional protocol where the representatives had the opportunity to comment, give proposals, suggestions, etc. As it was expected, the most active was the Committee on the Rights of the Child, which has submitted a separate document with comments for the draft optional protocol. The recommendations and notes from the Committee were a subject of special consideration.²⁰⁰

This working group, in the period of the 10th to 16th of February 2011, met again to review the revised version of the draft of the optional protocol.²⁰¹ During that period, several times have been emphasized the reasons and need of adoption of this Protocol. The Committee on the Rights of the Child pointed out that “for rights to have meaning, effective remedies must be available to redress violations.” Also, it is stated that the gap between the obligation undertaken by the State and the level of fulfillment of the rights of the child in practice, in much due to the lack of an efficient mechanism on a national, regional and international level, which will provide children and their representatives to communicate the violation of the children’s rights and to gain appropriate legal remedies. The only regional system on the protection of the children is realized in Africa²⁰² and its experience should be taken seriously in the drafting of the Protocol text.

During the session, it was agreed that a future protocol should include the protection of all children’s rights contained in the Convention and its protocols.²⁰³ On the 16th of February 2011, a report was adopted, and it was decided that the draft Optional protocol would be forwarded to the Human Rights Council on consideration. This was the last activity of the working groups and thus ended its mandate.

Thus, on the 17th of June 2011, the Human Rights Council adopted Resolution 17/1838, which accepted the draft Optional Protocol and proposed its final adoption by the United Nations General

¹⁹⁹Ibid

²⁰⁰ Ibid

²⁰¹ Ibid

²⁰² African Charter on the Rights and Welfare of the Child; In 1990 is adopted African Charter on the Rights and Welfare of the Child, and its implementation is under supervision by the African Committee of Experts on the Rights and Welfare of Children. According the article 44, it could “receive communication, from any person, group or non-governmental organization recognized by the Organization of African Unity, by a Member State, or the United Nations relating to any matter covered by this Charter “. Available at:

https://www.un.org/en/africa/osaa/pdf/au/afr_charter_rights_welfare_child_africa_1990.pdf

²⁰³Human Rights Council. “Report of the Open-ended Working Group on an optional protocol to the Convention on the Rights of the Child to provide a communications procedure”. U.N. Doc. A/HRC/17/36, 25 May 2011, paragraph 5

Assembly. Finally, on the 19th of December 2011, on the 66th regular session of the General Assembly, the OPIC was unanimously adopted.

3.2.1. Open-ended Working Group for the Communications Procedure (i) Reasons and timing, (ii) Efficiency in protection, (iii) Unique rights, and (iv) Implications of a procedure

As pointed out in the text above, the role of the Open-ended working group in the OPIC preparation process was crucial because within this group the key points and content of the protocol itself are considered and discussed. Moreover, during its sessions, polemic topics are discussed and many advantages and disadvantages are reviewed. At last but not least, the final draft Protocol is prepared by this group and delivered to the General Assembly for final confirmation and adoption, which is just a formal procedure. Therefore, in this section, we will briefly analyze the dominant themes and dilemmas discussed within the working group.

The Human Rights Council decided, in its resolution 11/1 of 17 June 2009, to establish 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.

At that time, all core international human rights treaties, except the Convention on the Rights of the Child, provided individuals with a mechanism by which they can file complaints before the respective treaty monitoring body. Therefore, during the opening session of the working group, Ms. Connors, in her speech, encouraged delegates to keep in mind the need to ensure consistency and coherence within the existing body of international human rights law.²⁰⁴

Several core arguments (and counter-arguments) for the protocol emerged in the discussions organized from the working group. Hence, it is not surprising that during the negotiations regarding the Protocol, the majority of the delegations expressed the view that children have a right to an international remedy for violations of their rights. And, an optional protocol would improve the

²⁰⁴ UNHRC. "Report of the 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" (21 January 2010) U.N.Doc. A/HRC/13/43

existing system of international complaints mechanisms for children. Therefore, during the negotiations, they insisted for establishing of a simple procedure which will be easily implementable. It should especially be as accessible as possible to children as its core target group. On the other side, some states were concerned that an optional protocol for the CRC would lead to the 'duplication of a communications procedure with existing mechanisms under other Conventions'. They held the view that children's rights would be better protected in national law and practice.

Children have a right to an international remedy for violations of their rights - Many delegates pointed to the inherent right of children to a remedy for violations of their rights. In the Working Group, the representative from Slovakia put the argument this way: 'there was no doubt that children were full rights holders and should have every chance to have their rights respected'. The idea of a child's right to a remedy was also mentioned in the Committee's General Comment No. 12 in 2003. It first views it as an effect of substantive rights, 'For rights to have meaning, effective remedies must be available to redress violations'.²⁰⁵ Both of these elements are relevant to an OP to the CRC which is said to provide the procedural mechanism for child victims of human rights violations and substantive redress or damages for violations of child rights.

During the meetings of the working group, State delegations and representatives of intergovernmental and non-governmental organizations made opening statements and expressed their preliminary views on options regarding the elaboration of an optional protocol to the Convention on the Rights of the Child to provide a communications procedure. They underlined several key issues that need to be addressed by the working group. Several core arguments (and counter-arguments) for the protocol emerged in the discussions organized from the Working group. In addition to the discussions by the delegations of the states, for each of these special groups, a separate child rights expert submitted his/her observations separately. So below it is stated in each sub-topic which of the experts has submitted a paper. They were structured into five groups:

²⁰⁵ UNCRC "General Comment No. 5: General Measure of Implementation of the Convention on the rights of the Child" (2003) U.N.Doc. CRC/GC/2003/5, 7. It also notes that 'This requirement is implicit in the Convention and consistently referred to in the other six major international human rights treaties'.

(i) Reasons and timing²⁰⁶ Reasons and timing to elaborate a communications procedure under the Convention on the Rights of the Child

Numerous delegations expressed the reasons which justified the establishment of a communications procedure, such as:²⁰⁷ - many rights guaranteed by the Convention are not included in other human rights treaties; - claims regarding violations of the Convention should be dealt with by the body with the appropriate expertise, such as the Committee on the Rights of the Child; - the procedure would be able to provide a remedy when national systems fail, as many countries lacked appropriate redress mechanisms; - the Committee would be in a unique position to provide expert clarifications on complex issues regarding the implementation of the Convention; - the procedure would strengthen the status of children as rights holders; - there would be no interference with the national jurisdictions, as the exhaustion of remedies would be required; - the procedure would constitute an additional tool to reinforce the monitoring of the Convention; - it would also contribute to reinforce the State obligations under the Convention and to strengthen national standards and policies.

As for the timing, different views were expressed by the States' delegations. Several delegations agreed that the time was ripe and a communications procedure was long overdue, some underlined that this is an appropriate time and others found it difficult to identify the right time for it. However, it was concluded and recommended a draft protocol to be prepared.

(ii) Existing mechanisms²⁰⁸ - Existing international mechanisms, their efficiency and accessibility for children: perspective of a special procedure

When summing up the debate on this topic, it is noted that: - the existing treaty bodies and special procedures systems offered only a partial protection regarding children's rights; the existing treaty bodies could not ensure the same level of protection as the one provided under the CRC; - the effectiveness of the procedure would depend on its accessibility by children meaning children, their representatives, those working on children's issues and other stakeholders should be aware of its

²⁰⁶ UNHRC. "Report of the 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" (21 January 2010) U.N.Doc. A/HRC/13/43; paragraph 26-32

²⁰⁷ UNHRC. "Report of the 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" (21 January 2010) U.N.Doc. A/HRC/13/43; pg.7 and 8

²⁰⁸ Ibid, pg. 9 (paragraph 33-40)

existence. Information in that regard should be made available in schools and other appropriate institutions.

(iii) Efficiency in protection of the rights of the child under mechanisms existing at the national and regional levels²⁰⁹

The Chairperson-Rapporteur in his summary of that debate emphasized: - the need for the procedure to be child-friendly and for the communications to be dealt with expeditiously; - the need to ensure that children have access to courts; - the importance of taking into account best practices at the national level; - the fact that regional and international mechanisms do not overlap but rather complement each other; - the idea that international protection mechanisms can contribute to strengthen mechanisms at the national level; - the positive expectations at the national and regional levels should not be ignored; - exhaustion of domestic remedies is necessary but only when they are effective and available and the proceedings are not unduly prolonged; - national institutions should be empowered to bring children-related cases to court; - and the need to further discuss the issue of collective complaints in connection with the future communications procedure.

(iv) Unique rights²¹⁰, the unique nature of the rights of the child and specific rights from the Convention on the Rights of the Child, including the right of the child to be heard

The topic on the unique nature of the rights of the child and specific rights from the Convention was introduced by Marta Santos Pais, Special Representative of the Secretary-general on Violence against Children.

More specific reasons in favor of an optional protocol establishing a communications procedure include providing detailed guidance to States on specific legislative measures, as well as giving the right of the child to information a more specific content. National mechanisms should be set up to assist individuals in the use of the procedure, for instance through ombudsman offices. It is essential to ensure that all relevant actors become knowledgeable and skillful in the use of the procedure.

²⁰⁹Ibid, pg. 9-11 (paragraph 41-59)

²¹⁰Ibid, pg. 12-14 (paragraph 60-69)

During the debate, it was highlighted that the recommendations on redress mechanisms should be taken into consideration when deciding on the elaboration of an optional protocol. It was also noted the importance of a child-friendly procedure which took into consideration the evolving capacity of the child and the uniqueness of the rights and principles set up in the Convention.

Questions regarding the ability of the child to submit a complaint and the most appropriate body to assess the maturity of a child should be considered in light of lessons learned from the Convention on the Rights of Persons with Disabilities as well as experiences developed at the national level; (d) While the Convention does not specify a minimum age for the child's views to be heard, it does state that consideration of the child's views has to be assessed against criteria that are both objective (age) and subjective (level of maturity); (e) In view of the vulnerable status of children, there is an objective risk that children may be manipulated when submitting a complaint. An optional protocol should devote particular attention to this aspect and put in place specific guarantees to avoid or limit this risk to the maximum extent possible.

(v) Implications of a procedure²¹¹ Implications and feasibility of a communications procedure under the Convention on the Rights of the Child

During the meetings of the working group, one of the first raised questions was about the feasibility of such a communication procedure and the current capacities of the Committee to be able to respond professionally to its new competence. A number of questions were raised by delegations in connection with the current functioning of the Committee and its workload as well as about the treaty bodies system regarding the examination of communications.

A paper on the same topic was submitted by Nevena Vuckovic Sahovic, former member of the Committee on the Rights of the Child where she shared the confidence of existing members that the Committee can adapt to meet the demands of this additional procedure.²¹²

²¹¹ Ibid, (paragraph 70-87)

²¹² Human Rights Council. Working Group on an optional protocol to the Convention on the Rights of the Child. "Feasibility of a communication procedure under the Convention on the Rights of the Child". Submission by Dr. Nevena Vuckovic Sahovic, 2009, A/HRC/WG.7/1/CRP.1; paragraph 11

Some of the discussants stated that the Committee has faced an increased workload so far but that it has found appropriate solutions for that, so it decided to work in two parallel chambers and moved from 10 to 18 members, successfully coping with the workload. Therefore, the Committee will review its methods of work with a view to providing a more durable long-term solution. The methods of work to examine communications could be dealt with in the context of the Rules of Procedure to be adopted once the mechanism was set up. In that regard, the Committee would look at how other communications mechanisms operated.²¹³ In the end, they agreed the Committee would build on the best practices of other treaty bodies and will do this function appropriately.

