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Editorial



A Decade of the Optional Protocol to the CRC on a Communications Procedure

Progress, Challenges and the Pathways Ahead for Children's Access to Justice

1 Reflecting on a Decade of OPIC

In April 2024, the Optional Protocol to the Convention on the Rights of the Child on a communications procedure (OPIC) marks its 10th anniversary. Over the past decade, the United Nations Committee on the Rights of the Child (CRC Committee or Committee) has received a few hundred of complaints (formally: communications) by or on behalf of children and has adopted more than 120 decisions and views on the merits concerning various children's rights matters. It is fair to say that since the entry into force of OPIC in 2014, a growing body of children's rights jurisprudence has emerged. This has been impactful in the sense that it has contributed to a better understanding of complex and also sensitive children's rights matters and has led to legislative changes and better outcomes for children in certain specific cases. The OPIC case law has also revealed that, in line with OPIC's admissibility's criteria (Article 7 (e) OPIC, the CRC Committee is reluctant to admit cases when domestic remedies are not exhausted, which represents the idea that effective remedies should preferably be available at the domestic level and that OPIC should contribute to the development of such remedies close to where children live and grow up (Preamble OPIC). As we approach the 10th anniversary of OPIC, it is the right time to contemplate on the first ten years of children's rights jurisprudence under this international access to justice mechanism for children, delve into the valuable insights gained and reflect on several burning questions demanding international, scholarly attention. This editorial, which builds on the work of the Leiden Children's Rights Observatory, an open access platform for the

analysis of children's rights jurisprudence under OPIC and other international or regional human rights mechanisms (childrensobservatory.org), aims to invite scholars, students and professionals to contribute to this reflection (see further and more extensively Liefwaard, forthcoming).

2 Access to Justice for Children

Access to justice, defined as the ability to obtain a just and timely remedy for rights violations as put forth in national and international norms and standards, including the Convention on the Rights of the Child (CRC), is central to children's rights protection (UN Human Rights Council, 2008: para. 4). The CRC Committee emphasises that for children's rights to have real meaning, effective remedies must be available (CRC Committee General Comment No. 5: para 24; UN Human Rights Committee General Comment No. 31: para. 15). Although the CRC itself does not explicitly reference the right to an effective remedy or access to justice, it is implied that children, like any other human beings, possess such rights (Article 8 UDHR; Article 2(3) ICCPR, cf Article 41 CRC; Liefwaard, 2019: 195–227). Despite this legal premise, specific 'barriers' (UN Human Rights Council, 2008: para. 13ff) hinder children's effective access to justice. These barriers include the intricacies and lack of child-sensitivity in justice systems, contributing to incomprehensibility and inaccessibility for children. Legal empowerment for children is often lacking, and justice systems can be intimidating or even perilous, especially in situations where children risk reprisals for lodging complaints. Additionally, issues such as the lack of legal capacity or standing for children pose significant obstacles. This dependence on legal representatives denies children the autonomy to pursue justice independently (*ibid.*; UNICEF, 2015).

3 OPIC: International Recognition of Children's Access to Justice

Although, access to justice has for long been acknowledged as a crucial element of human rights protection, the rule of law and, more recently also of, sustainable development (see sustainable development goal 16), access to justice for *children* has not been taken so seriously, neither internationally, nor domestically. Until 2011 the CRC was the only human rights treaty without a communications procedure. The adoption and entry into force of OPIC, respectively in 2011 and 2014, marked a crucial turning point. OPIC symbolises the international acknowledgment of children's right to access to justice. It

has introduced a communications procedure allowing individual or groups of children to bring forth alleged violations of their rights under the CRC and its first two optional protocols (OPAC; OPSC). OPIC's significance lies in affirming children as 'subjects of rights' (Preamble OPIC) and extending access to justice internationally (Spronk-Van der Meer, 2014: 268–269). In addition to receiving communications, OPIC gives the CRC Committee the authority to conduct inquiries into grave or systematic violations by a state party to the CRC, which it has used once so far (Article 13; Espejo Yaksic, 2018).

4 Developments under OPIC since 2014

At the end of 2023, 51 states had ratified or acceded to OPIC, with 16 more that had signed it (UN Treaty Database, 2023). It is notable, however, that 130 states have taken no action, revealing a considerable gap compared to the CRC with its 196 States Parties. Geographically, Europe and Latin America lead in ratifications, while Africa, Asia, North America and Australia/Pacific lag behind. Migration-related matters have dominated the cases brought to the CRC Committee, highlighting OPIC's immediate relevance to pressing global issues. The CRC Committee adopted its first substantive views in 2018 in a case against Denmark in which a girl faced deportation to Somalia, where she would be at risk of female genital mutilation (*I.A.M v. Denmark*; Sloth-Nielsen, 2018). Subsequently, the Committee has addressed numerous migration-related cases, particularly against Spain and other European countries, such as Belgium, Denmark, Finland and Switzerland, covering a spectrum of issues, including age verification, deportation, immigration detention and entitlements to medical care, an adequate standard of living and education. The diversity of cases has expanded in recent years, encompassing issues like cross-border custody rights, international child abduction, violence against children, youth justice and child protection. Prolific cases against France and Finland regarding repatriation of children from foreign fighters (*L.H. et al. v. France* and *P.N et al. v. Finland*) and the landmark children's climate case (*Chiara Sacchi et al. v. Argentina et al.*) showcases the breadth of concerns addressed under OPIC.

