

Navigating Human Rights Complaints Mechanisms

RULES, TOOLS AND RESOURCES

With a foreword by Sir Nicolas Bratza



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Foreword

FOREWORD

One of the most dispiriting features of my work as a judge of the European Court of Human Rights for 14 years was the significant number of occasions on which a case had to be rejected not because of a lack of substance but because of a failure to comply with the basic requirements for lodging or pursuing an application. In some cases, the failure could be rectified; more often than not, the damage was irremediable, the case falling fatally at the first hurdle. The importance of bringing home to applicants and their representatives not only the requisite rules governing the bringing of applications but the need for strict compliance with those rules is difficult to overstate.

Proceedings before the Strasbourg Court have not been lacking in practical guides setting out the increasingly detailed rules and case-law governing such matters as victim status, legal standing, time limits and forms of claim and intervention. Similar guides exist in respect of other international courts and tribunals. What, however, makes the current handbook special is that it combines in a single volume a clear, concise and accurate guide to the procedural requirements of a wide range of international courts, commissions, committees and other bodies concerned with the protection of human rights, including the vitally important right of freedom from discrimination, which is the direct and particular concern of several of the bodies whose procedures are described. As is clear from the handbook, the roles, jurisdiction and procedural rules of the various bodies differ widely and require separate and careful study.

The considerable added value of the handbook is that it is prepared by the Equal Rights Trust, an international organisation with unparalleled expertise in combating discrimination and advancing equality through advocacy and litigation, and that it contains, in respect of each of the international mechanisms examined, words of advice from expert partners of the Trust, with detailed knowledge and experience of using the particular mechanism.

Increasing attention has been paid in recent years to the importance of protecting against all forms of discrimination, both direct and indirect. In the Strasbourg Court alone, the last decade has witnessed a growing number of significant judgments and decisions finding separate violations of the Convention on grounds of discriminatory treatment. In this development, NGOs, including the Trust, have played a vital role, whether by lodging applications or by intervening in pending proceedings and adding their authoritative voice to the case. It is no exaggeration to say that, without the involvement of such organisations, serious issues of discriminatory treatment would in all likelihood never have seen the light of day or have resulted in a successful outcome.

However, as experience has shown, even well-founded claims may falter if there is not close adherence to the procedural rules of the body concerned. I therefore warmly welcome this excellent handbook, which admirably fills the need of providing both an overview and a valuable reminder of the most important procedural requirements of a wide range of international institutions. The Equal Rights Trust are to be congratulated in producing a handbook that will become an invaluable tool for claimants and their representatives alike.

Nicolas Bratza

Former President of the European Court of Human Rights

Introduction

SUPPORTING THE GROWING GROUP OF HUMAN RIGHTS LITIGATORS

An introduction

For the past decade, the Equal Rights Trust has been supporting lawyers around the world to take cases challenging discrimination and inequality before the courts. While there is well-established practice of litigating these and other human rights matters in some countries, in many of the places in which the Trust has worked, this practice has been new.

At the demand of its in-country partners, the Trust has focussed on developing the foundations for successful human rights litigation and development of judicial practice. Accordingly, the Trust has responded to lawyers' demands for support to expand their knowledge of the human rights obligations to which their states are bound and for technical assistance to them and their teams on individual cases. This work begins before the national courts, but it is always done with one eye on the potential regional or international avenues, should the case be lost at the domestic level.

As time has passed, some cases have been won and some lost. As the number of successes has grown, so too has the number of cases where domestic remedies have been exhausted without a successful outcome. Increasingly, the Trust's partner lawyers and clients are looking beyond their borders for justice. As they do, they are asking to hear from others who have trod the path before them: How does one avoid basic procedural pitfalls? What advice can litigators with experience of regional mechanisms offer?

At the same time, the Equal Rights Trust and Ashurst LLP have developed a strong partnership. As organisations, we are both committed to finding innovative ways to ensure that *pro bono* work is appropriate, responsive to demand and impactful. Together, we have developed a model for *pro bono* partnership, whereby Ashurst LLP provides a dedicated client team of lawyers committed to supporting the work of the Equal Rights Trust and its partners.

This handbook has come about in the context of our work together, as the Trust faced increasing demand from its partners for guidance on litigating regionally and internationally. While the Trust continued to provide technical support in respect of particular cases, it became clear that many of its partner lawyers would benefit from a simple, accessible resource to address their preliminary queries about the procedural aspects of litigation at the regional and international levels. Research by the Trust, Ashurst LLP and partner lawyers found that no such resource existed, so together, we decided to create this handbook.

The process for creating the handbook benefited from the cooperation between an international non-governmental organisation and a commercial law firm with a deep commitment to *pro bono* work. Ashurst LLP brought to bear the legal research and analytical skills and understanding of procedural law of its *pro bono* lawyers. A team of Ashurst LLP lawyers researched the procedural rules and relevant jurisprudence of the various bodies and drafted the handbook, undertaking

Introduction

work beyond the limited capacity of a small organisation like the Trust. The Trust then engaged its network of international organisations, seeking hints, tips and guidance from experienced litigators around the world.

This handbook was conceived as a starting point for the Equal Rights Trust's beneficiaries – those lawyers and clients planning to take a complaint before a regional or international mechanism and new to doing so. It is important to note that there is a plethora of guides to international litigation available; our aim is not to replicate their detail, but rather to provide litigators with a starting point: an accessible introduction to the procedural rules, together with some practical advice from experts. Accordingly, this handbook does not provide advice on the interpretation of substantive human rights. Nor does it seek to provide a short-cut for the important process of learning the procedural rules and relevant jurisprudence in detail before finalising your claim. Rather, it aims to provide an introduction.

The handbook is split into sections for each of the regions which have functioning regional complaints mechanisms – Africa, Europe and the Americas – and a section for the UN treaty body individual complaints mechanisms which are in operation. The handbook does not cover the UN Human Rights Council. Each section contains a chapter for each of the relevant complaints mechanisms. It also provides guidance in the form of maps and tables as to which mechanism is available to you when seeking to bring a complaint about a particular state.

We hope you find this handbook a useful starting point as you take the next step in your litigation journey.

Finally, we would like to note that we see this as the beginning of a process. Ashurst LLP intends to keep the handbook – which is designed to be, primarily, an online resource – updated periodically. As is hopefully evident from the array of people who have contributed their thoughts to the handbook, it is intended to be a collaborative project and one which will grow from this first starting point. Your input and engagement with this collaborative process are greatly appreciated and we would welcome your feedback.

“Alone we can do so little; together we can do so much” – Helen Keller

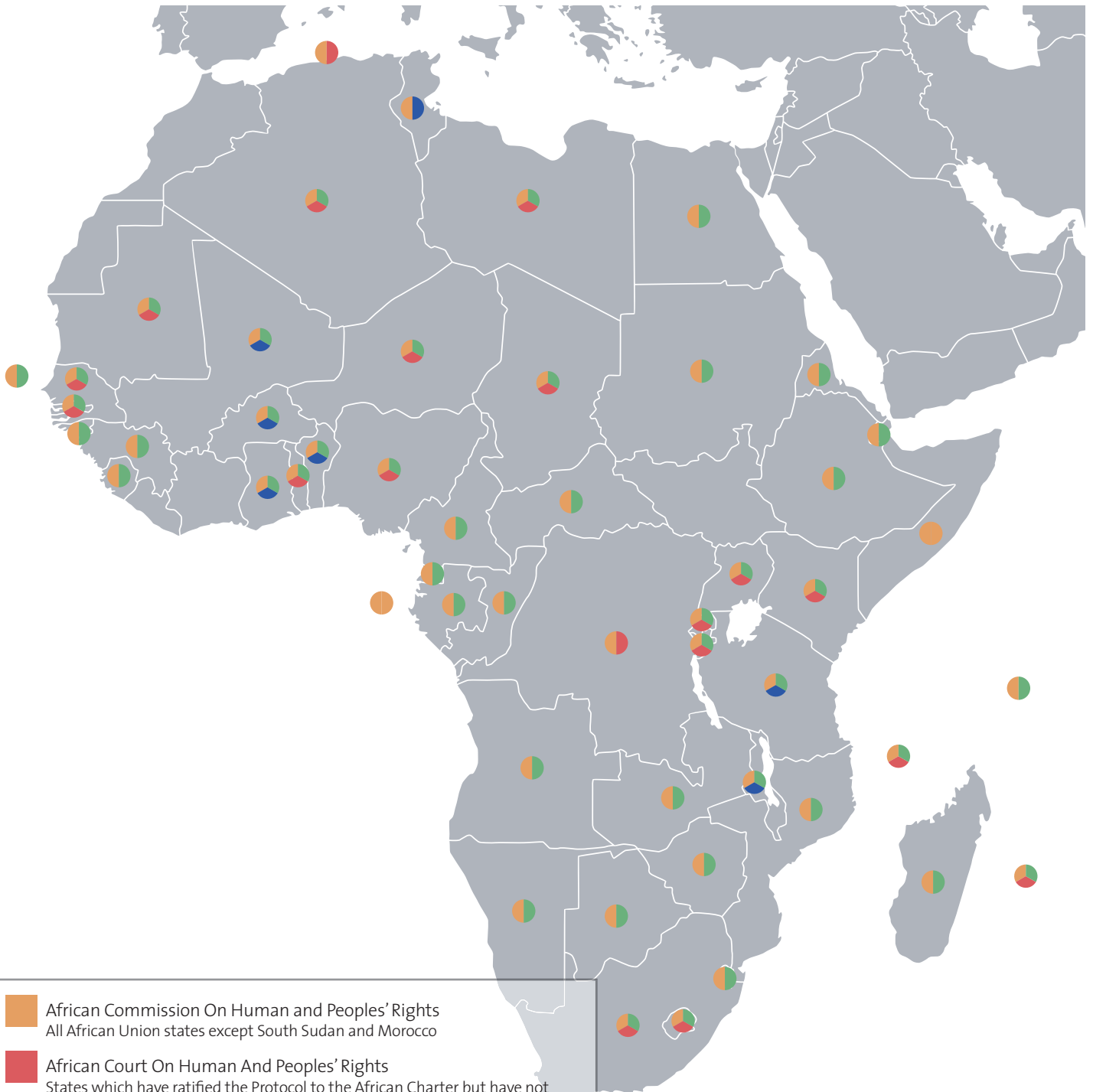
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African Regional Mechanisms



-  African Commission On Human and Peoples' Rights
All African Union states except South Sudan and Morocco
-  African Court On Human And Peoples' Rights
States which have ratified the Protocol to the African Charter but have not made a declaration accepting ACTHPR competence to receive cases from NGOs
-  African Court On Human And Peoples' Rights
States which have ratified the Protocol to the African Charter and made a declaration accepting ACTHPR competence to to receive cases from NGOs
-  African Committee Of Experts On The Rights And Welfare Of The Child
States which have ratified the African Charter on the Rights and Welfare of the Child

African Commission on Human and Peoples' Rights

1 BACKGROUND

The African Commission on Human and Peoples' Rights (the **"Commission"**) is a quasi-judicial body established pursuant to the African Charter on Human and Peoples' Rights (the **"Charter"**).¹ The Commission may also be referred to by the acronym "ACHPR".