3.3. Adoption of the Protocol

The Third Optional Protocol to the Convention on the Rights of the Child on communication procedures was adopted by the UN General Assembly on the 19th of December 2011 with resolution A/RES/66/138 (19.12.2011).

It was opened for signature on 28th of February 2012 in Geneva. During the official signing ceremony in Geneva, 20 UN member States signed the Optional Protocol, including: Austria, Belgium, Brazil, Chile, Costa Rica, Finland, Germany, Italy, Luxembourg, the Maldives, Mali, Montenegro, Morocco, Peru, Portugal, Serbia, Slovakia, Slovenia, Spain and Uruguay.²¹⁴

The protocol entered into force on the 14th of April 2014, after ratification by ten member States. By October 2020, 52 have signed the OPIC and 46 have ratified it²¹⁵, which is around 20% of the CRC parties.

This protocol was signed by the Republic of North Macedonia on 23rd of May 2012, but even after a full eight years, the State parliament has not ratified it yet. That means this mechanism is still not

²¹³ UNHRC. "Report of the 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" (21 January 2010) U.N.Doc. A/HRC/13/43; paragraph 72

²¹⁴ More information about the Signing ceremony is available at:

<https://www.ohchr.org/EN/HRBodies/CRC/Pages/OPIC.aspx>

²¹⁵ UN Treaty Collection; Status of ratification of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure. Available at: https://treaties.un.org/Pages/ViewDetails.aspx?src=treaty&mtdsg_no=IV-11-d&chapter=4&lang=en (04.10.2020)

available to children in North Macedonia. We hope the Government will ratify the third Protocol soon and will show commitment to the child rights protection. The non-governmental sector and all other relevant actors should improve the advocacy for OPIC ratification and urge the State to start the procedure as soon as possible. NGOs have repeatedly called on the Macedonian government to ratify the OPIC and allow children and their representatives to address the Committee directly as the oversight body.²¹⁶ We hope that all these efforts will be successful very soon.

Just for illustration, by October 2020, 46 states (20% of the CRC parties) have ratified the OPIC, in contrast to: 170 States (80% of the parties to the CRC) which have ratified the OPAC and 176 States (almost 90% of those parties to the CRC) which have ratified the OPSC.²¹⁷

It is important to note that some of the States that have signed or acceded to this Protocol, at the time of deposit of the corresponding instrument or at the time of signature, have made a declaration to some of the articles in order to emphasize the position and attitude of the state on a certain issue.²¹⁸ The declarations are made mainly on Art. 12 of the Protocol (interstate communication).

3.4. New challenges having emerged on the way of adoption of this Protocol

Some challenges related to the adoption of this Protocol may be connected to the above information about the discussions that took place during the adoption of the Protocol. Several of them are stated below:

The role of the protocol and its systemic effects – During the preparation process and adoption of the Protocol, several states expressed worries that another complaints mechanism would lead to ever-growing duplication with existing mechanisms.²¹⁹ On the contrary, a significant number of state delegations, experts and NGOs' representatives took a positive view of this dilemma and stated that

²¹⁶ Македонска национална коалиција на невладини организации за правата на детето. „Извештај за состојбата на правата на децата во Република Македонија подготвен од Националната коалиција на невладини организации за правата на детето“, Прва детска амбасада во светот Меѓаши, Скопје, 2012, pg. 81

²¹⁷Source: Child Rights Connect. <http://opic.childrightsconnect.org/it-is-time-to-ensure-child-rights-and-improve-advocacy-for-opic-ratification/>

²¹⁸

²¹⁹ Langford, Malcolm. and Clark, Sevda. "The New Kid on the Block, A Complaints Procedure for the Convention on the Rights of the Child". Nordic Journal of Human Rights. Vol. 28 No. 3–4; pg. 390

an optional protocol should not be elaborated only to reproduce the procedures established under other treaties.²²⁰ It is true that children can submit complaints under other international human rights conventions, but the number of international cases involving children is significantly low. Arcus Schmidt from OHCHR Petitions Secretariat showed that only 2 to 2.5 percent of cases to UN human rights treaty bodies were brought by or on behalf of children.²²¹ Also, many delegates pointed to the right of children to an international remedy for violations of their rights²²², and the international community should enable that. Therefore, it was concluded that the adoption of a new Protocol is more than needed, and the existing communications procedures should be a good basis for its creation.

The position of the Protocol and its impact on the national child rights protection systems – The purpose of the new protocol is not to replace and minimize the importance of the national mechanisms, but to strengthen them. Taking into account the fact that ‘regional and international mechanisms do not overlap but complement each other’²²³, many of the state delegates emphasized that saw in the instrument an opportunity for empowering the national judicial systems.

It is expected that many States Parties to the Protocol will be more dedicated to ensure children's rights protection when they are aware that there is another control mechanism on the international level. Therefore, many countries will strengthen their national institutions and will be fully committed to children's rights and their realization on local ground. In one word, the optional protocol will assist States at the national level to better promote and protect children’s rights and will provide backup ways to address potential gaps in protection.²²⁴

In this context we have to mention that the Government of the Republic of North Macedonia did several attempts to establish an independent national monitoring mechanism with the task of monitoring the implementation of the provisions of the CRC and its optional protocols in practice,

²²⁰ HRC. “Report of the 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”. A/HRC/13/43, paragraph 20

²²¹ Ibid, paragraph 78

²²² Langford, Malcolm. and Clark, Sevda. “The New Kid on the Block, A Complaints Procedure for the Convention on the Rights of the Child”/ Nordic Journal of Human Rights. Vol. 28 No. 3–4; pg. 378

²²³ HRC. “Report of the 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”. A/HRC/13/43. Statement of Ms. Yanghee Lee, Chairperson of the Committee

²²⁴ Child Rights Connect. “Ratification Toolkit; Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (OPIC)”. Available at: http://opic.childrightsconnect.org/wp-content/uploads/2020/10/OPIC_ratification-toolkit_2020_English.pdf

as a national counterpart of the CRC Committee. These attempts were made through the establishment of the National Commission for Children's Rights in 2007²²⁵ within the Government of the Republic of North Macedonia, which was composed of representatives of the competent institutions, and if necessary, representatives of non-governmental organizations should be included in its work.

This approach in some way reflects the new practice in designing international human rights treaties²²⁶ which includes the obligation of the States parties to establish or designate a national monitoring mechanism. This mechanism has given a monitoring role with regard to the implementation of the Convention by the national governments, complementary to the international monitoring system embodied in the CRC and the Committee on the Rights of the Child. This recognizes and confirms the primary responsibility of the state in implementing the provisions of the CRC and the optional protocols. Moreover, the national monitoring system strengthens the national capacities of the States parties to fully realize the commitments and obligations undertaken under the Convention and its optional protocols. However, after several years of operation, this National Commission stopped working and its website is non-functional any more.

This National Commission was initially chaired by the Secretary General of the Government, and later by the Minister of Labor and Social Policy. In addition to monitoring the implementation of the Convention and the two optional protocols, this body has an opportunity to prepare proposals and opinions on laws and bylaws in the children's rights protection area. This body functioned with regular monthly meetings for several years after its establishment, then when it was undertaken to be coordinated by the Ministry of Labor and Social Policy, it continued to exist only on paper and neither holds meetings nor functions as a national oversight mechanism. Therefore, the state needs to take urgent measures to revive this mechanism, which should have a much broader role than the oversight mechanism. It should be the creator of policies and strategies in which children will have a leading role, in a word to be a guarantor of children's rights in N. Macedonia.

²²⁵ Одлука за образување Национална комисија за правата на децата во Република Македонија
Сл. весник на Р Македонија бр. 126/2007 од 16.10.2007
Извор: Влада на Република Северна Македонија
<http://www.slvesnik.com.mk/Issues/BAF66BA85D80934888D12F04A0F746BB.pdf>

²²⁶ For example, that is the case with the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment – OPCAT), United Nations General Assembly A/RES/57/199, 57th session, held on 18 December 2002, entered into force on 22 June 2006.

The content of the Protocol - Taking into consideration the specific characteristics of the Convention, the Protocol should be very much child-friendly oriented. 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 Capacity of the Committee on the Rights of the Child – It is estimated, that the average time lag between submission of a State report to the CRC Committee and its consideration is currently between three to four years.²²⁷ Guided by this finding, some States have shown doubts and reservations about the Committee’s capacity to cope with the extra workload created by the Protocol, while others have expressed immediate support for this instrument. Moreover, they underlined the Committee would be strengthened by extending its scope for action and by the increased publicity it would attract.²²⁸ It was concluded that the Committee will improve its working methods using some best practices in that regard from regional and international mechanisms.

When we talk about the capacity of the CRC Committee, it is important to highlight that CRC Committee is not the only one facing such challenges but this characterizes all UN human rights treaty bodies. Therefore, UN-level solutions and reforms are being sought to assist the Committees to be more efficient in their work.²²⁹

Child participation in the drafting process - Although the Protocol was welcomed as an important step toward the emancipation and recognition of children's rights, children were not involved in the process of drafting the Protocol. There was no input from those whose lives were supposedly the focus of the rights being created, debated or acted on: children.²³⁰ It is considered as a major omission, given the fact that the child's right to participation is one of the key principles. On the

²²⁷ Egan, Suzanne. “Strengthening the United Nations Human Rights Treaty Body System”. Human Rights Law Review 13:2, Oxford University Press. 2013, pg.212

²²⁸ Müller, Urte. “Children as Strong Nations - Background, reasons and arguments for introducing a right of petition”. Kindernothilfe e.V., 2002. p.4 and 5; Available at [https://archive.crin.org/en/docs/Children as Strong as Nations.pdf](https://archive.crin.org/en/docs/Children_as_Strong_as_Nations.pdf) pg. 6

²²⁹ More information about some reforms in the UN Hyman rights treaty system can be found Egan, Suzanne. “Strengthening the United Nations Human Rights Treaty Body System”. Human Rights Law Review 13:2, Oxford University Press. 2013, pg.209-243

²³⁰ Jones Phil and Walker Gary, “Children’s Rights in Practice”, SAGE Publications, London, 2011, pg.44

other hand, several NGOs, government delegations, and experts suggested (but not strictly insisted) that children should be actively involved in the Protocol drafting.²³¹

²³¹ All documents regarding the Protocol drafting process are available at: www.ohchr.org/EN/HRBodies/HRC/WGCRC/Pages/OpenEndedWorkingGroupIndex.aspx

CHAPTER IV

4. Third Optional Protocol to the Convention on the Rights of the Child establishes a three-stage mechanism to control the fulfillment of the obligations undertaken by member States

4.1. General provisions of the Protocol²³²

The text of OPIC consists of a preamble containing 10 paragraphs and a text of 24 articles, divided into four parts, namely: 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) - provisions of a technical nature which regulates the issues of international assistance and cooperation, signature, ratification and accession and entry into force.

In this section, it will be briefly reviewed the Preamble's paragraphs as a declarative introduction of the OPIC and the general provisions which cover several issues as Competence of the CRC Committee (art.1), General principles and rules of procedures guiding the CRC Committee work (art 2 and 3) and Protection measures (art.4).

*Preamble*²³³ - Although the Preamble is clearly declarative in its nature, it should be noted that it explains the justification for adopting this international legal instrument of human rights. The purpose of the preamble is, in part, to explain the relationship between the Optional Protocol and historical evolution of the international law. Therefore, the first and second paragraphs use the same vocabulary as several other human rights conventions, and the third paragraph is very similar to the Vienna Declaration and Programme of Action of the World Conference on Human Rights which states that all human rights and freedoms are universal, indivisible, and interdependent and interrelate²³⁴.