5 Active CRC Committee: Learning, Reflecting, and Impacting

The CRC Committee's engagement with OPIC reveals an active and evolving treaty body. The rapid increase in cases under OPIC has stimulated the Committee to learn and adapt rapidly. Its decisions on legally challenging and

sensitive matters, such as extraterritorial jurisdiction in cases against France (*L.H. et. al. v. France*; *F.B. et al. & D.A. et.al. v. France*; Sandelowsky-Bosman and Liefwaard, 2022) and Finland (*P.N. et al v. Finland*; Ignatius, 2023), which has met with criticism (Duffy, 2021), but has also led to acknowledgement by the European Court of Human Rights (*H.F. and others v. France*, European Court of Human Rights 2022: para. 269), indicates the Committee's influence beyond its immediate jurisdiction. It further demonstrates both courage and a commitment to protecting children's rights. Its views concerning the decriminalisation of abortion in Peru showcases the Committee's responsiveness to highly sensitive, contemporary challenges (*Camila v. Peru*; Kangaude, 2023).

As far as the outcomes of OPIC cases is concerned, the CRC Committee has shown a significant development in its approach to remedies provided in case of rights violations, incorporating a diverse range of individual and general measures that align with the child-specific nature of OPIC (Liefwaard, 2023: 486–504). These remedies address both substantive and procedural rights and builds on critical CRC's principles and rights, including the best interests of the child, the right to be heard, as well as the right to effective and accessible remedies. However, the extent to which the CRC Committee actively involves children in defining remedies remains unclear, as the Committee has not yet explicitly referred to children's views on expected outcomes in its decisions (*ibid.*).

The evolving legal interpretations and views adopted by the CRC Committee demonstrate tangible impacts. Notably, cases against Spain prompted legislative reforms, particularly in safeguarding the rights of refugee children, with a focus on age determination (CRC Committee Fourth Follow Up Progress Report on Individual Communications, 2022). Denmark also took favourable actions in migration contexts, responding to interim measures suggested by the CRC Committee (Van Dijk, 2020). France has increased repatriations of children in Northern Syria following the Committee's recommendations. In another case, a girl, denied admission to school due to irregular residency, gained admission after the Committee intervened (Liefwaard and Van Dijk, 2020), eliciting a positive response from the State Party and the Committee alike.

Yet, the follow-up reports issued by the Committee over the years underscore the challenges in guaranteeing the effective implementation of remedies specified in its decisions by States Parties and reveals a lack of engagement with the Committee's findings (CRC Committee Fifth Follow up Progress Report on Individual Communications, 2023). In addition, the OPIC procedure faces various challenges relating to speediness (i.e. cases may take a long time) and the

accessibility for children, with Geneva being far away from local realities and the majority of cases being brought to the Committee by others than children themselves. The lack of child sensitivity in the procedure, also with regard to remedies (e.g. children are not asked what they expect from a communication), continues to require the CRC Committee's attention, despite its demonstration of creativity in informing both children and the broader audience about decisions and follow-up, employing methods such as video messages and open letters (Liefwaard, forthcoming). Moreover, there are some further issues requiring the attention of legal scholarship, for example concerning the exhaustion of domestic remedies and the Committee's alignment with the case law of other treaty bodies and regional human rights tribunals, among others. Finally, OPIC has placed the CRC Committee under an additional burden, which comes on top of all the other work the Committee is already doing and may, ultimately, very well undermine the efficacy of the Committee's work altogether. This also underscores that domestic remedies are much needed to secure access to justice for children in a more effective and sustainable way.

6 Navigating the Pathways Ahead

As OPIC approaches its 10th anniversary, the international journey for children's access to justice reveals notable achievements and ongoing challenges. OPIC emphasises every child's inherent right to access to justice, with the CRC Committee's active involvement contributing to evolving jurisprudence. However, challenges persist, including geographical limitations in OPIC hearings and the need for enhanced child-sensitive procedures. Achieving universal commitment to children's access to justice remains a concern due to uneven ratification patterns among states. With all its limitations, OPIC stands as a beacon for children's rights. Its 10th anniversary is an invitation for renewed commitment – to refine child-sensitive procedures and remedies, enhance accessibility, and fortify domestic remedies. After OPIC's first decade, the strengthening of domestic remedies for children remains key, yet the CRC Committee's guidance showcases OPIC's potential for being the catalyst for change at the national level. The legacy of OPIC lies not so much in its past accomplishments but more in its capacity to inspire future endeavours to secure children's access to just and timely remedies for children's rights violations, ensuring that the global pursuit of justice for every child remains unwavering.

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