The Commission has a broad mandate pursuant to Article 45 of the Charter which includes, among other functions, to "ensure protection of human and peoples' rights under conditions laid down by the present Charter".

The Charter confers jurisdiction on the Commission to receive communications from both States Parties² and non-States Parties³ relating to alleged violations of the Charter by States Parties. This handbook focuses upon communications submitted by non-States Parties under Article 55 of the Charter.

The procedure for such communications is prescribed in the following instruments:

- a. The Charter; and
- b. Part Three of the Rules of Procedure (the **"ROP"**),⁴ particularly Section 4.⁵

All references to "Rules" in this chapter are to the ROP.

The Commission has also published two sets of guidelines regarding communications (the **"Guidelines"**).⁶

2 WHO CAN BRING A CLAIM?

Article 55 of the Charter provides for communications to be submitted by those "other than ... State Parties". The Charter contains no other guidance as to the rules of standing for communications by non-States Parties.

The Guidelines provide that "anybody" may submit a communication, either on their own behalf or on behalf of someone else. It specifies that this includes "[o]rdinary citizens, a group of individuals, NGOs, and states Parties to the Charter".⁷ This broad principle of standing may be contrasted with the rules on standing which apply to cases before the African Court of Human and Peoples' Rights, discussed in the chapter below.

Applicants who are natural persons may request that they remain anonymous provided that this is stated in their application, and no reasons for the requested anonymity need to be provided. However, in the case of an NGO applicant, the names of the representatives of the NGO are required.⁸

The term "complainant" is used in the ROP to refer to a person who submits a communication.

Victim eligibility

Communications can be submitted to the Commission in relation to any violations of the Charter.

Article 58(1) of the Charter provides that the Commission shall draw to the attention of the Assembly of Heads of State and Government (the **"Assembly"**) cases of "serious or massive violations of human and peoples' rights". However, violations need not be "serious or massive" in order for the Commission to consider them. The Guidelines state that the practice of the Commission has been to consider every communication, even if it refers to only a single violation of the Charter.⁹

If the person's life or health is in imminent danger, Rule 98 allows the Commission to request that the State concerned adopt provisional measures to prevent irreparable harm as urgently as the situation demands. Once a communication has been submitted, a party may request that the Commission does so.

¹ African Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3 rev. 5, 1981, (the **"Charter"**), available at: http://www.achpr.org/files/instruments/achpr/banjul_charter.pdf.

² Article 47 of the Charter.

³ Article 55 of the Charter.

⁴ African Commission on Human Rights and Peoples' Rights, *Rules of Procedure of the African Commission on Human and Peoples' Rights of 2010*, 2010, (the **"ROP"**), available at http://www.achpr.org/files/instruments/rules-of-procedure-2010/rules_of_procedure_2010_en.pdf.

⁵ The ROP, pp. 33–42.

⁶ African Commission on Human Rights and Peoples' Rights, *Information Sheet No.2*, available at: http://www.achpr.org/files/pages/communications/guidelines/achpr_infosheet_communications_eng.pdf; African Commission on Human Rights and Peoples' Rights, *Information Sheet No.3*, available at: http://www.achpr.org/files/pages/communications/procedure/achpr_communication_procedure_eng.pdf.

⁷ African Commission on Human Rights and Peoples' Rights, *Information Sheet No.2*, p. 5, available at: http://www.achpr.org/files/pages/communications/guidelines/achpr_infosheet_communications_eng.pdf.

⁸ African Commission on Human Rights and Peoples' Rights, *Information Sheet No.3*; Communication Procedure, p. 5, available at: http://www.achpr.org/files/pages/communications/procedure/achpr_communication_procedure_eng.pdf.

⁹ African Commission on Human Rights and Peoples' Rights, *Information Sheet No.2*, p. 6, available at: http://www.achpr.org/files/pages/communications/guidelines/achpr_infosheet_communications_eng.pdf.

African Commission on Human and Peoples' Rights

Can an NGO or other organisation act on behalf of a victim?

Yes, pursuant to the broad principle of standing discussed above under Article 55 of the Charter, an NGO may bring a communication based on a violation of its Charter rights, on behalf of another NGO that has suffered a violation,¹⁰ on behalf of an individual, or on behalf of a group of individuals.¹¹

The author of the communication need not be related to the victim in any way.¹²

Can an NGO or other organisation intervene in an existing claim brought by a victim?

Rule 85 provides that the Commission may decide to solicit or accept interventions by parties other than the complainant and the respondent State if it considers that they could provide it with relevant information.

3 ADMISSIBILITY REQUIREMENTS

There are three stages to the assessment of a communication by the Commission: seizure; admissibility; and merits.

Seizure

A communication may be addressed to the Chairperson of the Commission through the Secretariat.

The Secretariat must be satisfied that “all necessary information has been furnished”, in accordance with Rule 93, before transmitting the file to the Commission for a decision on seizure. This includes the following information:

- a. the name, nationality, and signature of the person or persons filing it, or where the applicant is an NGO, the name and signature of its legal representative(s);
- b. whether the complainant wishes that his/her identity be withheld from the State;
- c. the address for receiving correspondence from the Commission and, if available, a telephone number, fax number and email address;
- d. an account of the act or situation complained of, specifying the place, date and nature of the alleged violations;
- e. the name of a victim where the victim is not the complainant;
- f. any public authority that has taken cognisance of the fact or situation alleged;
- g. the name of the State(s) alleged to be responsible for the violation of the Charter, even if no specific reference is made to the article(s) alleged to have been violated;
- h. compliance with the period prescribed in the Charter for submission of the communication;
- i. any steps taken to exhaust domestic remedies, or grounds in support of an allegation of impossibility or unavailability of domestic remedies; and
- j. an indication that the complaint has not been submitted to another international settlement proceeding.

Rule 36(3) provides that if a communication is in a language other than the working languages of the Commission, the applicant will ensure its interpretation into one of the working languages. The working languages of the Commission are the working languages of the African Union, which are English, French, Portuguese, Arabic and African languages.¹³

The Guidelines state that when the Secretariat receives a communication, provided all relevant criteria are met, it is registered and a summary is made and distributed to members of the Commission (the “**Commissioners**”).¹⁴ A letter is written to the complainant acknowledging receipt of the communication. The Commission is seized of the matter if at least seven of the 11 Commissioners approve seizure. If the Secretariat does not receive at least seven responses approving seizure, then the communication will be presented to all Commissioners at the Commission’s next session under Article 55(1) of the Charter.¹⁵ Article 55(2) of the Charter provides that a communication shall be considered if a simple majority of Commissioners so decide.

¹⁰ See, for example, *Huri – Laws / Nigeria*, Communication 225/98, 6 November 2000. Available at: http://www.achpr.org/files/sessions/28th/communications/225_98/achpr28_225_98_eng.pdf.

¹¹ See, for example, *Centre for Minority Rights Development (Kenya) and Minority Rights Group (on behalf of Endorois Welfare Council) v Kenya*, Communication 276/03, 25 November 2009.

¹² African Commission on Human Rights and Peoples’ Rights, *Information Sheet No.2*, p. 5, available at: http://www.achpr.org/files/pages/communications/guidelines/achpr_infosheet_communications_eng.pdf.

¹³ Organization of African Unity (OAU), *Constitutive Act of the African Union*, 1 July 2000, Article 25.

¹⁴ African Commission on Human Rights and Peoples’ Rights, *Information Sheet No.3*, p. 4, available at: http://www.achpr.org/files/pages/communications/procedure/achpr_communication_procedure_eng.pdf.http://www.achpr.org/files/pages/communications/procedure/achpr_communication_procedure_eng.pdf.

¹⁵ Under Rule 26 of the ROP, ordinary sessions are held at least twice per year.

African Commission on Human and Peoples' Rights

Admissibility

Rule 105 outlines the procedure once the Commission has decided to be seized of a communication. The Commission will provide the respondent State with a copy of the communication, notify the complainant of the decision to seize the matter, and receive submissions from both parties on admissibility.

The requirements for admissibility are outlined in Article 56 of the Charter.¹⁶ Communications shall be considered if they:

- a. Indicate their authors even if the latter requests anonymity,
- b. Are compatible with the Charter of the Organisation of African Unity or with the present Charter,
- c. Are not written in disparaging or insulting language directed against the State concerned and its institutions or to the Organisation of African Unity,¹⁷
- d. Are not based exclusively on news disseminated through the mass media,
- e. Are sent after exhausting local remedies, if any, unless it is obvious that this procedure is unduly prolonged,¹⁸
- f. Are submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized with the matter, and
- g. Do not deal with cases which have been settled by those States involved in accordance with the principles of the Charter of the United Nations, or the Charter of the Organisation of African Unity or the provisions of the present Charter.¹⁹

Rule 107 provides that the Commission shall make a decision on the admissibility of the communication once it has considered the position of the parties. Once a communication has been declared admissible, the Commission shall inform the parties and defer the communication to the next session for consideration on the merits.

4 REPRESENTATION

Rule 94 provides that natural or legal persons “may either appear in person or be represented by their appointed representative before the Commission”.

5 TIME LIMITS

Under Article 56(6) of the Charter, a communication must be submitted “within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized with the matter”.