Several paragraphs of the Preamble elaborated below are especially interesting for this thesis. It can be clearly seen that this Protocol does not intend to bypass the State parties but on the contrary it

²³²Optional Protocol to the Convention on the Rights of the Child on a communications procedure. U.N.Doc. A/RES/66/138

²³³Ibid

²³⁴ Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights in Vienna on 25 June 1993; Available at: <https://www.ohchr.org/en/professionalinterest/pages/vienna.aspx>

seeks to strengthen and supplement *the national and regional mechanisms that enable children to file complaints for violation of their rights* (paragraph 6) as well as to encourage the State parties to *develop adequate national mechanisms enabling children whose rights have been violated to have access to effective state-level remedies* (paragraph 8). The paragraph before the last emphasizes the role of national human rights institutions as well as specialized institutions mandated to promote and protect the rights of children (paragraph 9). Hence, it can be seen that the tendency is not to take the role of national institutions, but to encourage them to work and act in the best interest of children.

The starring role of the OPIC is to encourage the institutions to work towards children and their rights, and the Committee with its supervision and monitoring mechanism to act as a reminder for that. The principle of the best interest of the child is present throughout the text of the preamble, but it is elaborated separately in the seventh paragraph where it states that *the best interest 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 level.*

Finally, in the last paragraph, it is clearly stated that in order to strengthen and supplement the national mechanisms as well as to improve the implementation of the CRC and the two protocols, the Committee on the Rights of the Child is allowed to perform the function given to it by this Protocol, which is to supervise the implementation of these international instruments by the Member States.

4.1.1. Responsibilities of the Committee on the Rights of the Child in relation to the implementation of this Protocol

When referring to the OPIC, it is necessary to have an overview of the competence of the CRC Committee as the crucial actor in the process of the Protocol implementation. While the previous chapter presented the main issues related to the new role to be given to the Committee (raised during the drafting process), in this section we will refer to the final provisions determining the extended function of the Committee.

The OPIC provides the Committee on the Rights of the Child with competency to receive and consider individual and inter-state complaints concerning the application of the CRC and two optional Protocols.²³⁵ The CRC Committee will review cases brought *by an individual, groups of individuals or on their behalf* concerning violations of the rights stated in the Convention by any State Party that has ratified the Protocol.²³⁶

With the adoption of the Third Optional Protocol to the CRC, the mandate of the Committee on the Rights of the Child has been significantly expanded. The introduction of the possibility of filing individual complaints, interstate statements, as well as the possibility of initiating an investigation in case of serious and systematic violation of the rights guaranteed by the CRC and its protocols significantly strengthens the position and the role of the Committee on the Rights of the Child in the field of children's rights protection. This means that the international human rights protection system is completed because the last treaty body has received the competence that the other Committees already have. Thus although this function is new to the Committee on the Rights of the Child, the treaty bodies as a whole, through the regular UN Chair meetings, are endeavoring continually to strengthen the effectiveness of the monitoring process to ensure best possible protection and promotion of human rights.²³⁷

The competence of the Committee, the bases of the general principles according to which it is guided in its work as well as the need to introduce a Rules of Procedure are listed in the First part, i.e. the General provisions of the Third Optional Protocol on communication procedures.

According to Article 1, the State, by becoming a member to this Protocol, *recognizes the competence of the Committee on the Rights of the Child as prescribed by the present Protocol.*²³⁸ The Committee shall not exercise its competence with respect to a State Party to this Protocol on matters relating to the violation of rights prescribed by a particular instrument to which a State Party is not a party. The Committee shall not receive any communication, if it concerns a State that is not a party to the present Protocol.²³⁹

²³⁵ Freeman Michael, "The Future of Children's Rights", Brill Nijhoff, Leiden-Boston, 2014, pg.180

²³⁶Optional Protocol to the Convention on the Rights of the Child on a communications procedure. U.N.Doc. A/RES/66/138. Article 1 and Article 5

²³⁷ Freeman Michael, "The Future of Children's Rights", Brill Nijhoff, Leiden-Boston, 2014, pg.180, pg.181

²³⁸Optional Protocol to the Convention on the Rights of the Child on a communications procedure. U.N.Doc. A/RES/66/138. (art.1, paragraph 1)

²³⁹Ibid (art.1, paragraph 3)

Based on the experiences of other international complaint mechanism, some scholars noted from the text of the article, that persons who are not citizens of the specific state party to the Protocol have also locus standi (the right or capacity to bring an action), i.e. the jurisdiction of the state is considered in relation to the violation of rights, and not in terms of formal connection of the victim with the country concerned.²⁴⁰ When we talk about legal standing it is especially important to emphasize the locus standi in favor of the child, which is the real added value of the CRC²⁴¹ and the OPIC. We will share more information about this in the individual communication section within this work.

4.1.2. General principles guiding the functioning of the Committee

The main principles by which the Committee is guided in its work are: the principle of the best interest of the child; the principle of respecting the views and opinions of child(ren) being given due weight in accordance with the age and maturity of the child²⁴²; the principle of expediency and the principle of privacy.²⁴³

These principles are applied throughout the Optional Protocol and Rules of procedure under the OPIC and the CRC Committee is responsible to ensure smooth application of these principles in order to guarantee sensitive procedures where the focus is centered on the child and its rights. Since the principles are the guiding points of the CRC and OPIC, we will briefly address them and shortly review where they are applied/or should be applied.

- The principle of the best interest of the child²⁴⁴

This principle is a broad concept and there is no single interpretation applicable to each child. The application of this principle involves an individual approach to every child separately. According to

²⁴⁰Попоска, Жанета. „Толкувач на Меѓународната Конвенцијата за правата на лицата со попреченост на Организацијата на обединетите нации“. Полио Плус. Скопје, 2018, pg. 96

²⁴¹Carletti, Cristiana. 'The Third Optional Protocol to the Convention on the Rights of the Child: Preliminary case law assessment for the effective promotion and protection of children's rights' (2020) 4 Global Campus Human Rights Journal, pg.114, 115 and 121

²⁴²Ibid

²⁴³Rules of procedure under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure. CRC/C/62/3, (rule 1,2,3)

²⁴⁴ More information about the best interest of the child is available at the UN Doc. General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1). CRC/C/GC/14

Sonja Grover, the indeterminate nature of the concept of ‘best interest of the child’ is problematic and the notion is not clearly defined in international law.²⁴⁵ Despite these challenges, the Committee’s members should follow the best interest of the child/children throughout their work. Given that this approach is quite demanding in terms of time, knowledge and other resources, on 29th of May 2013 the Committee adopted General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration²⁴⁶ where the interpretation of this principle is elaborated in detail. The concept of the child's best interests *is aimed at ensuring both the full and effective enjoyment of all the rights recognized in the Convention and the holistic development of the child.*²⁴⁷ The full application of the concept of the child's best interests *requires the development of a rights-based approach, engaging all actors, to secure the holistic physical, psychological, moral and spiritual integrity of the child and promote his or her human dignity.*²⁴⁸

We also recognize the principle of the best interest of the child/ren within the OPIC:

- Submission of communications – *where there is a concern that representation, despite the victim’s(s’) consent may be a result of improper pressure or inducement, the Committee may request additional information ... that show that the submission of a communicationis in the best interests of the child.*²⁴⁹
- Request for clarification or additional information - The Secretary-General may ask for an additional clarification *from the author(s) and/or alleged victim(s) of a communication, among the other information, whether the communication is in the child’s best interests.*²⁵⁰
- Oral hearing²⁵¹ - *The Committee may decide to invite the author(s) and/or alleged victim(s) ... in order to provide additional clarifications. The hearings will not be conducted in the presence of State representatives, unless the Committee deems it in the best interests of the child(ren). The Committee shall guarantee child-sensitive procedures at hearings.*

²⁴⁵ Grover C. Sonja “Children defending their human rights under the CRC communications procedure: On strengthening the convention on the rights of the child complaints mechanism”, Publisher: Springer; 2015, pg.110 (Reliance of the best interest of the child principle)

²⁴⁶Committee on the Rights of the Children. “General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration”. U.N.Doc. CRC/C/GC/14

²⁴⁷Ibid

²⁴⁸Ibid

²⁴⁹Rules of procedure under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, CRC/C/62/3, (rule 13.2);

²⁵⁰Ibid, Rule 15 d)

²⁵¹Ibid, Rule 19.1

Although OPIC provides and guarantees to hear and take into consideration of the child opinion, Grover who has studied international and regional complaint mechanisms in detail, underlined that it is fair to say perhaps that the African Children's Charter communications procedure provisions as implemented are in some ways more child-centered than is the case for the OP3-CRC.²⁵² Based on this, we can say that the international mechanisms should be upgraded following the good experiences and lessons learned of other regional or international instruments.

We can conclude that the best interest of the child is a really broad concept and therefore the members of the Committee are expected to act very professionally and studiously for each case separately. The individual approach is really important because each case has its own characteristics for which it is necessary to make special analyses and considerations.

-Respecting and taking into consideration opinions of the child

This principle is one of the fundamental principles on which the CRC is based, which is defined in Article 12, and elaborated in more detail in the General Comment No. 5 (2003) 'General measures of implementation of the Convention on the Rights of the Child'. *The child's right to express his or her views freely in "all matters affecting the child", those views being given due weight (art.12 CRC)*. This principle, which highlights the role of the child as an active participant in the promotion, protection and monitoring of his or her rights, applies equally to all measures adopted by States to implement the Convention.²⁵³

Principle of expeditiousness - For any action undertaken under the Protocol and at any stage of the procedure, the Committee shall handle communications expeditiously and avoid unnecessary delays. It shall also encourage the parties to avoid unnecessary delays.²⁵⁴

Privacy - The identity of any individual or groups of individuals concerned by any action undertaken under the Protocol shall not be revealed publicly without her/his/their express consent.²⁵⁵

²⁵² Grover C. Sonja "Children defending their human rights under the CRC communications procedure: On strengthening the convention on the rights of the child complaints mechanism", Publisher: Springer; 2015, pg.

²⁵³ Committee on the Rights of the Children. "General comment No. 5 (2003) General measures of implementation of the Convention on the Rights of the Child". U.N.Doc. CRC/GC/2003/5, pg.4

²⁵⁴ Rules of procedure under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure. U.D.Doc. CRC/C/62/3, (rule 2)

²⁵⁵ Ibid, Rule 3

Based on the previously said, we can confirm that the principles listed above are really important and should be applied in any case that comes before the CRC Committee.

4.1.2.1. Protection measures²⁵⁶

This provision is especially important because it provides protection measures for children as one of the most vulnerable groups. In exceptional circumstances, CRC Committee may ask the state to take interim measures to prevent that the victim suffers irreparable damage. We can underline that this provision gives more security and encourages children to report inadequate protection of their rights in their country.

According to the article 4 of the Protocol, *each State party shall take all appropriate measures 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.* When the Committee receives reliable information that a State party has not complied with its obligations under article 4, paragraph 1, of the Protocol to take all appropriate measures to ensure that individuals under its jurisdiction are not subjected to any human rights violations, ill-treatment or intimidation as a consequence of communications or cooperation with the Committee, it may request the State party to adopt and take all appropriate measures urgently to stop the breach reported and submit written explanations and clarifications thereon to the Committee. Compliance with this request shall be monitored.

4.1.3. Methods of work

Article 3 provides that *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.*²⁵⁷

²⁵⁶OPIC, Article 4

²⁵⁷Optional Protocol to the Convention on the Rights of the Child on a communications procedure. U.N.Doc. A/RES/66/138. (art.3)

Some of the crucial methods of Committee's work are listed in this paragraph²⁵⁸: - *Record of activities under the Protocol where the Secretary-General shall maintain a permanent record of all individual communications, information indication grave or systematic violations by a State party and inter-State communications brought to the attention of the Committee and shall make all the information available to any member of the Committee upon her/his request in the language of submission; - Establish Working group(s) and rapporteur(s) - The Committee may establish working group(s) and may designate rapporteur(s) to make recommendations to the Committee and to assist it.*

As the work of the Committee is quite extensive, the Secretariat assists in procedural matters and takes care of the timely and proper implementation of operational tasks.

4.2 Individual communication (complaint)

4.2.1. Definition of individual communication

The second part of the OPCP explains how to submit a complaint and how it is handled by the Committee. It is important to underline that three different terms are used to express complaint in the sense of individual complaint procedure: complaint, petition and communication. The treaty bodies and the Committees dealing with individual complaints procedures use the term communication. In this work, we will use the terms complaint and communication, because both terms are present in the literature used in the study preparation.

There are several definitions of this notion, but it seems that the following one describes the meaning and the function of this tool in the shortest and clearest way. The individual complaints procedure is a monitoring instrument of the UN system to secure respect for human rights. In the case of human rights abuses, this makes it possible for a single person or their representative, to legally demand their rights at UN level²⁵⁹ if the set conditions are met. Anyone may bring an alleged violation of human rights to the attention of the UN. It can be done through individual complaints

²⁵⁸Committee on the Rights of the Child. "Working methods to deal with individual communications received under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure: Available at: <https://www.ohchr.org/Documents/HRBodies/CRC/WorkingMethodsOPIC.pdf>

²⁵⁹Müller, Urte. "Children as Strong as Nations - Background, reasons and arguments for introducing a right of petition". Kindernothilfe e.V., 2002, pg5 and 6

that human rights are given concrete meaning.²⁶⁰ In the adjudication of individual cases, international norms that may otherwise seem general and abstract are put into practical effect. The existence of this complaint mechanism is particularly important in cases of non-existence of domestic or regional mechanisms or when they are insufficient.²⁶¹

The second part of the OPCP deals with the individual complaint, how to file a complaint or to send information, what conditions need to be met and how it is resolved by the Committee. Individual complaints are regulated by Article 5 till Article 11 of this Protocol. The Committee's competence for these petitions is established ipso jure, which means automatically, by the law itself. The State parties accept the competence of the CRC Committee to consider individual communications by ratification of the Protocol itself. In other words, it is not needed no special statement of the State parties.

Individual communications²⁶² (Article 5) - According to the article 5 of the Protocol, the individual communication to the Committed can be submitted by:

1. An individual or a group of individuals claiming that their rights have been violated by a State party (including children of any age), meaning victims or a group of victims. We can underline that with this opportunity attention has been given to children not only being made aware of the rights they have but on encouraging them to be active in claiming their rights²⁶³ (by the possibility to send a complaint by themselves).

2. From another entity representing the victim or group of victims (i.e. the child or group of children), such as a lawyer, doctor, parent or friend. If the complaint is filed through a representative of the victim (i.e. the child), then the representative must show that the victim agrees and has given his or her consent. If the representative cannot provide evidence of the victim's consent, then the applicant must prove that such a situation is justified (For example, if the victim cannot consent because he or she is too young or if the victim cannot be found).

²⁶⁰Office of the United Nations High Commissioner for Human Rights. "Individual Complaint Procedures under the United Nations Human Rights Treaties". Fact Sheet No. 7/Rev.2. United Nations New York and Geneva. 2013; pg. 1-2

²⁶¹Human Rights Council. "Working Group on an optional protocol to the Convention on the Rights of the Child; Newell Peter; Submission to Open-ended Working Group of the Human Rights Council, considering the possibility of elaborating an Optional Protocol to provide a communications procedure for the Convention on the Rights of the Child". pg. 2; Available at:

<https://www.ohchr.org/EN/HRbodies/HRC/WGCRC/Pages/OpenendedWorkingGroupSession1.aspx>

²⁶²Optional Protocol to the Convention on the Rights of the Child on a communications procedure. U.N.Doc. A/RES/66/138, (art.5)

²⁶³ Jones Phil and Walker Gary, "Children's Rights in Practice", SAGE Publications, London, 2011, pg. 44

The CRC Committee in its Rules of procedure under the OPIC²⁶⁴ clarifies this provision where it says that Author(s) of communications (Rule 12) of an individual communication means the person(s) who is/are submitting the individual communication, whether the alleged victim(s) or not. The fact that the alleged victim(s) is/are represented does not mean that he/she/they cannot correspond with the CRC Committee directly.²⁶⁵

If there is a concern that representation, despite the victim (s) consent may be a result of improper pressure or induction, the CRC Committee may instruct the Secretary-General to request additional information, including from third party sources, in accordance with Rule 23, paragraph 1, which will show that sending the communication to the Secretary-General to request additional information or documents, including from third party sources in accordance with rule 23, paragraph 1, of the present rules.²⁶⁶

Violations can only cover the rights guaranteed under: UNCRC and/or OPAC and/or OPSC. The violation must have been committed by a State that is party (i.e. has ratified) to the UNCRC, the OPAC and/or OPSC. States must have also recognized the competence of the Committee to receive such complaints through ratification of or accession to the OPIC.²⁶⁷

4.2.1.1. Admissibility

The provision that deserves comment is Article 7 which stipulates the conditions for individual communication. Each communication must meet certain requirements in order to be accepted by the Committee for further consideration, i.e. it should be admissible. Thus, the Committee will reject the submission in cases when:²⁶⁸

- a) *the communication is anonymous;*
- b) *the communication is not written;*

²⁶⁴Rules of procedure under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure. U.N.Doc. CRC/C/62/3

²⁶⁵Ibid

²⁶⁶Ibid, rule 13.2

²⁶⁷Optional Protocol to the Convention on the Rights of the Child on a communications procedure. U.N.Doc. A/RES/66/138. (art.5)

²⁶⁸ Ibid, Art. 7

- c) *the communication constitutes an abuse of the rights which are incompatible with the provisions of the Convention and/or the Optional Protocols thereto;*
- d) *the same matter has already been examined by the Committee and / or has been examined 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 use of remedies is unreasonably prolonged or unlikely to bring an effective solution.*
- f) *the communication is manifestly ill-founded or not sufficiently substantiated;*
- g) *the facts which 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 exhaustion of the domestic remedies, except in cases where the author can demonstrate that it had not been possible to submit the communication within that time limit*

From the stated requirements listed in Art. 7 of this Protocol, we can realize that they are very similar, almost identical to the other requirements set by other universal instruments for human rights protection. In order to show how these claims are regulated in other complaint mechanisms, we will present a comparative overview.

Comparison of the CRC Complaints Mechanism with other existing Complaints Mechanism²⁶⁹

In order to gain a clear picture of the position of the OPIC individual communication among the other human rights treaty bodies which have provided this type of legal institute, we will make a brief comparison with the requirements stated in the rest existing complaints mechanisms.

- We can realize that each of the complaints mechanism predicts that the individual communication cannot be anonymous, which means that if the complaint does not mention anyone's name, i.e. no one has signed, it is inadmissible.
- The second requirement is that the individual communication must be in writing, which is not necessary in all other universal documents, for example in the International Convention on Racial Discrimination, in ICRMW, OP - CRPD and CPED.

²⁶⁹CRIN. "CRC Complaints Mechanism Toolkit: Annex II Understanding OP3-CRC: Comparison of existing Complaints Mechanisms".

Available at: <https://archive.crin.org/en/guides/legal/crc-complaints-mechanism-toolkit.html>

- Complaints must allege a violation of one or more of the rights guaranteed under the Convention on the Rights of the Child (UNCRC) and/or the Optional Protocol to the UNCRC on the involvement of children in armed conflict (OPAC) and/or the Optional Protocol to the UNCRC on the sale of children, child prostitution and child pornography (OPSC). Otherwise, the complaint will be declared inadmissible.
- The next requirement is that the individual complaint is not admissible if the same matter has already been examined by the Committee and / or has been examined or is being examined under another procedure of international investigation or settlement.²⁷⁰ This means that the OPIC has incorporated the principle of *ne bis in idem*. In this admissibility requirement we recognize the ban on existence of litigation, i.e. individual communication will not be admissible if it has already been considered or is being considered before another international body. The rule is set alternatively, which means that if any of these conditions are met, the complaint is inadmissible.
- This rule is present in all existing complaints mechanisms, except in the International Convention on the Elimination of Racial Discrimination, which allows a complaint to be lodged, but the Committee may ask for related information. (84g of the Rules of procedure of the Committee on the elimination of Racial Discrimination).
- Exhaustion of all remedies available nationally²⁷¹ - This is a general requirement set in all existing complaints mechanisms. This does not apply in cases where the application of remedies is unjustifiably delayed or is unlikely to lead to an effective solution, which is also stated in all other international instruments that allow for a complaint procedure. In the process of exhaustion domestic remedies, legal capacities as an issue needs to be addresses. Children lack legal capacity in all jurisdictions thus initiating complaints is problematic. Children require some form of adult representation. That means that parents/guardians should support the child's complaints in those jurisdictions requiring parental consent to initiate a complaint.²⁷² This was recognized and discussed on the drafting and adoption of OPIC.
- Prohibition of retroactive effect of the Protocol - The application of the protocol is limited to a situation of possible violation of the rights of the child after its entry into force, which prohibits retroactive effect that is common to all adopted procedural instruments for human

²⁷⁰Ibid

²⁷¹Ibid

²⁷² Freeman Michael, "The Future of Children's Rights", Brill Nijhoff, Leiden-Boston, 2014, pg.185

rights protection. The only exception to this temporal application is possible in a situation of continuous violation which, although it started before the adoption of the Protocol, continues after its entry into force.

It is particularly important to note that the requirements for the admissibility of the submission set out in Art. 7, must be met cumulatively, i.e. in order for a complaint to be further processed, all conditions for its admissibility must be met. Most of the set conditions are general principles in law and through their application, the principal of legal certainty is guaranteed. The prohibition of retroactive effect, principle ne bis in idem, prohibition of double existence of litigation is guaranteed as well.