6 FORM OF CLAIM AND INTERVENTION

What form should the complaint take?

See Section 3 above.

What form should the intervention take?

See Section 2 above. There is no prescribed form for applications.

¹⁶ Rule 106 of the ROP. For an example of a Commission's decision on admissibility, see *Sir Dawda K. Jawara / Gambia (The)*, Communication 147/95-149/96, 11 May 2000, available at: http://www.achpr.org/files/sessions/27th/communications/147.95-149.96/achpr27_147.95_149.96_eng.pdf.

¹⁷ See *Ligue Camerounaise des Droits de l'Homme / Cameroon* (Communication 65/92, 24 April 1997), deemed inadmissible for using phrases such as “regime of tortures” and “a government of barbarism”.

¹⁸ See *Embga Mekongo Louis / Cameroon* (Communication 59/91, 22 March 1995), where an appeal pending before the courts for 12 years was considered unduly prolonged.

¹⁹ The submission of a complaint to an NGO or Inter-Governmental Organisation, such as the EEC, does not render a communication inadmissible (*Embga Mekongo Louis / Cameroon* (Communication 59/91, 22 March 1995)).

African Commission on Human and Peoples' Rights

7 FORMS OF SERVICE/COMMUNICATIONS WITH THE COMMISSION

Communications are usually directed to the Secretariat of the Commission, based in Banjul, The Gambia.²⁰ For more information please contact the Commission directly.

Address: 31 Bijilo Annex Layout,
Kombo North District,
Western Region P.O. Box 673 Banjul,
The Gambia

Phone: (220) 441 05 05, 441 05 06

Fax: (220) 441 05 04

Email: au-banjul@africa-union.org

8 WHAT HAPPENS NEXT?

Section 3 of the Part III of the ROP governs the procedure once a communication has been declared admissible. This includes: the filing of observations on the merits by the complainant and the respondent State;²¹ the option of amicable settlement;²² and the Commission's decision on the merits.²³

Rule 112 outlines the procedure for follow-up on the recommendations of the Commission.

²⁰ African Commission on Human Rights and Peoples' Rights, *Information Sheet No.3*, p.3, available at: http://www.achpr.org/files/pages/communications/procedure/achpr_communication_procedure_eng.pdf.

²¹ Rule 108 of the ROP.

²² Rule 109 of the ROP.

²³ Rule 110 of the ROP.



Further reading

Online Resources

- The Commission publishes decisions on communications on its website.²⁴
- Case law database and analysis available via the Case Law Analyser on the website of the Institute for Human Rights and Development in Africa.²⁵
- A number of NGOs have produced guidance to litigation before the Commission, including: the Open Society Justice Initiative;²⁶ Minority Rights Group;²⁷ and the International Service for Human Rights.²⁸
- Gumedze S., *Bringing Communications before the African Commission on Human and Peoples' Rights*, African Human Rights Law Journal 3, 2003.²⁹
- Reventlow, N. J., *Strategic Litigation Before the African Regional Courts: Great Potential for Progressive Protection of Human Rights*, 2018.³⁰

Other Resources

- Evans, M. and Murray, R., *The African Charter on Human and Peoples' Rights: The System in Practice 1986-2006*, Cambridge University Press, 2011.
- Long, D. and Murray, R., *The Implementation of the Findings of the African Commission on Human and Peoples' Rights*, Cambridge University Press, 2015.

²⁴ African Commission on Human Rights and Peoples' Rights, *Communications*. Available at: <http://www.achpr.org/communications/>.

²⁵ Institute for Human Rights and Development in Africa, *Case Law Analyser*. Available at: <https://www.ihrda.org/african-human-rights-case-law-analyser/>.

²⁶ Open Society Justice Initiative, *Fact sheet on the African Commission on Human and Peoples' Rights*, 2013, Available at: <https://www.opensocietyfoundations.org/sites/default/files/fact-sheet-african-commission-human-peoples-rights-20130627.pdf>.

²⁷ Minority Rights Group, *Guidance: Exhausting domestic remedies under the African Charter on Human and Peoples' Rights*, Available at: http://minorityrights.org/wp-content/uploads/2016/04/Domestic-remedies-guidance_final.pdf.

²⁸ International Service for Human Rights, *African Commission on Human and Peoples' Rights*, 2013, available at: <http://www.ishr.ch/sites/default/files/article/files/achrp.pdf>.

²⁹ Available at: <http://www.corteidh.or.cr/tablas/R21582.pdf>.

³⁰ Available at: <https://grojil.org/2018/03/12/strategic-litigation-before-the-african-regional-courts-great-potential-for-progressive-protection-of-human-rights/>.



Hints and tips

communications

- *"It's important to consider the admissibility criteria for cases carefully, as the Commission takes a very rigorous approach to this."*

Judy Gitau-Nkuranga, Regional Coordinator – Africa, Equality Now

- *"It is good practice to submit communications to the ACHPR in the working language of the respondent state at the outset, as the ACHPR is likely to request that it be translated at a later date."*

Lucy Claridge, Strategic Litigation Director, Amnesty International

- While there is not much clarity in what will be considered a "reasonable" period of time to file a communication after the exhaustion of local remedies or the date that the Commission is seized on the matter under Article 56 of the Charter, general practice suggests that anything beyond six months is likely to be considered 'unreasonable'.

Submissions

- *"In our experience, the Commission appreciates references to international and regional comparative jurisprudence in submissions. For example, the case of Valasquez Rodriguez from the Inter-American Court of Human Rights has been cited by the Commission itself in several decisions."*

Judy Gitau-Nkuranga, Regional Coordinator – Africa, Equality Now

Engagement with the Commission

- It is important to take as many opportunities as possible to engage with the Commission once you file a case. It's useful to send updates to the Commission on key developments on the case, as well as attending the Commission's bi-annual ordinary sessions which are generally held in April and October each year.

Decisions

- *"In some of our communications before the African Commission, it has taken more than five years to receive a decision from the date of filing the complaint. In general, you are unlikely to receive a decision on the merits in less than two to three years."*

Gaye Sowe, Executive Director, Institute for Human Rights and Development in Africa

- As with other international and regional courts, the time periods for judgments can vary depending on a number of factors including the complexity of the case, its political import, and whether it raises an urgent matter.

African Court on Human and Peoples' Rights

1 BACKGROUND

The African Court on Human and Peoples' Rights (the “**ACTHPR**”) was established pursuant to the Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights (the “**Protocol**”).³¹ The Protocol was adopted in Ouagadougou, Burkina Faso on 9 June 1998 and entered into force on 25 January 2004.

The Protocol confers jurisdiction on the ACTHPR, including with respect to “the interpretation and application” of the African Charter on Human and Peoples' Rights (the “**Charter**”).³² The Court's jurisdiction applies to those States that have ratified the Protocol. As at February 2018, 30 States had ratified the Protocol.³³

The procedure for cases before the ACTHPR is prescribed in the following instruments:

- a. The Protocol;
- b. The African Charter; and
- c. The Rules of Court.³⁴

The ACTHPR has also published Practice Directions.³⁵ All references to “Rules” in this chapter refer to the Rules of the Court.

2 WHO CAN BRING A CLAIM?

Article 5(1) of the Protocol states that five types of parties can bring a claim in the ACTHPR:

- a. the African Commission on Human and Peoples' Rights (the “**Commission**”);
- b. the State Party which had lodged a complaint to the Commission;
- c. the State Party against which a complaint has been lodged in the Commission;
- d. the State Party whose citizen is a victim of human rights violation; and
- e. African Intergovernmental Organisations.

Under Article 5(3) of the Protocol, the ACTHPR may also permit “relevant” NGOs with observer status before the Commission and individuals to institute cases directly before it; however, the respondent State Party must have first accepted the competence of the Court to receive such cases, pursuant to Article 34(6) of the Protocol.³⁶

As at February 2018, only eight States (Benin, Burkina Faso, Côte d'Ivoire, Ghana, Malawi, Mali, Tanzania and Tunisia) had made such a declaration.³⁷

If a State has made a declaration allowing NGOs and individuals to bring claims, this does not limit standing to entities that are themselves victims, but also allows organisations to bring claims on behalf of victims.

Victim eligibility

Article 3(1) of the Protocol confers jurisdiction on the Court with respect to “all cases and disputes submitted to it concerning the interpretation and application of the Charter, this Protocol and any other relevant Human Rights instrument ratified by the States concerned”. On this basis, cases may be submitted in relation to any violations of the Charter.

Can an NGO or other organisations act on behalf of a victim?

Yes, but only in accordance with Article 5(3) of the Protocol as outlined above.

The Commission may refer a case to the ACTHPR under Article 5(1), as outlined above.³⁸ This may include referring a case that was communicated to the Commission by an NGO. In this way, an NGO may remain involved in a case that is brought by the Commission to the ACTHPR.

³¹ Organisation of African Unity, Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, OAU Doc. CAB/LEG/66.6, 2000, available at: http://www.achpr.org/files/instruments/court-establishment/achpr_instr_proto_court_eng.pdf.

³² Article 3 of the Protocol.

³³ Available at: <http://www.african-court.org/en/>.

³⁴ African Court on Human and Peoples' Rights, *Rules of Court*, 2010, available at: http://www.african-court.org/en/images/Basic%20Documents/Final_Rules_of_Court_for_Publication_after_Harmonization_-_Final_English_7_sept_1_.pdf.

³⁵ African Court on Human and Peoples' Rights, *Practice Directions*, 2012, available at: <http://www.african-court.org/en/images/Practice%20Directions/Practice%20Directions%20to%20Guide%20Potential%20Litigants%20En.pdf>.

³⁶ Article 5(3) of the Protocol.

³⁷ Available at: <http://www.african-court.org/en/>. It is also possible to withdraw a declaration of competence after it has been made, as Rwanda did in February 2016.

³⁸ See also, Rule 29 3(c) of the Rules of Court, available at: http://www.african-court.org/en/images/Basic%20Documents/Final_Rules_of_Court_for_Publication_after_Harmonization_-_Final_English_7_sept_1_.pdf.

African Court on Human and Peoples' Rights

Can an NGO or other organisation bring a claim absent a victim?