Stages of the communications procedure²⁷³ - The Communications procedure has several stages, and each of them is elaborated in the text below. The following image has been prepared by the Child Rights Connect and shows the stages of the communication procedure²⁷⁴

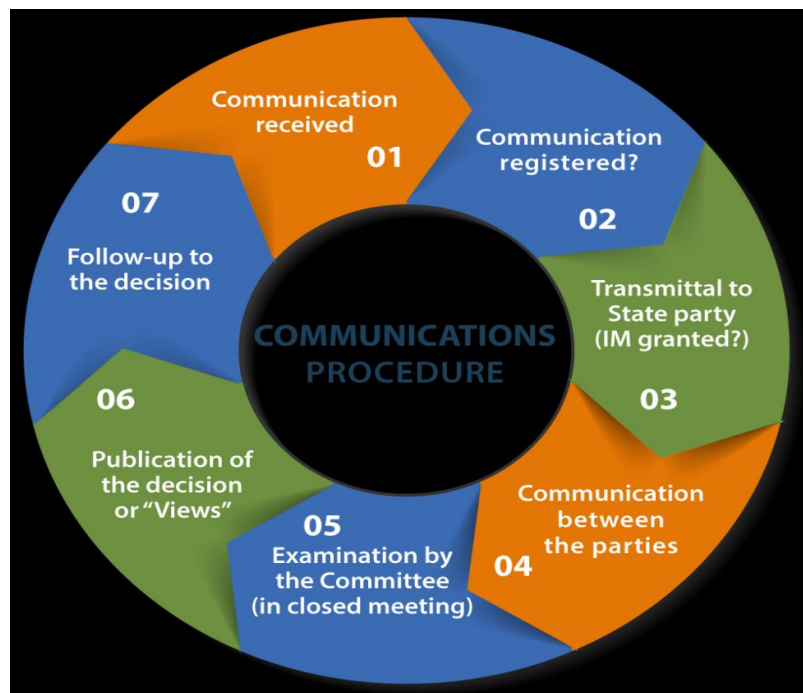


Chart 2. Stages of the communication procedure

Source: Web site of the Child Rights Connect

²⁷³Child Rights Connect. "The Communications Procedure". Available at: <http://opic.childrightsconnect.org/what-is-opic/the-mechanisms/>

²⁷⁴Source: <http://opic.childrightsconnect.org/wp-content/uploads/2019/09/Communication-procedure-round-980x968.png>

4.2.1.2. Transmission of the communication (transmission to State party for observations/
Request of interim measures)

Transmission of the communication to the State party for observations is the third stage of the communication procedure. Bearing in mind the importance of the formal process from filing a complaint to processing it, prior transmission explanation, we will address these two starting steps.

Sending and Reception of an individual communication - The individual communication can be sent to the Petitions Unit of the United Nations Office of the High Commissioner of Human Rights in Geneva, Switzerland. The documentation can be sent by e-mail petitions@ohchr.org. The complaint has to be submitted in writing in one of the UN's six working languages (Arabic, Chinese, English, French, Russian and Spanish). The person who prepares and sent the complaint is known as the “author”, and the child whose rights have been violated is often referred to as the “victim”. Child victims can also be thought of as “complainants”, and are empowered to prepare and submit complaints without the assistance of a separate author.²⁷⁵

In order to facilitate the submission process and give proper guidance to the complaint’s authors, the CRC Committee has prepared a model form for submission of individual complaints to the Committee under the OPIC.²⁷⁶ This model form was adopted by the Committee on the 2nd of October 2015 and is available at the CRC Committee’s web page.

It is important to note that if the author would like the Committee to consider requesting interim measures, it should be clearly stated in the communication. Then, the Committee will speed up the consideration of any communication or inquiry that requires interim measures.

Registration of an individual communication - After an individual communication is received, the Petition Unit will make a screen, and can reject the complaint if it is prima-facie inadmissible (i.e. anonymous; does not concern the UNCRC nor its Optional Protocols; communications against a non-State party or manifestly unfounded communications). Once the complaint is complete, it will be registered and the Unit will then pass it along to the Committee to determine whether it can be reviewed.

²⁷⁵Geary, Patrick. “CRC Complaints Mechanism Toolkit”. Child Rights International Network (CRIN); 2013; page 3;

²⁷⁶The complaint model form is available at:

https://www.ohchr.org/Documents/HRBodies/CRC/ModelCommunicationForm_en.pdf

No communication shall be received by the Committee if all the conditions set out in Article 7 are not met.²⁷⁷ All these circumstances are explained in the section dedicated to admissibility.

Transmission of the communication - Registered communications are transmitted to the State against which the complaint was filed, which will be asked to provide its written observations and comments.²⁷⁸ As soon as possible and within six months after receipt of the Committee's request under the present rule, the State party has to submit to the CRC Committee written explanations or statements that relate to the admissibility and the merits (substance) of the communication.*(Scenario A)*²⁷⁹

The CRC Committee may request written explanations or statements that relate only to the admissibility of a communication. *(Scenario B)*²⁸⁰ In this case, after receiving comments from the State as well as the authors of the communication, the Committee will take a decision only on the admissibility of the communication.

Communication between the parties²⁸¹ - During the whole procedure, and before any decision is reached regarding the admissibility and merits of the communication, the observations of the author(s) of the complaint and the State party will be shared with the other party who will have the opportunity to provide its comments.

Discontinuance²⁸² - At any moment, the authors of a communication can request for the case to be discontinued. The CRC Committee will decide on such request. If it considers the case should be discontinued it will adopt a decision in that regard, indicating the grounds for the discontinuance.

4.2.1.3 Friendly statements²⁸³ (article 9 of the OPIC)

The friendly settlement procedure allows the parties concerned (the complainant and the State party) to agree on a solution with regards of the communication, on the basis of respect for the

²⁷⁷Committee on the Rights of the Child. "Rules of procedure under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure". U.N.Doc. CRC/C/62/3; 2013; Rule 16, paragraph 3

²⁷⁸Ibid, Rule 18.1

²⁷⁹Ibid, Rule 18.3

²⁸⁰Ibid, Rule 18.4

²⁸¹ Stages of the communication procedure, <http://opic.childrightsconnect.org/what-is-opic/the-mechanisms/>

²⁸² Ibid

²⁸³Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure; art.9

obligation set forth in the Convention and/or the Optional Protocols thereto. Hence, this agreement on a friendly settlement terminates the procedure (closes consideration of the communication) under the present Protocol.²⁸⁴

Only the OP-CESCR and OPIC-CRC provide for the possibility of friendly settlement. In practice, other treaty bodies may suspend the consideration of an individual communication if the parties are engaged in a friendly settlement process.²⁸⁵

The friendly statement explicitly permitted for individual communications is one of the features that this Protocol together with OP-ICESCR distinguishes from other international documents that do not permitted the possibility of friendly settlement.

This procedure is described in the Rules of procedures under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure.

The friendly settlement procedure can be initiated by a request from one of the parties at any time between the receipt of the communication and the determination of the merits by the Committee. However, the procedure is voluntary and the parties expressly have to accept it.²⁸⁶

The Committee may terminate its facilitation of the friendly settlement procedure if it concludes that the matter is not susceptible to reach a solution or if one of the parties withdraws its consent or does not display the necessary will to reach a friendly settlement.²⁸⁷

The friendly settlement procedure shall be confidential and without prejudice to the parties' submissions to the Committee. No written or oral communication and no offer or concession made in the framework of the attempt to secure a friendly settlement may be used against the other party in the communication proceedings before the Committee.²⁸⁸

²⁸⁴Ibid, art.9

²⁸⁵Pillay, Navanethem. "Strengthening the United Nations human rights treaty body system; A report by the United Nations High Commissioner for Human Rights". 2012; pg. 72

²⁸⁶Committee on the Rights of the Child. "Rules of procedure under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure". U.N.Doc. CRC/C/62/3; 2013; Rule 25

²⁸⁷Ibid, Rule 25

²⁸⁸Ibid, Rule 25

4.2.1.4. Considering an appeal

Examination by the CRC Committee²⁸⁹ - Based on the information received from both parties, the CRC Committee will proceed to the examination of the admissibility and/or merits of the case in closed meetings. It will then take a decision on the admissibility and/or the merits.

Adoption and publication of Views/Inadmissibility decisions or discontinued cases – The adopted Views and recommendations of the Committee, as well as the decisions of inadmissibility or discontinuance, will be transmitted to the parties, and published on the Committee’s webpage. Two years is currently the average time for the Committee to adopt a View on an individual communication since its registration.

4.2.1.5. Monitoring the procedure

Friendly agreement is a subject to a monitoring or follow-up procedure aiming to ensure that the terms of the agreement are implemented appropriately and within a reasonable period of time. Therefore, the Committee should ensure that the interest of the victim/s is completely taken into consideration by the State party concerned and to examine whether the agreed settlement is realized regarding the best interest of the child.

Within six months of the decision that a friendly settlement has closed the consideration of a communication, the State party concerned shall submit to the Committee a written response, including information on action taken, if any, in the light of the friendly settlement agreement. The Committee shall, through the Secretary-General, transmit the information received from the State party to the author(s) of the communication.²⁹⁰ The Committee can also ask States to provide further information on the measures taken following a friendly settlement agreement in its subsequent reports under article 44 of the UNCRC. A summary of the explanations and information on follow-up activities of the State party concerned will be included in the Committee’s report submitted to the General assembly every two years.²⁹¹

²⁸⁹Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure; art.10

²⁹⁰Ibid, Rule 28

²⁹¹Ibid, Rule 28, paragraph 9

4.2.2. Procedures for the consideration of individual communications received under the Optional Protocol

The importance and popularity of the Protocol is confirmed by the numbers of cases submitted, reviewed and adopted by the CRC Committee. It can be freely stated that despite the OPIC is the last individual complaints mechanism that has entered into force compared to the series of such international documents, it is currently the third in terms of the number of cases adopted per year (after CCPR and CAT).²⁹² This demonstrates that the individuals who claim that their rights were not sufficiently protected in their domestic countries strongly believe in the power of this supervisory mechanism.

If we look at the CRC Committee's database, we can find out the recent developments in the individual communications received under the OPIC, including an overview of the cases received under the OPIC, jurisprudential trends and procedural developments.²⁹³

According to the CRC Committee analysis, to April 2020, the Committee has received over 300 individual communications under the OPIC-CRC and has registered 116 of those cases. The Committee has adopted decisions on 39 registered cases. Of these, the Committee found violations of the Convention in 12 cases, declared 17 cases inadmissible, and discontinued 10 cases. There are currently 77 cases pending consideration.

The issues raised in the registered cases involved migration-related issues, child abduction, custody and visiting rights, juvenile justice, corporal punishment, right to education, and climate change.²⁹⁴

It is obvious that there is a significant difference between the received and registered cases. This has already been an impetus for researchers working on this issue to analyze more deeply what is due to it. They structured the findings in a few points: - Submission on behalf of child(ren): position of parents and consent; - Communications incompatible with the provisions of the CRC; - Exhausting domestic remedies; - Communication ill-founded or not sufficiently substantiated.²⁹⁵

²⁹² CRC Committee. Note on OPIC CRC trends. "Recent Developments in the Individual Communications Received under the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure", April 2020, pg.1

²⁹³ Ibid

²⁹⁴ Ibid

²⁹⁵ Doek, E. Jaap. "Communications with the Committee on the Rights of the Child under Optional Protocol to the CRC on a Communications Procedure and Admissibility. Report on the Decisions of the Committee on Admissibility: Summary and Comments", Leiden Children's Rights Observatory Papers No. 1, 2020, pg.24-27

4.3. Inquiry procedure

4.3.1. Definition of an inquiry procedure - The Inquiry Procedure (article 13 and 14 of the OPIC)

Inquire procedures are a key complementary tool to individual communications and are standard provision in instruments establishing communications procedures.²⁹⁶ Communications and inquiries are in fact different elements of the same 'package' aimed at strengthening the national implementation of the rights of the child and developing the Committee's jurisprudence.²⁹⁷ The inquiry procedure is a mechanism allowing the Committee to investigate allegations of grave or systematic violations of the UNCRC and/or the OPSC and/or the OPAC by a State party to these instruments, if the State concerned has ratified the OPIC and accepted its inquiry procedure.

It is important to address that the inquiry procedure is an optional mechanism. This means that there is an "opt-out" clause (article 13.7) of the OPIC which allows States parties to the OPIC to "opt-out" from the inquiry procedure by making a declaration at signature, ratification of or accession to the OPIC²⁹⁸, while article 13. 8 allow States parties that opted-out to withdraw that declaration. Thus, these declarations may be given and withdrawn at any time, by notification to Secretary-General of the United Nations which shall transmit information to other State members.