Article 4 of the Protocol gives the ACtHPR the power to give an advisory opinion on any legal matter relating to the Charter or any other relevant human rights instruments". This procedure does not require there to be a victim.

A request for an advisory opinion may be made by an African Union ("AU") member State, any organ of the AU, or "any African organization recognized by the [AU]". An organisation may be considered an African organisation recognised by the AU if it is registered in an African State and has structures at the sub-regional, regional or continental level, or undertakes its activities beyond the territory where it is registered.³⁹ An NGO will not, however, automatically be considered as one recognised by the AU by virtue of it having observer status before the Commission.

The ACtHPR will provide an opinion only if the subject matter of the opinion is not related to a matter being examined by the Commission, as specified in Article 4(1) of the Protocol.

Can an NGO or other organisation intervene in an existing claim brought by a victim?

There is no provision allowing third party organisations to request to join a claim.

However, a State Party to the Protocol can submit a request to join an existing claim if it has an interest in it.⁴⁰ This has to be done when the Registrar forwards the claim to the respondent State and gives third party States the opportunity to file an application to intervene under Rule 35 of the Rules of Court. Such applications need to be filed as soon as possible, and in any case before the closure of written proceedings.⁴¹

The application should:

- f. state the legal interest which the intervening State views as having been affected;
- g. state the precise object of the intervention;
- h. state the basis of the jurisdiction which the State claims exists between it and the parties to the case; and
- i. be duly reasoned and be accompanied by supporting documentation.

3 ADMISSIBILITY REQUIREMENTS

What are the requirements for bringing a claim?

Article 6(2) of the Protocol provides that the ACtHPR "shall rule on the admissibility of cases taking into account the provisions of article 56 of the Charter".

- a. indicate its authors, even if they request anonymity;
- b. be compatible with the Charter, or the Charter of the AU;
- c. not be written in disparaging or insulting language towards the concerned State or the AU;
- d. not be based solely on news disseminated through the mass media;
- e. be sent after exhausting local remedies, unless it is obvious that local procedure is unduly prolonged;
- f. be submitted within a reasonable period from the time local remedies are exhausted or from the date the Commission is seized of the matter;
- g. not deal with cases which have been settled by the States involved in accordance with the principles of the Charter of the UN, AU, or the Commission.

The application must involve circumstances which fall within the territorial jurisdiction of the accused State. The circumstances need to have occurred after the ratification of the Protocol by the State.

³⁹ *Request for Advisory Opinion by the Socio-Economic Rights and Accountability Project (SERAP)* (No. 001/2013, 26 May 2017), available at: [http://en.african-court.org/images/Cases/Advisory%20Opinion/Advisory%20Opinions/Request%20of%20for%20Advisory%20Opinion%20No.001-2013-Socio-%20Economic%20Rights%20and%20Accountability%20Project%20\(SERAP\)%20ENGLISH%20\(2\).pdf](http://en.african-court.org/images/Cases/Advisory%20Opinion/Advisory%20Opinions/Request%20of%20for%20Advisory%20Opinion%20No.001-2013-Socio-%20Economic%20Rights%20and%20Accountability%20Project%20(SERAP)%20ENGLISH%20(2).pdf).

⁴⁰ Article 5(2) of the Protocol.

⁴¹ Rule 53 of the Rules.

African Court on Human and Peoples' Rights

4 TIME LIMITS

What is the time limit for bringing a claim?

Applications must be made within a “reasonable time” from when local remedies are exhausted, pursuant to Article 56 of the Charter.

What is the time limit for making an intervention?

As noted, it is possible for other states to intervene; such requests should be filed as soon as possible, and in any case before the closure of written proceedings.

5 FORM OF CLAIM AND INTERVENTION

What form should the complaint take?

The application should be written in one of the official languages of the Court, which are English, French, Portuguese, Arabic and African languages.⁴²

The other formal elements of a complaint are specified in Rule 34. These include:

- a. the application must contain clear particulars of the Applicant and the party against whom such application has been brought;
- b. the application must specify the alleged violation, evidence of exhaustion of local remedies or of the inordinate delay of such local remedies as well as the orders or the injunctions sought;
- c. where the applicant is represented, the application shall also contain the names and addresses of the persons designated as the Applicant's representatives.

What form should the intervention take?

See Section 2 above. There is no prescribed form for applications by other states.

7 FORMS OF SERVICE/COMMUNICATIONS WITH THE COURT

Rule 34 provides details on the form of communications with the Court.

The applicant must file a copy of the application containing a summary of the facts of the case and of the evidence intended to be adduced in the Court Registry.⁴³

Documents should be submitted to the Registry of the Court:

Postal address: Registry of the Court,
P.O. Box 6274, Arusha,
Tanzania

Fax: +255-732-97 95 03

Email: registry@african-court.org

Service of the application to the respondent State is effected by the Registrar by registered post.⁴⁴

⁴² Rule 34(3) of the Rules of Court.

⁴³ Rule 34(1) of the Rules of Court.

⁴⁴ Rule 34(6) of the Rules of Court.

African Court on Human and Peoples' Rights

6 WHAT HAPPENS NEXT?

The procedure after the receipt of an application is set out in Rule 35. Upon receipt, the Registrar shall transmit a copy of the application to the President and other Members of the Court. Unless the Court decides otherwise, copies will be forwarded to the respondent State, the State Party whose citizen is a victim, the State Party against which a complaint has been filed at the Commission, the Commission, and the individual or organisation that has filed an application at the Commission by virtue of Article 55 of the Charter. The respondent State shall be given 60 days to reply, though it can apply for an extension.⁴⁵

The Court may decide that the application has no merit and proceed to dismiss it with reasons.⁴⁶ Otherwise, the Court will conduct preliminary examination of its jurisdiction and admissibility of the application in accordance with Articles 50 and 56 of the Charter (i.e. the admissibility conditions).⁴⁷

Rules 42 to 50 set out the conditions for the next stage in the process: oral hearing. Cases are to be heard in open court, though the court may hold hearings in camera.⁴⁸ The Rules include provisions covering inter alia taking evidence, the calling of witnesses, experts and other persons, the procedure for questioning and recording of hearings.⁴⁹

Under Rule 51, the Court may “at the request of a party, the Commission or on its own accord, prescribe to the parties any interim measure which it deems necessary to adopt in the interest of the parties or of justice”; the President of the Court may convene an extraordinary session to consider such measures, in cases of extreme urgency.

The Rules set out a number of provisions for the conclusion of a case. The Court may reach a judgment in default, if any party does not appear before the court or fails to defend its case.⁵⁰ The case may be settled amicably, either between the parties or under the auspices of the court; where the parties reach amicable settlement without the Court's assistance, the Court may decide to proceed with the case.⁵¹ Upon the conclusion of a case, the Court closes proceedings for deliberations and judgment.⁵² Judgments are final and are binding.⁵³

45 Rule 37 of the Rules of Court.

46 Rule 38 of the Rules of Court.

47 Rule 39 of the Rules of Court.

48 Rule 43 of the Rules of Court.

49 Rules 45, 46, 47, 48 and 49 of the Rules of Court.

50 Rules 56 and 57 of the Rules of Court.

51 Rule 56(3) of the Rules of Court.

52 Rule 59 of the Rules of Court.

53 Rule 61(4) and (5) of the Rules of Court.

African Court on Human and Peoples' Rights



Further reading

Online Resources

- The ACTHPR's website includes details about the latest decisions, finalised and pending cases, provisional measures issued and a statistical summary of received applications.⁵⁴
- Case law database and analysis available via the Case Law Analyser on the website of the Institute for Human Rights and Development in Africa.⁵⁵
- Comment and analysis about the ACTHPR may be found on the website of the non-affiliated *ACTHPR Monitor*.⁵⁶
- A number of NGOs have produced guidance to litigation before the ACTHPR, including: the International Federation for Human Rights;⁵⁷ and the Open Society Justice Initiative.⁵⁸

Other Resources

- Viljoen, F., "Understanding and Overcoming Challenges in Accessing the African Court on Human and Peoples' Rights", *International and Comparative Law Quarterly*, Vol. 67, No. 1, 2018, pp. 63-98.
- Ouguerouz, F., *The African Charter of Human and People's Rights: A Comprehensive Agenda for Human Dignity and Sustainable Democracy in Africa*, Martinus Nijhoff Publishers, 2003.
- Evans, M. and Murray, R., *The African Charter on Human and Peoples' Rights: The System in Practice 1986-2006*, Cambridge University Press, 2011.



Hints and tips

- "There is some provision for legal aid for claimants before the ACTHPR (see, ACTHPR, **Legal Aid Rules**); however, this is only available to an NGO if they are bringing a case directly against a state."
Lucy Claridge, Strategic Litigation Director, Amnesty International
- It's important to remember that only a small number of countries have accepted the appearance of approved NGOs and individuals before the ACTHPR. For this reason, NGOs file many more cases with the Commission rather than the Court.
- Interviewees generally concurred that the ACTHPR is keen to develop progressive jurisprudence on issues and welcomes third party interventions in this respect.

⁵⁴ African Court on Human and Peoples' Rights, *Contentious Matters*. Available at: <http://www.african-court.org/en/index.php/cases>.

⁵⁵ Institute for Human Rights and Development in Africa, *Case Law Analyser*. Available at: <https://www.ihrda.org/african-human-rights-case-law-analyzer/>. Available at: www.acthprmonitor.org.

⁵⁶ International Federation for Human Rights, *Admissibility of Complaints before the African Court: Practical Guide*, available at: https://www.fidh.org/IMG/pdf/admissibility_of_complaints_before_the_african_court_june_2016_eng_web-2.pdf.

⁵⁷ Open Society Justice Initiative, *Fact sheet on the African Court on Human and Peoples' Rights*, 2013, available at: <https://www.opensocietyfoundations.org/sites/default/files/fact-sheet-african-court-human-peoples-rights-20130627.pdf>.

African Committee of Experts on the Rights and Welfare of the Child

1 BACKGROUND

The African Committee of Experts on the Rights and Welfare of the Child (the “ACERWC”) is a group of individuals mandated to monitor and report on the fulfilment of child rights in Africa. The ACERWC draws its mandate from Articles 32 to 46 of the African Charter on the Rights and Welfare of the Child (the “Children’s Charter”) which was adopted by the Heads of State and Government of the Organisation of African Unity on 11 July 1990 and came into force on 29 November 1999.⁵⁹

Article 44 of the Children’s Charter provides for a complaints procedure on any matter covered by the Charter, “from any person, group or non-governmental organization recognized by the Organization of African Unity, by a Member State, or the United Nations”.

The Revised Guidelines for the Consideration of Communications (the “Guidelines”) provide a guide to the procedures open to individuals who claim to be victims of a violation of the Charter.⁶⁰

2 WHO CAN BRING A CLAIM?

Article 44(1) of the Children’s Charter provides as follows:

- a. any individual or group of natural or legal persons including children;
- b. any State party to the Children’s Charter;
- c. any intergovernmental or non-governmental organisation legally recognised in either one or more of the Member States of the African Union, a State party to the African Children’s Charter or the United Nations; or
- d. any specialised organ or agency of the African Union or the United Nations.

Can an NGO/other organisation act on behalf of a victim?

Yes. The Guidelines provides that, pursuant to Article 44 of the Children’s Charter, claims may be made by NGOs on behalf of third parties.⁶¹

Can an NGO/other organisation intervene in an existing claim brought by a victim?

The Guidelines expressly provide for third party interventions. The Committee may decide to solicit or accept interventions by parties other than the complainant and the respondent state that it considers will provide it with information relevant to making a decision on a Communication.⁶²

3 ADMISSIBILITY REQUIREMENTS

To declare a communication admissible, the ACERWC shall ensure that:

- a. *The Communication is compatible with the provisions of the Constitutive Act of the African Union and the African Children’s Charter;*
- b. *The Communication is not exclusively based on information circulated by the media or is manifestly groundless;*
- c. *The Communication does not raise matters pending settlement or previously settled by another international body or procedure in accordance with any legal instruments of the Africa Union and principles of the United Nations Charter;*
- d. *The Communication is submitted after having exhausted available and accessible local remedies, unless it is obvious that this procedure is unduly prolonged or ineffective;*
- e. *The Communication is presented within a reasonable period after exhaustion of local remedies at the national level; and*
- f. *The Communication does not contain any disparaging or insulting language.*⁶³

As of April 2018, only 10 Communications had been filed. The ACERWC has rendered a decision on four of these Communications.⁶⁴

⁵⁹ African Charter on the Rights and Welfare of the Child, OAU Doc. CAB/LEG/24.9/49, 1990, (the “Children’s Charter”), available at: <http://www.achpr.org/instruments/child/#a44>.

⁶⁰ African Committee of Experts on the Rights and Welfare of the Child, *Revised Guidelines for Consideration of Communications*, 2015, (the “Guidelines”), available at: <http://www.acerwc.org/download/acerwc-communication-guidelines/>.

⁶¹ The Guidelines, p. 3.

⁶² The Guidelines, p. 19.

⁶³ The Guidelines, p. 10.

⁶⁴ Available at: <http://www.acerwc.org/communications/table-of-communications/>.

African Committee of Experts on the Rights and Welfare of the Child

4 REPRESENTATION

It is not necessary to have a lawyer prepare the complaint. A complainant submitting a communication may designate an attorney or other person to represent them before the ACERWC in the communication itself or in a separate document.⁶⁵

5 TIME LIMITS

There is no strict time limit to submit a communication, although it must be done within a reasonable period after exhaustion of local remedies.⁶⁶

6 FORM OF CLAIM AND INTERVENTION

What form should the complaint take?

The complaint should be in the following form:⁶⁷

- a. the Communication must not be anonymous;
- b. the Communication must be written in one of the official languages of the Committee. The working languages of the Committee are the official languages of the African Union. As per Article 25 of the Constitutive Act of the African Union, the official languages are English, French, Portuguese, Arabic and African languages.
- c. the Communication must be signed by the complainant or their representative(s).

The Communication should contain the following information:⁶⁸

- a. clear particulars of the complainant and party against whom such complaint has been made;
- b. where possible, the name of the victim, in case they are not the complainant, and of any public official or authority who has taken cognisance of the fact or situation alleged;
- c. whether or not the complainant wishes that his or her identity or the identity of any victim be withheld from the State party against which the Communication is brought;
- d. the State the complainant considers responsible, by act or omission, for the violation of any of the rights and welfare of the child recognised by the Charter;
- e. an account of the act or situation that is the subject matter of the complaint, specifying the place and date of the alleged violations;
- f. where possible, the provision of the Charter allegedly violated;
- g. the remedies sought by the complainant to redress the alleged violations;
- h. any steps taken to exhaust domestic remedies, or the impossibility or ineffectiveness of doing so as provided under Section IX(1)(D) of the Guidelines;
- i. an indication of whether the Communication has been submitted to another international settlement procedure as provided in Section IX(C) of the Guidelines;
- j. the address for receiving correspondence from the Committee and, if available, a telephone number, fax number, and email address.

What form should the intervention take?

The application for intervention should include the following information:⁶⁹

- a. the name of the applicant or applicant's representatives;
- b. the interest of the applicant in the Communication;
- c. the object of the intervention; and
- d. a summary of the supporting documents to be submitted.

⁶⁵ The Guidelines, p. 3.

⁶⁶ The Guidelines, p. 10.

⁶⁷ The Guidelines, p. 4.

⁶⁸ The Guidelines, p. 4.

⁶⁹ The Guidelines, p. 19.

African Committee of Experts on the Rights and Welfare of the Child

7 FORMS OF SERVICE/COMMUNICATIONS WITH THE COURT

Complaints may be submitted by fax or email.

Address: African Committee of Experts on the Rights and Welfare of the Child,
African Union Commission,
P.O. Box: 3243 – Roosevelt Street,
Old Airport Area,
W21K12 Addis Ababa,
Ethiopia

Phone: +251 11 551 7700

Fax: +251 11 553 3616

Email: info@acerwc.org

There is no prescribed form for Communications.

8 WHAT HAPPENS NEXT?

There are only two stages to consideration – admissibility and merits.

A communication addressed to the ACERWC shall be submitted to the Secretariat, which shall carry out a preliminary review on compliance of formalities detailed above. Where the Secretary is satisfied, it shall transmit the communication to the ACERWC.⁷⁰ The ACERWC shall make a decision on the admissibility or otherwise of the communication within 90 days of conclusion of deliberation on of admissibility.⁷¹

If the ACERWC decides the communication is admissible, it shall request the respondent State to submit its arguments and evidence on the merits of the communication within merits of the communication within 60 days.⁷²

If the ACERWC deems it necessary or advisable for the determination of a communication at any stage before determination on the merits, it may carry out an on-site investigation in accordance with article 45 of the Children's Charter.⁷³

Upon the receipt of all arguments and evidence on the merits from the parties, the conduct of any hearings or any on-site investigations, the ACERWC shall deliberate on the merits of and prepare a report on its deliberations.⁷⁴

Where the Committee considers that one or more communications submitted to it or pending before it reveals a situation of urgency, serious or massive violations of the Children's Charter and the likelihood of irreparable harm to a child or children in violation of the Children's Charter, it may, either on its own initiative or at the request of a party to the proceedings, request the respondent State to adopt provisional measures to prevent grave or irreparable harm to the victim or victims of the violations as urgently as possible.⁷⁵

Parties to a communication may settle their dispute amicably any time before the Committee decides on the merits of the Communication.⁷⁶

⁷⁰ The Guidelines, p. 5.

⁷¹ The Guidelines, p. 11.

⁷² The Guidelines, p. 12.

⁷³ The Guidelines, p. 18.

⁷⁴ The Guidelines, p. 20.

⁷⁵ The Guidelines, p. 7.

⁷⁶ The Guidelines, p. 16.



Further reading

Online Resources

- African Committee of Experts on the Rights and Welfare of the Child, Revised Guidelines for the Consideration of Communications.⁷⁷
- African Committee of Experts on the Rights and Welfare of the Child, *Table of Communications*.⁷⁸
- The ACERWC website also contains a database of African child rights cases from national courts across Africa.⁷⁹



Hints and tips

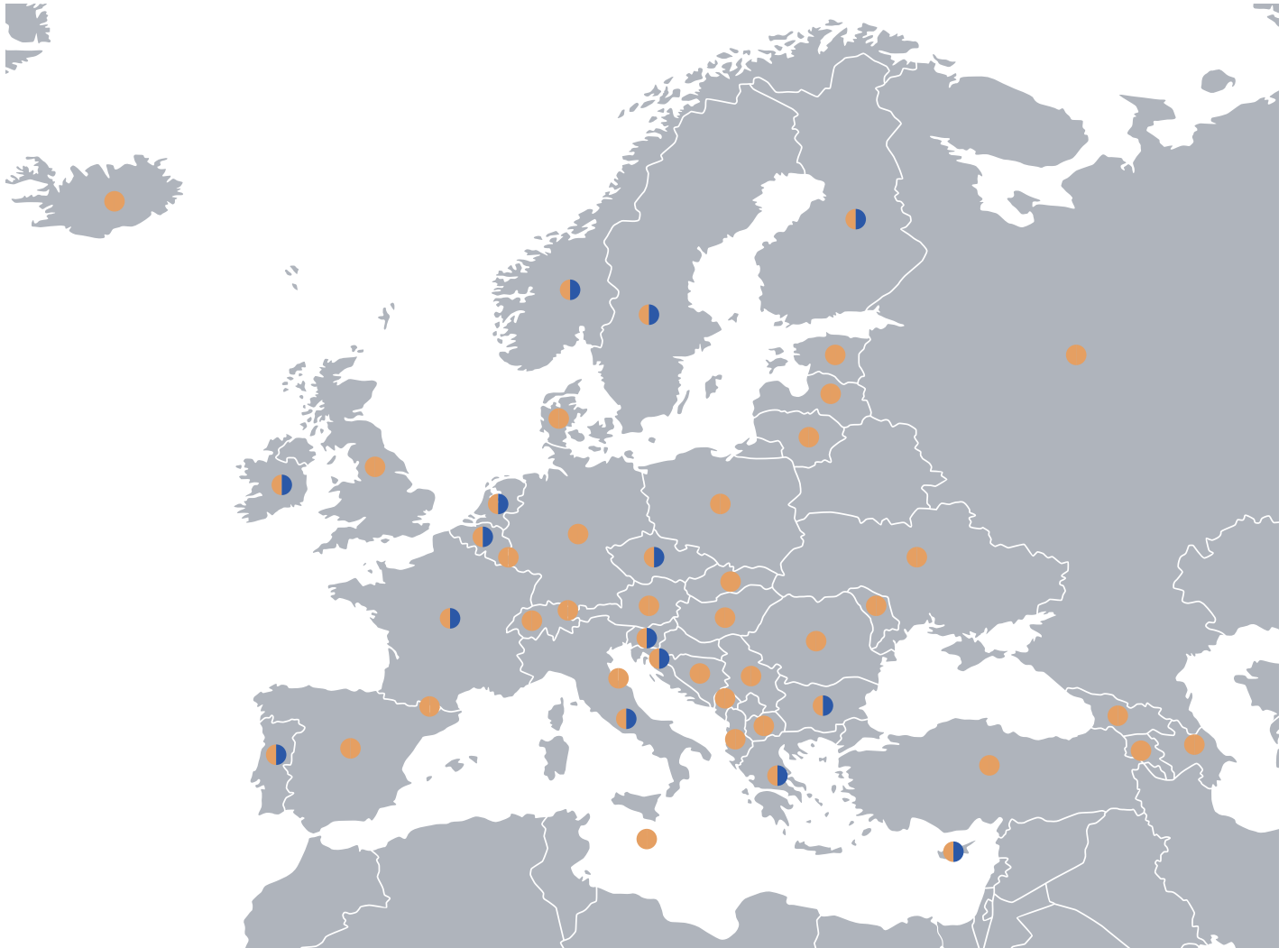
- Given that the ACERWC is not as busy as the Commission and the Court, decisions are generally received much more quickly.