If we consider the process of drafting a third Optional protocol, we can perceive that numerous delegations supported the inclusion of an opt-out provision with regard to the inquire procedure to promote wider acceptance of the protocol.²⁹⁹ On the contrary, many non-governmental organizations, experts, including Committee members suggested that the Protocol should follow the example of the Convention for the Protection of All Persons from Enforced Disappearances, which

²⁹⁶Inquiries are possible under the OPs to ICCPR, ICESCR, CEDAW, CAT, CED

²⁹⁷ Joint NGO Submission to the Open-ended Working Group on an Optional Protocol to the Convention on the Rights of the Child to provide a communication procedure, October 2010, pg. 10.

The NGO Group for the CRC is a global network of 77 national and international NGOs. Its mission is to facilitate the promotion, implementation and monitoring of the Convention on the Rights of the Child. Available at: <https://www.ohchr.org/EN/HRBodies/HRC/WGCRC/Pages/OpenEndedWorkingGroupSession2.aspx>

²⁹⁸ Grover C. Sonja "Children defending their human rights under the CRC communications procedure: On strengthening the convention on the rights of the child complaints mechanism", Publisher: Springer; 2015, pg.60

²⁹⁹General Assembly. Human Rights Council. "Report of the Open-ended Working Group on an optional Protocol to the Convention on the Rights of the Child to provide a communication procedure". U.N.Doc. A/HRC/17/36; 2011; paragraph 86

does not allow for any opt-in or opt-out.³⁰⁰ However, this suggestion was not embedded in the final text of the Protocol and there is a possibility for States to opt-out of this procedure.

In a brief comparison between individual communications (complaints) and inquiries as two different mechanisms under the OPIC, we can realize several differences. Some of them are³⁰¹: - the inquiries can also be initiated at the own initiative of the Committee (ex officio), which is not the case in the individual communications (complaints); - Inquiries can only be presented against States parties to the OPIC who have not made a declaration withdrawing recognition of the Committee's competence under article 13 of the OPIC, applicable with respect to the rights set forth in the UNCRC and/or OPAC and/or OPSC; - To initiate inquiry procedures for grave or systematic violations of children's rights, the exhaustion of domestic remedies is not required, nor is the identification of the victims, which is explicitly required in individual complaints; - Where justified, and with the consent of the State party, the inquiry may include a visit to the territory of the State party concerned, which is also not the practice in the case of individual complaints.

4.3.1.1. Inquire procedure in case of severe or systematic violations of rights

Like other contemporary international human rights instruments, the OPIC also provides the competence of the Committee in cases of a serious or systematic violation of the rights of the child. (art. 13 and 14)

If the Committee receives reliable information indicating grave or systematic violations by a State party of rights set forth in the CRC or in the both Optional Protocols thereto, the Committee can decide to conduct an inquiry (ex officio). The Committee will take this step only if the State concerned has ratified the OPIC and accepted its inquiry procedure by making a declaration.

In the Committee's comments to the draft Optional Protocol, majority members suggested that the competence of the Committee to initiate inquiries concern situation of "grave and repeated violations" rather than of "grave or systematic violations" of the Convention, because it considered

³⁰⁰Ibid, pg. 10

³⁰¹CRIN. "CRC Complaints Mechanism Toolkit: Annex II Understanding OP3-CRC: Comparison of existing Complaints Mechanisms". Available at: <https://archive.crin.org/en/guides/legal/crc-complaints-mechanism-toolkit.html>

the term 'systematic' to be too restrictive.³⁰² Therefore some authors believe that this opportunity will be used very little and only in exceptional situations.³⁰³

To initiate inquiry procedures for grave or systematic violations, the exhaustion of domestic remedies is not required, nor is the identification of the victims. If the Committee receives reliable information indicating grave or systematic violations of children's rights, it can decide to conduct an inquiry.

Firstly, the Committee will contact the state, which allegedly suffers severe or systematic violations of its rights, in order to verify the information gathered and receive a response from the state. After that, he will call on the state to cooperate in the investigation and for that purpose, to submit its remarks and observations. The committee will then appoint one or more of its members to conduct an investigation. If necessary, the investigation may be conducted on the territory of the country in question, but only with its consent. In the event that this is not possible, the members will report immediately to the Committee. The investigation procedure is confidential due to the great need to cooperate with the state that allegedly violates the rights. The procedure ends with the adoption of a conclusion, recommendations and comments by the Committee, which are then forwarded to the state concerned. Although the recommendations and conclusions of the Committee are not legally binding, the state is expected to inform the Committee of its position and the measures taken within 6 months.

There are several stages of an inquiry procedure:

1. *Reception of information indicating grave or systematic violations* - The Committee can receive information indicating grave or systematic violations of the UNCRC and/or the OPAC and/or the OPSC by a State party to these instruments and to OPIC, by any person or organization, including children and NGOs.

³⁰²Human Rights Council. "Working Group on an optional protocol to the Convention on the Rights of the Child; Comments by the Committee on the Rights of the Child on the proposal for a draft optional protocol prepared by the Chairperson-Rapporteur of the Open-ended Working Group on an optional protocol to the Convention on the Rights of the Child to provide a communications procedure". U.N.Doc. A/HRC/WG.7/2/3; 2010; Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G10/169/56/PDF/G1016956.pdf?OpenElement> pg. 5

³⁰³ Grover C. Sonja "Children defending their human rights under the CRC communications procedure: On strengthening the convention on the rights of the child complaints mechanism", Publisher: Springer; 2015, pg.

According to the “Guidance to sources of information when submitting information for an Inquiry under Article 8 of the Optional protocol”³⁰⁴, the submission should: - Indicate the State party alleged to be violating rights under the Convention; - Be written in one of the United Nations languages; - Provide a factual description of the alleged violations and indicate the rights under the Convention which are alleged to have been infringed by these violations and, where possible, should indicate the extent to which infringement of these rights by the State party is grave or systematic.

The CRC Committee may, on its own initiative, in case of reliable information on the existence of grave and systematic violations against children in a State party, initiate an inquiry (rule 31 of the Rules of procedure).³⁰⁵

2. *Preliminary consideration of the information by the Committee*³⁰⁶ - The Committee may determine the reliability of the information and/or the sources of received information in order to decide whether the information received contains reliable information indicating grave or systematic violations of rights set forth in the CRC or in the both Optional Protocols thereto by the State party concerned. It may seek to obtain additional relevant information substantiating the facts of the situation.

3. *Examination of information and Request of observations from State* - If the Committee is satisfied that the information received is reliable and appears to indicate grave or systematic violations of rights by the State party concerned, the Committee shall invite the State party to cooperate in the examination of the information by submitting observations³⁰⁷(article 13.1 of the OPIC). The Committee shall take into account any observations that may be submitted by the State party. It may decide to obtain additional information, from the following³⁰⁸: (a) Representatives of the State party concerned; (b) Governmental organizations; (c) United Nations bodies, specialized agencies, funds, programmes and mechanisms; (d) International organizations, including from regional human rights systems; (e) National Human Rights Institutions and other relevant specialized

³⁰⁴ Committee on the Rights of the Child, Inquire procedure, Guidance to sources of information when submitting information for an Inquiry under Article 8 of the Optional protocol;

Available at: <https://www.ohchr.org/EN/HRBodies/CRC/Pages/InquiryProcedure.aspx>

³⁰⁵ Committee on the Rights of the Child. “Rules of procedure under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure”. U.N.Doc. CRC/C/62/3; 2013, pg. 16

³⁰⁶ Committee on the Rights of the Child. “Rules of procedure under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure”. 2013; CRC/C/62/3; Rule 34

³⁰⁷ Ibid

³⁰⁸ Committee on the Rights of the Child. “Rules of procedure under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure”. 2013; U.N.Doc. CRC/C/62/3; Rule 35

institutions mandated to promote and protect the rights of the child; (f) Non-governmental organizations; (g) Individuals, including children.

4. *Decision to launch inquiry* - Taking into account any observations made by the State party concerned, as well as any other reliable information available to the Committee, the latter will decide whether an inquiry procedure to investigate such violations should be launched or not. (Article 13.2 of the OPIC). During the period of the inquiry, the Committee may defer the consideration of any report that the State party concerned may have submitted pursuant to article 44 of the Convention, article 12 of the Optional Protocol on the sale of children, child prostitution and child pornography and article 8 of the Optional Protocol on the involvement of children in armed conflict.³⁰⁹

Cooperation of the State party concerned - The cooperation of the State party is sought at all stages of the inquiry, which is conducted confidentially. (Article 13.3 of the OPIC). The Committee may request the State party concerned to nominate a representative to meet with the member(s) designated by the Committee. It may also request the State party concerned to provide the member(s) designated by the Committee with any information that they or the State party may consider relevant to the inquiry.

5. *Possible visit to territory of State party concerned and conduct hearings* - Where warranted, and with the consent of the State party, the inquiry may include a visit to its territory. The modalities of the visit will be defined with the State. (Rule 38 of Rules of procedure)³¹⁰. During country visits members of the Committee can meet with government representatives, civil society representatives and alleged victims in the country. It can also visit specific places (e.g. detention centers and prisons).

6. *Report on findings and recommendations* – *After examining the findings of the designated member(s) the Committee shall transmit the findings to the State party concerned, together with any comments and recommendations.* The state party has six months to submit its observations to the Committee. Particularly, the State's response will include any action taken or envisaged in the light of these recommendations. Once the inquiry procedure is completed, the Committee's report is made public. However, the State party can choose to publish it at any moment.

³⁰⁹Ibid, Rule 36

³¹⁰ Ibid, Rule 38

Confidentiality - All documents and proceedings of the Committee relating to the conduct of the inquiry shall remain confidential, without prejudice to the provisions of article 13, paragraph 6, of the Protocol. 2. Meetings of the Committee, during which inquiries under article 13 of the Protocol are considered, shall be closed.³¹¹

4.3.1.2. Monitoring after completion of the investigation

The Committee may request additional information on the measures taken or invite the State to include in its regular reports information on the measures taken after the investigation has been completed. If the State permits, the Committee may present a summary of the results of the inquiry in its annual report, which shall be submitted to the General Assembly every two years.³¹²

Follow-up - Article 14 of the OPIC lays out follow-up measures to the inquiry procedure, which can lead to constructive initiatives between the State and the Committee.

Follow-up procedures - According to the OPIC, after the Committee concludes an inquiry, the State has 6 months to respond in writing including by providing information on any action taken and envisaged in light of the Views and recommendations made by the Committee (article 14 of the OPIC).

The Committee can also ask States to provide further information on the measures taken or envisaged to take³¹³, in the State's subsequent reports.

4.3.2. Procedure of conducting the inquire procedure in accordance with Rules of Procedures

*Report of the investigation in Chile under article 13 of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, CRC/C/CHL/INQ/1*³¹⁴

As of September 2019, the Committee has received six requests to conduct an Inquire procedure, of which three have been suspended, two are ongoing and one has been closed. It is about Chile. This example is briefly explained below.

³¹¹ Committee on the Rights of the Child. "Rules of procedure under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure"; U.N.Doc. CRC/C/62/3; Rule 33

³¹²OPIC, Article 16

³¹³Committee on the Rights of the Child. "Rules of procedure under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure". 2013; U.N.Doc. CRC/C/62/3; Rule 42

³¹⁴ N. Espejo Yaksic. "Report of the investigation in Chile under article 13 of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure". Leiden Children's Rights Observatory, Case Note 2018/2, 13 November 2018.