⁷⁷ Available at: <http://www.acerwc.org/download/acerwc-communication-guidelines/>.

⁷⁸ Available at: <http://www.acerwc.org/communications/table-of-communications/>.

⁷⁹ African Committee of Experts on the Rights and Welfare of the Child, *National cases*, available at: <http://national-cases.acerwc.org/>.

European Regional Mechanisms



● European Court of Human Rights

● European Court of Human Rights and European Committee of Social Rights Collective Complaints Procedure

European Court of Human Rights

1 BACKGROUND

The admissibility requirements of the European Court of Human Rights (the “**ECTHR**”) are set out in the following instruments:

- a. the European Convention on Human Rights as amended (the “**Convention**”);¹ and
- b. the ECTHR Rules of Court, as updated on 16 April 2018 (the “**Rules of Court**”).²

The ECTHR has published a Practical Guide on Admissibility Criteria, last updated on 28 February 2017, which sets out the rules and case law concerning admissibility (the “**Practical Guide**”).³

The Court adjudicates complaints of violations of the European Convention on Human Rights and its Protocols.

2 WHO CAN BRING A CLAIM?

Article 34 of the Convention states that the ECTHR may receive applications from any person, non-governmental organisation (“**NGO**”) or group of individuals claiming to be the victim of a violation by a party to the Convention (a “**Contracting Party**”) of the rights set out in the Convention or its Protocols (where the Protocol in question is applicable to the Contracting Party).

Applications may not be submitted anonymously unless the applicant has submitted factual and legal information enabling the ECTHR to identify the applicant and establish links with the facts in issue and complaint raised.⁴ However, if the applicant has valid reasons for not disclosing his/her identity, the applicant can request confidentiality. If the request is granted, the Court may refer to the applicant by using a pseudonym.

Victim eligibility

The term “victim” in the context of Article 34 of the Convention denotes the person(s) directly or indirectly affected by the alleged violation. Therefore, Article 34 concerns not just the direct victim(s) of the alleged violation, but also any indirect victim(s) to whom the violation would cause harm or who would have a valid and personal interest in seeing it brought to an end. The term “victim” does not imply the existence of prejudice and an act that has only temporary legal effects may suffice. Victim status may be linked to the merits of the case.⁵

The Practical Guide identifies three types of victims: (a) “direct”; (b) “indirect”; and (c) “potential”.⁶

- a. **Direct victims:** the applicant must be able to show that he or she was “directly affected” by the measure complained of in order to lodge an application in accordance with Article 34.
- b. **Indirect victims:** in general, the applicant must be able to show: (i) the direct victim has died or disappeared before the introduction of an application; (ii) the indirect victim is the next of kin; and (iii) the complaint relates to the death or the disappearance of the direct victim. However, in exceptional cases, the ECTHR has allowed NGOs to represent victims who have died (see below).
- c. **Potential victims and *actio popularis*:** in certain specific circumstances, the Court has accepted that an applicant may be a potential victim, for example, where they were not able to establish that the legislation complained of had actually been applied to them on account of the secret nature of the measures it authorised. In order to claim to be a potential victim in such a situation, an applicant must produce reasonable and convincing evidence of the likelihood that a violation affecting them personally will occur; mere suspicion or conjecture is insufficient.

The ECTHR has underlined that the Convention does not envisage the bringing of an *actio popularis* for the interpretation of Convention rights, or permit individuals to complain about a domestic law simply on the basis that it may contravene the Convention.⁷

We note that for complaints relating to companies, the ECTHR has found that a person cannot complain of a violation of their rights in proceedings to which they were not a party, even if they were a shareholder or a director of a company which was party to the proceedings.⁸

¹ European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5 (the “**Convention**”), available at: http://www.echr.coe.int/Documents/Convention_ENG.pdf.

² European Court of Human Rights, Rules of Court, 16 April 2018 (the “**Rules of Court**”), available at: http://www.echr.coe.int/Documents/Rules_Court_ENG.pdf.

³ European Court of Human Rights, Practical Guide on Admissibility Criteria, 4th edition, updated on 28 February 2017 (the “**Practical Guide**”), available at: http://www.echr.coe.int/Documents/Admissibility_guide_ENG.pdf.

⁴ Article 35(2)(a) of the Convention; see also Practical Guide pp. 34-35.

⁵ Practical Guide p. 10.

⁶ See Practical Guide pp. 10-12 for more information.

⁷ Practical Guide p. 12.

⁸ Practical Guide p. 12.

Can an NGO or other organisation act on behalf of a victim?

Article 34 of the Convention contains three categories of petitioners:⁹

- a. Persons (both natural and legal): any person may make an application against a Contracting Party when the alleged violation took place within the jurisdiction of the State concerned, regardless of nationality, place of residence, civil status, situation or legal capacity;
- b. Groups of Individuals: an application can be brought by a group of individuals; and
- c. NGOs: a legal entity must show that it is a non-governmental organisation to have standing before the ECtHR. The term “governmental organisations”, as opposed to “non-governmental organisations”, applies to central organs of the State, local and regional authorities, municipalities and decentralised authorities that exercise “public functions”.

In exceptional cases, the ECtHR has held that NGOs can represent persons who have died due to violations of their Convention rights, notwithstanding the absence of a power of attorney and that the victim may have died before the application was lodged.¹⁰

Can an NGO or other organisation bring a claim absent a victim?

No. See above for the requirement for a “victim”.

Can an NGO or other organisation intervene in an existing claim brought by a victim?

Yes. Article 36 of the Convention and Rule 44 of the Rules of Court permit and govern third party interventions. Article 36(2) of the Convention states that the President of the ECtHR may, in the interests of the proper administration of justice, invite any person who is not the applicant to submit written comments or take part in the hearings. There are two types of intervention:

- a. Where the ECtHR invites an *amicus curiae* submission. This does not occur frequently. The ECtHR has historically invited Contracting States, the Commissioner for Human Rights or the UN High Commissioner for Refugees to make such a submission.¹¹
- b. Where a third party seeks to provide information to the ECtHR of its own initiative. Acceptance of such briefs is at the discretion of the President of the ECtHR.¹²

Rule 44(3) of the Rules of Court provides that once notice of an application has been given to the respondent State, the President of the Chamber may invite, or grant leave to, any person concerned who is not the applicant to submit written comments or, in exceptional cases, to take part in the hearings.

The President of the Chamber can make the invitation or grant of leave subject to any conditions that he or she considers appropriate.¹³

⁹ Practical Guide pp. 9-10.

¹⁰ *Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania* (no. 47848/08, 17 July 2014); *Case of Association for the Defence of Human Rights in Romania – Helsinki Committee on behalf of Ionel Garcea v. Romania* (no. 2959/11, 24 March 2015).

¹¹ Van den Eynde, L., “An empirical look at the Amicus Curiae Practice of Human Rights NGOs before the European Court of Human Rights” (2013), *Netherlands Quarterly of Human Rights*, vol. 31/3, p. 277.

¹² Mackenzie, R., “The Amicus Curiae in International Courts: Towards Common Procedural Approaches?” in T Treves et al (eds), *Civil Society, International Courts and Compliance Bodies* (TMC Asser Press 2005), p. 303.

¹³ Rule 44(5) of the Rules of Court.

3 ADMISSIBILITY REQUIREMENTS

What are the requirements for bringing a claim?

A claim may be inadmissible on the basis of: (a) procedural grounds; (b) jurisdiction; or (c) merits.

- a. Procedural grounds for inadmissibility of an application include the following:
 - i. All domestic remedies have not been exhausted.¹⁴
 - ii. The application is substantially the same as a matter that has already been examined by the ECtHR or submitted to another procedure of international investigation or settlement and contains no relevant new information.¹⁵
 - iii. The application is an “abuse of the right of individual applications”:¹⁶ “Abuse” means a harmful exercise of a right for purposes other than those for which it is designed. Such cases can be grouped into the following typical categories:¹⁷
 - misleading the ECtHR;
 - use of offensive language;
 - violation of the obligation to keep friendly-settlement proceedings confidential; and
 - applications that are manifestly vexatious or devoid of any real purpose.

Other cases not falling within these categories may also be deemed an abuse of the right of individual applications.

- b. Jurisdictional grounds for inadmissibility of an application include the following:¹⁸
 - i. *Ratione personae*: the alleged violation of the Convention must have been committed by a Contracting Party or be in some way attributable to it.¹⁹
 - ii. *Ratione loci*: the alleged violation must have taken place within the jurisdiction of the respondent Contracting Party or in a territory effectively controlled by it.²⁰
 - iii. *Ratione temporis*: the alleged violation must have occurred after the date of the entry into force of the Convention in respect of the Contracting Party.²¹
 - iv. *Ratione materiae*: the right relied on by the applicant must be protected by the Convention and Protocols that have come into force. The majority of decisions declaring applications inadmissible on this ground pertain to the limits of the scope of the Articles of the Convention or its Protocols.²²
- c. Grounds for inadmissibility of an application based on merits include the following:
 - i. It is manifestly ill-founded.²³
 - ii. The applicant has not suffered a significant disadvantage, unless the Convention and its Protocols require an examination of the application on the merits and provided that a case may not be rejected on this ground which has not been duly considered by a domestic tribunal.²⁴

¹⁴ Article 35(1) of the Convention. See Practical Guide pp. 19-27 for more information.

¹⁵ Article 35(2)(b) of the Convention. See Practical Guide pp. 35-37 for more information.

¹⁶ Article 35(3)(a) of the Convention.

¹⁷ See Practical Guide pp. 37-40 for more information.

¹⁸ Jurisdiction refers to the ECtHR’s jurisdiction, under Article 35 (Admissibility criteria) and Article 32 (Jurisdiction of the Court) of the Convention.

¹⁹ See Practical Guide pp. 41-46 for more information.

²⁰ See Practical Guide pp. 46-47 for more information.

²¹ See Practical Guide pp. 47-52 for more information.

²² See Practical Guide pp. 52-53 for more information.

²³ Article 35(3)(a) of the Convention. See Practical Guide pp. 54-60 for more information.

²⁴ Article 35(3)(b) of the Convention. See Practical Guide pp. 60-69 for more information.

4 REPRESENTATION

Where an applicant chooses to be represented under Rule 36(1) of the Rules of Court, Rule 45(3) requires their representative to produce a written authority to act, duly signed, containing specific and explicit instructions from the applicant.²⁵ However, in exceptional circumstances, the Court may declare admissible an application lodged without valid authority.²⁶

5 TIME LIMITS

What is the time limit for bringing a claim?²⁷

Article 35(1) of the Convention states that the ECtHR may only deal with a matter within a period of six months from the date on which the final decision was made in the process of exhaustion of domestic remedies.

Domestic law is an important aspect in determining the starting point of the six-month period, but it is not decisive. The ECtHR will also take account of:

- a. the date on which the applicant and/or his or her representative has sufficient knowledge of the final domestic decision;
- b. service of the domestic law decision;
- c. the availability of a domestic law remedy; and
- d. whether there is a “continuing situation.”²⁸

The date of introduction of an application is the date on which the application form satisfying Rule 47 of the Rules of Court is sent to the ECtHR.

In certain special situations, different time limits apply. Such situations include continuing violations concerning the right to life, home and property, and cases of multiple periods of detention.²⁹

What is the time limit for making an intervention?

Requests for leave to intervene must be submitted no later than 12 weeks after notice of the application has been given to the respondent Contracting Party.³⁰ The President of the Chamber may fix a different time limit for exceptional reasons or if sufficient cause is shown.³¹

In cases to be considered by the Grand Chamber of the ECtHR, the period of time starts to run from the notification to the parties of the decision of the Chamber to relinquish jurisdiction in favour of the Grand Chamber or of the decision of the panel of the Grand Chamber to accept a request by a party for referral of the case to the Grand Chamber.³²

²⁵ See Practical Guide pp. 14-15 for more information.

²⁶ See Practical Guide pp. 14 for more information.

²⁷ See Practical Guide pp. 27-33 for more information.

²⁸ See Practical Guide pp. 27-28 for more information.

²⁹ See Practical Guide pp. 32-33 for more information.

³⁰ Rule 44(3)(b) of the Rules of Court.

³¹ Rule 44(3)(b) and Rule 44(4)(b) of the Rules of Court.

³² Rule 44(4)(a) of the Rules of Court.

6 FORM OF CLAIM AND INTERVENTION

What form should the complaint take?

The complaint should take the form of an application as set out in Rule 47 of the Rules of Court (which can be downloaded from the Court's website).³³ It must contain the following information:

- a. the name, date of birth, nationality and address of the applicant and, where the applicant is a legal person, the full name, date of incorporation or registration, the official registration number (if any) and the official address;
- b. the name, address, telephone and fax numbers and e-mail address of the representative, if any;
- c. where the applicant is represented, the dated and original signature of the applicant on the authority section of the application form, and the original signature of the representative showing that he or she has agreed to act for the applicant must also be on the authority section of the application form;
- d. the name of the Contracting Party or Parties against which the application is made;
- e. a concise and legible statement of the facts;
- f. a concise and legible statement of the alleged violation(s) of the Convention and the relevant arguments; and
- g. a concise and legible statement confirming the applicant's compliance with the admissibility criteria laid down in Article 35 of the Convention.

The application form should be accompanied by copies of documents relating to the decisions or measures complained of and copies of documents showing that domestic remedies have been exhausted.

What form should the intervention take?

The request must be duly reasoned and submitted in one of the official languages of the ECtHR (French or English) unless leave is granted to use another language.³⁴

There is no prescribed form, no fee for requesting leave, and no need to seek the consent of the parties.

7 WHAT HAPPENS NEXT?

What happens once a claim is submitted?

The application will be allocated to one of the ECtHR's judicial formations, depending on the type of case:

- a. Single judge: An application that is clearly inadmissible because it does not meet the required admissibility criteria will be dealt with by a single judge, who will rule on admissibility. It is not possible to challenge an admissibility decision.³⁵
- b. Committee: An application considered to be a repetitive case (raising an issue on which the ECtHR has already ruled in a number of cases concerning the State in question) will be dealt with by a Committee of three judges, which, if the case is admissible, will make a decision on the merits. Judgments are final and there is no possibility of appeal.³⁶
- c. Chamber: An application not considered to be a repetitive case will be examined by a Chamber of seven judges which, if the case is admissible, will make a decision on the merits. A judgment becomes final three months after it is delivered. During those three months, a party to the proceedings may request that the case is referred to the Grand Chamber (consisting of 17 judges) for fresh examination. The Chamber may also relinquish jurisdiction to the Grand Chamber at an earlier stage in the proceedings if the case raises a serious question affecting the interpretation of the Convention or there is a risk of inconsistency with a previous decision of the ECtHR.³⁷

When a judgment finding a violation becomes final, the ECtHR forwards the file to the Committee of Ministers of the Council of Europe, which is responsible for monitoring the execution of the Court's judgments.³⁸

³³ Available at: <https://www.echr.coe.int/Pages/home.aspx?p=applicants/forms&c=>

³⁴ Rule 44(3)(b) of the Rules of Court.

³⁵ Article 27 of the Convention

³⁶ Article 28 of the Convention

³⁷ Articles 29 and 30 of the Convention.

³⁸ Available at: https://www.echr.coe.int/Documents/Case_processing_ENG.pdf



Further reading

Online Resources

- The Rules of Court³⁹ and Practical Guide on Admissibility Criteria⁴⁰ are available on the ECtHR's website. In addition, the website contains a range of resources for litigants, including: fact-sheets summarising the Court's jurisprudence;⁴¹ a flow chart that indicates the progress of a case through the different judicial formations;⁴² and background information to the Court.⁴³ The Council of Europe has also produced an online training course for legal professionals.⁴⁴
- Analysis of recent decisions of the ECtHR is available on the ECHR Blog⁴⁵ and Strasbourg Observers blog.⁴⁶
- A number of NGOs and regional bodies have produced guidance on litigation before the ECtHR, including: Equinet;⁴⁷ the European Human Rights Advocacy Centre;⁴⁸ the European Roma Rights Centre;⁴⁹ ILGA Europe;⁵⁰ and the AIRE Centre.⁵¹
- Van den Eynde, L., "An empirical look at the Amicus Curiae Practice of Human Rights NGOs before the European Court of Human Rights", *Netherlands Quarterly of Human Rights*, vol. 31/3, 2013, pp. 271-313.⁵²

Other Resources

- Bürli, N., *Third-Party Interventions before the European Court of Human Rights*, Intersentia, 2017.
- Leach, P., *Taking a Case to the European Court of Human Rights*, OUP Oxford, 2011.
- Mowbray A. R., *Cases, materials, and commentary on the European Convention on Human Rights*, Oxford University Press, 2012.
- Reid, K., *Practitioner's Guide to the European Convention on Human Rights*, Sweet & Maxwell, 10 Dec 2015.
- van Dijk, P. et. al., *Theory and Practice of the European Convention on Human Rights: Fifth Edition*, Intersentia, 2018.

39 Available at: http://www.echr.coe.int/Documents/Rules_Court_ENG.pdf

40 Available at: http://www.echr.coe.int/Documents/Admissibility_guide_ENG.pdf

41 Available at: <https://www.echr.coe.int/Pages/home.aspx?p=press/factsheets&c>

42 European Court of Human Rights, *Life of an Application*, accessed 2018. Available at: https://www.echr.coe.int/Documents/Case_processing_ENG.pdf

43 European Court of Human Rights, Information Documents, updated 2018. Available at: https://www.echr.coe.int/Pages/home.aspx?p=court&c=#newComponent_1346149514608_pointer

44 Available at: <http://help.elearning.ext.coe.int/?id=812#section->

45 Available at: <http://echrblog.blogspot.com/>

46 Available at: <https://strasbourgobservers.com/>

47 Equinet, *Strategic Litigation Handbook*, 2017. Available at: <http://www.equineteurope.org/Strategic-Litigation-Handbook>

48 European Human Rights Advocacy Centre, *Witness Statement Preparation Guide*, 2008. Available at: <http://www.ehrac.org.uk/wp-content/uploads/2014/10/Witness-statement-guide-online-ENG.pdf>

49 European Roma Rights Centre, *Strategic Litigation at the European Roma Rights Centre*, 2015. Available at: http://www.errc.org/uploads/upload_en/file/strategic-litigation-at-the-errc-4-may-2015.pdf

50 ILGA Europe, European Court of Human Rights and litigation, accessed 2018. Available at: <https://www.ilga-europe.org/resources/guide-european-institutions/council-europe/lgbti-rights/ECTHR>

51 Mole N. and Meredith C., *Asylum and the European Convention on Human Rights*, The AIRE Centre, 2009.

52 Available at: https://dipot.ulb.ac.be/dspace/bitstream/2013/141443/1/amicus_curiae_briefs_NGOS_ECHR_NQHR_Laura_Van_den_Eynde.pdf



Hints and tips

Applications

- *“When you are litigating a case at the domestic level, try to use the language of the ECHR as much as possible. If the case reaches the ECtHR, it really helps if the lawyers have formulated the claim using the right language at the domestic level.”*

Arpi Avetsiyan, Litigation Officer, ILGA Europe

- The six-month time limit imposed on bringing a case before the ECtHR under Article 35(1) ECHR is strictly enforced and the Court will only depart from this rule where there are very good reasons for doing so.
- It is generally very difficult to predict how long it will take for a case to be communicated and for a judgement to be delivered.