*Description of the case*³¹⁵ - July 2016, the Committee received a request for investigation regarding the situation of children and adolescents deprived of a family environment that are in residential care centers, under the control of the National Service of Minors. In Chile, residential programs are intended for the care of children without an adequate family environment and might be directly managed by the State or by non-for-profit organizations. It was noticed increased number of died children in residential centers. The made inquiries showed a significant number of deaths, serious negligence on the part of the personnel responsible for the care of children and adolescents. The events described indicated a possible serious and systematic violation of the rights set forth in the Convention.

Therefore, the Committee decided to conduct a confidential investigation about the potential grave or systematic violation of various provisions of the Convention with respect to a significant percentage of children and adolescents under the protection of the State party. The State party authorized the visit of the two experts appointed by the Committee.

Findings³¹⁶ - The Committee determined the existence of grave and systematic violations of at least fifteen rights recognized in the CRC against children under residential care in Chile. The Committee considered the State to be responsible for “grave” violations of the rights considering that Chile's residential care system has resulted in a widespread violation of the rights of thousands of children and adolescents under the protection of the State over a long period. Along with these grave violations, the Committee also determined the existence of “systematic” violations of the rights enunciated in the Convention. Based on these findings, the Committee adopted a series of recommendations. These included immediate requests for the closure of state-controlled centers for residential care and a set of legislative and policy measures for the prevention and protection of children.

Based on the presented case above, we can conclude that until and unless a collective complaints option is incorporated in the OPIC, the inquiry procedure may be the only vehicle under the OPIC (aside from inter-State communications which are likely to be used rarely) by which systemic and/or grave violations by State Parties against groups of children, can be addressed.³¹⁷

³¹⁵Ibid

³¹⁶Ibid

³¹⁷ Grover C. Sonja “Children defending their human rights under the CRC communications procedure: On strengthening the convention on the rights of the child complaints mechanism”, Publisher: Springer; 2015, pg.

4.4. Inter-state communications

4.4.1. Notion of inter-state communications

The term Inter-state communications also called State to state complaints, refers to those procedures of complaint between states which exist within the instruments comprising international human rights law.³¹⁸ This procedure involves the filing of a formal application by a state or group of states against another state alleging noncompliance with the norms contained in a human rights instrument to which all states concerned are legally bound.³¹⁹

What is particularly important to note is that a State party does not automatically become subject to the Committee's competence, but the State concerned should issue a separate statement clearly stating that it accepts the Committee's competence to consider interstate communications.³²⁰ This is the so-called opt-in clause, which gives member states the opportunity to choose whether or not to participate, and if they decide to participate, they must file a special statement with the UN Secretary-General, who is required to forward it to the other States Parties to the Protocol in order to be informed.³²¹

This clause is in a totally contrary legal-technical solution regarding the established competence of the Committee for individual complaints, which is established *ipso iure*. Inter-state communications operate on the principle of reciprocity, so the State submitting such communication and the State against which the statement is filed must have accepted such jurisdiction in order to be able to institute proceedings before the Committee. Hence, the appropriate and timely transmission of information on the acceptance of such competence is not only formal in nature.

Inter-state communications can be submitted to the Committee whenever a government claims that another government is responsible for children's rights violations. The communication shall contain

³¹⁸Leckie, Scott. "The Inter-State Complaint Procedure in International Human Rights Law: Hopeful Prospects or Wishful Thinking?" *Human Rights Quarterly*, vol. 10, no. 2, 1988, pp. 249–303. JSTOR, www.jstor.org/stable/762144. Accessed 20 Oct. 2020.

³¹⁹*Ibid*

³²⁰Grover C. Sonja "Children defending their human rights under the CRC communications procedure: On strengthening the convention on the rights of the child complaints mechanism", Publisher: Springer; 2015, pg.163

³²¹Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure. art.12

the information regarding:³²² (a) The name of the State party against which the communication is directed; (b) The declaration by the State party submitting a communication in accordance with article 12 of the Protocol; (c) The provision or provisions of the Convention and/or the substantive Optional Protocols thereto alleged to have been violated; (d) The objectives of the communication; (e) The facts of the claim. These are listed in rule 43, paragraph 4 of the Rules of procedures.

Governments can file inter-state communications against any other government that has given the Committee permission to receive and review these kinds of complaints. The State parties must specifically say that they are willing to accept and respond to inter-state communications when or after they ratify the Optional Protocol on a communications procedure, and can only file communications against other governments if they have also agreed to accept them.³²³

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

A communication under article 12 of the Protocol may be submitted to the Committee by a State party which claims that another State party is not fulfilling its obligations under the Convention and/or the substantive Optional Protocols thereto, and which has made a declaration in accordance with article 12 of the Protocol.

The States parties may withdraw that declaration at any time by notification to the Secretary-General. Such a withdrawal shall not affect the already initiated procedure/s. No further communications by any State party shall be received 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.³²⁴

The Committee is responsible for passing along any inter-state communication it receives to the government accused of violating children's rights. There is no automatic requirement that a government should submit an official response to an inter-state communication filed against it, but the Committee may ask either government involved to provide additional information. If desired, the Committee can work with the governments to set out rules for whether and when submissions

³²²Committee on the Rights of the Child. "Rules of procedure under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure" U.N.Doc. CRC/C/62/3; 2013; Rule;

³²³Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure. art.12

³²⁴Ibid

and responses should be filed, facilitate "friendly solutions" or establish special commissions to help governments reach an agreement.³²⁵

Communications are then reviewed by the Committee in closed sessions. Once this process is complete, the Committee will issue a report and promptly provide copies to both of the governments involved. Where a friendly solution has been reached, the Committee will limit its report to a short statement of the facts and description of the solution. It can also share its views on the agreed solution with the complaining and defending governments, although these must remain confidential. The Committee's reports are considered final, and there are no provisions for follow up.

4.4.2. Proceedings under the inter-state communications procedure of the Optional Protocol

Although inter-state communications exist in many other similar agreements at the universal level for the human rights protection, practice shows that they are very rarely used. Due to their small practical significance, the question arose about their inclusion in the final draft of the Protocol. Compared to other international instruments, it can be seen that except for OP-CRPD, all others contain provisions for reviewing inter-state communications.³²⁶

From the previously presented provisions, we can outline some of the advantages and disadvantages of the implementation of the inter-state communications. Some of the advantages are: - offers the broadest scope to raise potential violations of children's rights; - do not have to identify individual child victims; - and aren't limited to serious or widespread rights violations. They also offer greater flexibility and simplicity in terms of review procedures.

This said, inter-state communications are rarely used, and can risk being more about politics than children's rights. Inter-State communications have the potential to address systematic, widespread violations; often grave, which cannot be addressed under a collective communications mechanism (given that the collective communications option is not available under the OPIC).³²⁷ Nonetheless,

³²⁵Committee on the Rights of the Child. "Rules of procedure under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure". U.N.Doc. CRC/C/62/3; 2013; Rule 25

³²⁶CRIN. "CRC Complaints Mechanism Toolkit: Annex II Understanding OP3-CRC: Comparison of existing Complaints Mechanisms". Available at: <https://archive.crin.org/en/guides/legal/crc-complaints-mechanism-toolkit.html>

³²⁷ Grover C. Sonja "Children defending their human rights under the CRC communications procedure: On strengthening the convention on the rights of the child complaints mechanism", Publisher: Springer; 2015, pg.164

advocating for a government to file an inter-state communication can give the Committee a chance to look at virtually any children's rights violation.

4.5. International assistance and cooperation

The final provisions of the protocol regulate the International cooperation and mutual assistance for the implementation of the protocol. In order to ensure the full realization of human rights and children's rights as well, it is recommended multi sectoral approach and joint forces of both the national and international bodies and programs.

With the consent of the State party concerned, the Committee may transmit 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.³²⁸ In addition to the opinions and views of the Committee, any observations and suggestions from the State parties shall be transmitted to these entities.

On the other hand, the Committee, with the consent of the State party concerned, may ask for an assistance form all such bodies, institutions and funds if it is necessary. Each of them, within its field of competence, will provide assistance and support on any matter, so that the Committee, after collecting all relevant information, can decide appropriately.³²⁹

In the Committee's fifteenth biannual report, in part C³³⁰ dedicated to the 'International cooperation and solidarity for the implementation of the Convention' it emphasized the mutual cooperation with the United Nations entities, other competent bodies (other human rights mechanisms) and representatives from non-governmental organizations. Some of them are: The International Labor Organization, the International Organization for Migration, the World Health Organization, Child Rights Connect, Child Soldiers International, Child Rights International Network etc.

In this section, it is particularly important to underline that the Committee never acts on its own, but always ask for a consent of the State party concerned. This leads us to the fact that although

³²⁸Optional Protocol to the Convention on the Rights of the Child on a communications procedure. U.N.Doc. A/RES/66/138, art.15

³²⁹Ibid

³³⁰United Nations. General Assembly. "Report of the Committee on the Rights of the Child". U.N.Doc. A/75/41; New York, 2020

children's rights are crucial in all these international documents, we should still keep in mind that states are the main entities in international public law.

4.6. Final provisions of the Protocol

The final provisions of the Protocol regulate technical issues such as signature, accession, ratification and entry into force of the Protocol, as well as the provisions for amendments to the Protocol. The final part of this Protocol also contains provisions in regard to submission of a report by the Committee on the Rights of the Child to the UN General Assembly as well as the obligation to disseminate information on the content and importance on the present Protocol. At the very end, the provisions for denunciation of this Protocol, the depository and the authentic texts of the Protocol are left. The final provisions of the protocol are contained in article 16 to article 25.

Submission of a report to the General Assembly (art. 16)³³¹ - The art. 16 supplements the Committee's obligations to the UN General Assembly in the area of reporting on its work, which are in accordance with Article 45 paragraph 5 of the CRC.

Article 16 of the Optional Protocol on a communications procedure provides that the Committee has to include in its report submitted every two years to the General Assembly *a summary of its activities carried out under the Optional Protocol*.

In its biannual report to the General Assembly, the Committee shall include a summary of the activities it has carried out in accordance with the Third Optional Protocol. The CRC Committee has submitted its last report to the General Assembly in mid-2020, and in this report it has briefly stated what activities it has carried out in the previous two years in relation to the Third Optional Protocol.³³² The Committee divided the undertaken activities into two parts: *Part A* - Action taken by the Committee in respect of issues arising under article 5 of the Optional Protocol where it stated that during the reporting period, the Committee received over 200 individual communications under article 5 of the Optional Protocol, of which 71 were registered. This brought the total number of registered cases to 116 as at 6 March 2020. As at the same date, there was a backlog of 78 cases

³³¹Optional Protocol to the Convention on the Rights of the Child on a communications procedure. U.N.Doc. A/RES/66/138, art.16

³³² United Nations. General Assembly. "Report of the Committee on the Rights of the Child". U.N.Doc. A/75/41; New York, 2020, pg. 9

pending examination by the Committee.³³³ *Part B-* Action taken by the Committee in respect of issues arising under article 13 of the Optional Protocol where it is stated that during the reporting period, the Committee received one request to open an inquiry.³³⁴

Dissemination of the Optional Protocol (Art.17) – *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.*³³⁵ That means that the Committee and each State party should make the Protocol accessible to as many citizens as possible and in a language that is understandable to the public at large and children in particular.

Therefore, shorter and adapted versions of the CRC and the Optional Protocols are being prepared and are available in several versions for different age groups (up to 9 years, 9 to 12 years, and from 13 to 18 years) in child friendly language.³³⁶ Child friendly version of the website on the Committee in the Rights of the Child is also available.³³⁷ Usually, this process is led by UNICEF and civil society organizations working in the field of children's rights. The child friendly versions are available on Macedonian and Albanian language as well.

Signature, ratification and accession (art.18)³³⁸ – *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. The present Protocol is subject to ratification*³³⁹ *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. The present Protocol*

³³³ Ibid, pg. 9 and 10

³³⁴ Ibid, pg. 10 and 11

³³⁵ Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, Art. 17

³³⁶ UNICEF. The Convention of the Rights of the Child: The child-friendly version. Available at: <https://www.unicef.org/media/60981/file/convention-rights-child-text-child-friendly-version.pdf>

³³⁷ Committee on the Rights of the Child. "Information for children".

Available at: <https://www.ohchr.org/EN/HRBodies/CRC/Pages/InformationForChildren.aspx>

³³⁸ Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, Art. 18

³³⁹ „Ratification defines the international act whereby a state indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act. In the case of multilateral treaties, the usual procedure is for the depositary to collect the ratifications of all states, keeping all parties informed of the situation. The institution of ratification grants states the necessary time-frame to seek the required approval for the treaty on the domestic level and to enact the necessary legislation to give domestic effect to that treaty"; [Arts.2 (1) (b), 14 (1) and 16, Vienna Convention on the Law of Treaties 1969]; Available at: https://treaties.un.org/doc/Treaties/1980/01/19800127%2000-52%20AM/Ch_XXIII_01.pdf

shall be open to accession³⁴⁰ by any State that has ratified or acceded to the Convention or either of the first two Optional Protocols thereto. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General.

Entry into force (art.19)³⁴¹ – Article 19 sets that *the present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession. 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.*

Violations occurring after the entry into force (art.20)³⁴² - *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.*

In this provision, we can note the non-retroactivity of treaties which is one of the basic principles of the international public law defined in the Vienna Convention on the Law of Treaties.³⁴³

Amendments (art.21)³⁴⁴ – This article regulates that any State party may propose an amendment to the present Protocol and submit it to the Secretary-General 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 (paragraph 1). An amendment shall be binding only on those States parties that have accepted it (paragraph 2).

Denunciation from the Protocol³⁴⁵ - Article 22 stipulates the possibility for any State party to denounce the present Protocol by giving written notification to the Secretary-General of the United Nations. Denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.

³⁴⁰ "Accession" is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force"; [Arts.2 (1) (b) and 15, Vienna Convention on the Law of Treaties 1969]; Available at: https://treaties.un.org/doc/Treaties/1980/01/19800127%2000-52%20AM/Ch_XXIII_01.pdf

³⁴¹ Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, Art. 19

³⁴² Ibid, art.20

³⁴³Article 28 of the Vienna Convention on the Law of Treaties 1969] Non-retroactivity of treaties Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.

³⁴⁴ Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, Art. 21

³⁴⁵Ibid, Art.22

Depositary of the Protocol³⁴⁶ - Article 23 provides that the Secretary-General of the United Nations is the Depositary of the present Protocol. This is an identical practice to other human rights treaty bodies.

Languages in which the Protocol is originally available³⁴⁷ - Article 24 provides that the Arabic, Chinese, English, French, Russian and Spanish texts of this Protocol are equally authentic. The Secretary-General of the UN shall transmit certified copies of the present Protocol to all States. This is an identical practice to other human rights treaties.

³⁴⁶Ibid, Art.23

³⁴⁷Ibid, Art.24

CONCLUSION AND RECOMMENDATIONS

Through this thesis, it can be concluded that the adoption and entry into force of the Third Optional Protocol to the Convention on the Rights of the Child is a significant step forward in the protection of children's rights at the international level. More importantly, it is expected that its State parties will be more committed to children's rights and create better conditions for their protection because the main goal is to encourage countries to create national legislation, functional institutions and mechanisms for better implementation of children's rights.

As stated at the beginning of the thesis, the primary aim was to give an overview of the international mechanisms in the children's rights area with special reference to the Third Optional Protocol on the communications procedure. This thesis achieved its goal by presenting the Convention on the Rights of the Child as the highest international legal act, by reviewing the role of the Committee on the Rights of the Child as an international monitoring mechanism and a detailed review of the Third Optional Protocol as an instrument of direct address to the CRC Committee. Having in mind that the OPIC provisions are mainly based on other international complaint mechanisms, reference was made to three of them (HRC, CEDOW, CERD).

I especially want to emphasize that the hypotheses of the thesis have been confirmed. It is very evident that the adoption of the Third Protocol has strengthened the position of both the CRC and the CRC Committee on the Rights of the Child internationally and nationally. This is clearly visible from the large number of complaints submitted to the Committee and can lead us to two conclusions. Firstly, it means that children and their representatives have confidence in the CRC Committee capacities, and secondly can also show that children's rights are often violated and are not adequately protected at the national level. Hence, we recall once again the provision that the Committee does not intend to take on the role of state governments. The Committee's role is only to be a higher instance of child rights protection and to act in exceptional cases. Therefore, a lot needs to be done at the national level, especially with the representatives of the institutions that are the main stakeholders in the circle of children's rights protection.

In this concluding section, are listed some perceived advantages and disadvantages of this Protocol that we have identified through the analysis, and consequently, we will propose recommendations for strengthening its position and role in the international legal system.

Despite several identified shortcomings that have also been confirmed by other authors and child rights experts as well, the benefits brought by this Protocol are far greater and more significant. First of all, the most important thing is that such a Protocol has been adopted at the international level and has already been applied in practice in the countries that have acceded to it. This confirms that children become titular in international law and their rights belong equally into the category of all other human rights. This protocol gives children and their guardians an opportunity to address the international authority and seek greater protection of their rights when national authorities and courts have failed to protect children's rights. The procedure for reviewing individual complaints is free of charge, but it should be kept in mind that file complaints preparation is demanding and requires some financial expenses.

Some of the identified weaknesses of this mechanism, and recommendations for their possible overcoming are listed below. The recommendations are structured in two parts which refers to international and national level. Recommendations at the international level refer primarily to improving the work of the Committee and better implementation of the Protocol in practice.

Recommendations at International level:

- Greater involvement of children in all processes. We found out that the children were not involved in the CRC preparation process, nor in the process of the OPIC drafting. It is contrary to the basic principles on which the CRC is based, child participation and respect for the child's opinion. It is recommended to encourage and support the children's participation and to adjust the procedures to be child- friendly.
- The available data show that since the entry into force of the Protocol, out of a total of 300 complaints submitted, only 6 have been submitted by children. It is a fact that should seriously be taken into consideration. That is a signal that children are not familiar enough with this instrument and do not have adequate opportunities to use it. It is necessary to provide encouragement to children and their representatives to address the Committee on the Rights of the Child.
- Although the individual complaint procedure itself is basically free of charge, there are large financial costs due to the need to translate all documents into one of the official UN languages. This limits access to the Committee on the Rights of the Child. One of the recommendations on how to overcome this is to have temporarily engaged people in the

Secretariat of the Committee from the respective country from which the complaints were submitted. These child rights specialists will assist in the process in terms of language interpretation, as well as professional assistance in terms of interpretation of the national legislation of the respective country.

- Weak monitoring mechanism by the CRC Committee to monitor the implementation of its decision by the state party. - This is a weakness faced by all UN Committees and remains an open issue at the international level. One recommendation for overcoming this situation may be the involvement of non-governmental organizations that can monitor the implementation of decisions by states. The national and international organizations have experience in monitoring the implementation of the CRC and the recommendations of the states, so this will only expand their role national level monitoring. This is a far more economical, and it is expected that it would be much easier accepted by the states because a similar practice has been done by NGOs so far and the states will feel less interference in their internal sovereignty.
- Strengthening the child rights movements and support NGOs which are an extended arm of the Committee on the Rights of the Child.
- Improving the database of the Committee on the Rights of the Child by establishing detailed data segregation system.
- Strengthening the Committee's human and financial capacities enabling to be more professional and more independent
- Providing child rights education – Child rights education should be accessible to all children, available at the language and style they understand
- Collective communications are not permitted under OPIC, and so, there needs to be an identified victim (the children's communication had to be made in the name of identified children).
- The Committee's support for national independent monitoring bodies - It should be noted that the CRC Committee is not the only body in charge of monitoring the implementation of the rights of the child. First and foremost, this monitoring role is to be given full attention at the national level, through national independent monitoring bodies such as children's

ombudspersons in each and every state party. That is why we need to work on strengthening these national monitoring bodies.

Recommendations at national level:

The recommendations at the national level are primarily referring to the Republic of North Macedonia, but it is not excluded that some of them are applicable in other national legislations.

- First, we recommend ratification of the Protocol by the Assembly of North Macedonia. As stated in the thesis, this Protocol has been signed, but it is not ratified yet.
- Establishment of an independent national mechanism for monitoring the rights of children - given that the National Commission for the Rights of the Child has long been dysfunctional in practice and non-existent, it is more than necessary to establish such a body at the national level. This body should have the authority to monitor the implementation of the CRC and its protocols in practice at the national level.
- Public campaigns and disseminations the OPIC on child-friendly language
- Preparation of a National Strategy for the Children's Rights and an Action Plan where the promotion of the OPIC will be one of the goals
- More frequent analyzes and systematic research regarding the instruments implementation in practice and to create national and local policies based on the findings

I can freely say that this protocol strengthens one of the fundamental principle upon which the CRC stands and that is the principle of children's participation. With this protocol the children or their representatives are given the opportunity to take part in the struggle for the realization of their rights and turn directly to independent international expert authority.

Having in mind that this topic is not considered enough at the international level, and is not considered at all at the national level in North Macedonia, I hope that it will give an appropriate expert contribution in this area, especially at its national level.

I hope that this thesis will encourage the government of the North Macedonia to soon ratify this protocol. I also hope that this will help in terms of introduction to this opportunity and dissemination

of the Protocol, as well as encouraging and stimulating the use of the opportunities provided by this protocol. The persons that I interviewed while I was preparing the thesis, would contribute to this, as well. The OPIC ratification will not solve the problems in the child rights area, but it will demonstrate political will and determination of all political actors in Macedonia for creation a better place for living for all children in the country.

I believe that this study will be useful for all the professionals who work for children and with children in legal issues – judges, public prosecutors, lawyers and experts of other profiles as social workers, psychologists, pedagogues, health workers etc. I really hope it will be interesting read for the NGOs' representatives dealing with the children's rights as well as for the national and local authorities participating in the child rights policies creation.

Given that my work is closely related to the defense of children's rights, I am really interested in how this protocol will work in practice both personally as a lawyer and professionally as a defender of children's rights. Given that this Protocol has been signed by the Republic of North Macedonia, but it has not been ratified, I hope that this topic will add to the mobilization of the competent institutions and will serve as a tool for advocacy and lobbying for faster ratification of the Protocol.

Thus, I am particularly interested in how it would work in practice in the country, whether children who have been victims of injustice and whose rights have been violated, will turn to the international scene when they discover that their rights cannot be adequately protected in the domicile state. I also hope this will help encourage children to speak out about violations of their rights, violence, daily suffering, abuse and unequal treatment. Me, as a proponent of children's rights, really believe that this mechanism has the capacity to shape contemporary children's rights system.

Taking all into account, I can conclude this work with the well-known saying that "this is a small step for the international law, but a big one for defenders of children's rights, and especially for children as rights holders."

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