Third party interventions

- *“All third-party interventions, whether in Strasbourg or elsewhere, start with good standing. It’s crucial for an organisation to be clear about their expert platform before engaging.”*

Robin Allen QC, barrister, Cloisters

- *“In considering a request for leave to intervene, the Court will have regard to whether the proposed intervention can add value to the case and assist the Court in reaching a proper determination of the matter in dispute. For legal organisations requesting leave, the Court will often grant permission with the stipulation that the intervention should not address the facts of the case. The expectation is that the intervener, as a legal organisation, will provide the Court with an analysis of the legal situation in jurisdictions, domestic and regional, the Court might not be readily familiar with.”*

Padraig Hughes, Legal Director, Media Legal Defence Initiative

- *“A short, focussed written intervention highlighting central legal issues, wider implications or strategic questions arising in a particular case can be a powerful and cost-effective way of creating helpful caselaw from the European Court of Human Rights.”*

Helen Mountfield, barrister, Matrix Chambers

- *“In third-party interventions before the ECtHR or the complaints procedures under the UN human rights treaties, reference to comparative domestic law can prove very useful; however, one must handle analysis of comparative domestic law with care and appropriate knowledge of the relevant contexts. For example, domestic courts in England, France and Germany have interpreted the concept of human dignity in different ways which has a significant bearing on the jurisprudence from those countries.”*

Robin Allen QC, barrister, Cloisters

- The time limit given by the Court to NGOs to submit a third-party intervention can be quite short once the request is granted (two to three weeks); however, it is possible to obtain an extension of time, provided that a good reason is given, particularly where an intervention is being undertaken by a group of NGOs.

Enforcement of judgments

- *“Receiving a judgment from ECtHR is not the end of the process: whilst individual measures (such as compensation) are usually adopted relatively quickly, it can take many years for a state to comply with general measures (i.e. putting in place structures preventing similar violations found by the Court). Ensuring the implementation of judgments through making submissions to the Council of Europe Committee of Ministers is therefore a crucial part of the process. The European Implementation Network is great for facilitating engagement with the Committee of Ministers, and it also provides capacity-building for civil society organisations in relation to the implementation of ECtHR judgments. When drafting submissions to the Committee of Ministers, it can lend more weight to the submission if it is made jointly by more than one civil society organisation.”*

Arpi Avetsiyan, Litigation Officer, ILGA Europe

1 BACKGROUND

The European Committee of Social Rights (the “ECSR”) was established pursuant to Articles 24 and 25 of the European Social Charter (the “Charter”).¹ The role of the ECSR is to ensure that States conform with the provisions of the Charter.

The Charter is a Council of Europe treaty that guarantees fundamental social and economic rights. It is thus a counterpart to the European Convention on Human Rights, which guarantees civil and political rights. The rights guaranteed by the Charter relate to employment, housing, health, education, social protection and welfare.

The ECSR does not have an individual complaints mechanism but does have a mechanism by which it hears collective complaints. These complaints concern questions relating to the non-compliance of States’ law or practice with one of the provisions of the Charter.² The Collective Complaints Procedure derives from the Additional Protocol of 1995 (the “Protocol”).³ This process has only been authorised by some countries, which are listed in Section 3 below.

The procedure for collective complaints before the ECSR is prescribed in the following instruments:

- a. The Protocol; and
- b. The Rules of Procedure (“Rules of Procedure”).⁴

2 WHO CAN BRING A CLAIM?

The ECSR only admits complaints from certain organisations. According to Article 1 of the Protocol, standing is restricted to:

- a. the European social partners, representing employees and employers;⁵
- b. International Non-Governmental Organisations (“INGOs”) holding participatory status with the Council of Europe; and
- c. Employers’ organisations and trade unions in the country concerned.

Additionally, under Article 2 of the Protocol, a State party may grant national NGOs within its jurisdiction the right to lodge complaints against it. However, as of April 2018, Finland is the only State to have done so.

In practice, national NGOs often engage with an international NGO, who are permitted to take the complaint.

A database of existing INGOs with participatory status is available on the website of the Council of Europe.⁶ In order to be granted participatory status, INGOs must fulfil the conditions set by the Council of Europe and supply the required documents.⁷ INGOs with participatory status must submit a report to the Secretary General every four years outlining their engagement with the Council of Europe.⁸ A review of an INGO’s status will be undertaken based on this report.⁹

Can an NGO/other organisation act on behalf of a victim?

Yes, provided the NGO/other organisation meets the requirements outlined above. However, it is not appropriate to speak of acting “on behalf of a victim” in relation to a collective complaint as the focus is on infringement of collective rights.

1 Council of Europe, European Social Charter (Revised), 3 May 1996, ETS 163 (the “Charter”), available at: <https://rm.coe.int/the-european-social-charter-treaty-text/1680799c4b>.

2 Further information on the Collective Complaints Procedure is available at: <https://www.coe.int/en/web/turin-european-social-charter/collective-complaints-procedure1>

3 Council of Europe, Additional Protocol to the European Social Charter providing for a System of Collective Complaints, 9 November 1995, ETS 158 (the “Protocol”), available at: <https://www.coe.int/en/web/conventions/full-list/-/conventions/rms/090000168007cdad>.

4 European Committee of Social Rights, Rules as amended on 26 January 2018 (the “Rules of Procedure”), available at: <https://rm.coe.int/rules-of-the-european-committee-of-social-rights-rev-2-bil/1680788a3d>.

5 The European Trade Union Confederation represents employees, while BUSINESSEUROPE and the European Centre of Employers and Enterprises Providing Public Services represent employers.

6 Available at: <http://coe-ngo.org/#/ingos>

7 Council of Europe, Resolution (2016)3, Appendix, Paras 2 and 5, available at: https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=090000168068824c

8 Resolution (2016)3, Appendix, Para 4

9 Resolution (2016)3, Appendix, Para 11

3 ADMISSIBILITY REQUIREMENTS

If the complainant is an INGO, it must provide proof that it has particular competence in the field relating to the provision(s) of the Charter covered by the complaint.¹⁰

The complaint must be made against a country in which the Charter is in force and which has accepted the system of collective complaints, having complied with the requirements under Article 13 of the Protocol. As of April 2018, these are Belgium, Bulgaria, Croatia, Cyprus, the Czech Republic, Finland, France, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia and Sweden.¹¹

Before the ECSR decides on admissibility, the President may ask the respondent State for written observations on the admissibility of the complaint. The ECSR has the possibility of declaring any complaint either admissible or inadmissible, without having invited the respondent State concerned to submit observations, when it considers that the admissibility conditions are either manifestly fulfilled or manifestly unfulfilled.¹²

4 REPRESENTATION

There is no reference to a requirement for legal representation in order to make a complaint.

5 TIME LIMITS

There is no indication of any time limits for bringing a claim. This is because the process does not concern individual circumstances or events but is concerned with identifying State Parties' laws and practices that conflict with the provisions of the Charter.

The ECSR will make its decision based on the situation at the time of judgment rather than submission of the complaint. The ECSR may at this time find no violation and merely acknowledge that there may previously have been a violation.

6 FORM OF CLAIM AND INTERVENTION

Formal requirements are found in the Rules of Procedure.¹³ A collective complaint must:

- a. be in writing and clearly indicate the name and contact details of the complainant organisation;
- b. be signed by a person entitled to represent the complainant organisation and provide proof that the person is entitled to represent the organisation; and
- c. be drafted in either English or French.

The complaint must indicate the extent to which the relevant State Party has failed to implement the Charter and provide evidence, relevant arguments and supporting documents to substantiate this claim.

7 FORMS OF SERVICE/COMMUNICATIONS

Complaints must be addressed to the Executive Secretary of the European Committee of Social Rights acting on behalf of the Secretary General of the Council of Europe.

Address: Department of the European Social Charter,
Directorate General Human Rights and Rule of Law Council of Europe,
F-67075 Strasbourg Cedex

Phone: +33 (0)3 88 41 20 00

Fax: +33 (0)3 88 41 20 00

Email: social.charter@coe.int

There is no indication that complaints must be submitted in a particular manner.

¹⁰ Article 3 of the Protocol.

¹¹ A chart of signatures and ratifications is available at: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/158/signatures?p_auth=2f4kcfLp

¹² Rule 29 of the Rules of Procedure.

¹³ Available at: <https://rm.coe.int/rules-of-the-european-committee-of-social-rights-rev-2-bil/1680788a3d>

8 WHAT HAPPENS NEXT?

If the complaint is declared admissible, the ECSR asks the respondent State to make submissions on the merits of the claim within time limits set by the ECSR.¹⁴

The ECSR then invites the complainant to make a response to these submissions, and then may provide the respondent State another opportunity to submit a further reply.¹⁵

The ECSR may organise a hearing in the course of examination of the complaint, though these are rare. This may be at the request of one of the parties, or the ECSR's own initiative. The hearing is public unless the President decides otherwise.¹⁶

Following deliberation, the ECSR adopts a decision on whether or not the Charter has been violated. The decision gives reasons, and is signed by the President, the Rapporteur and the Executive Secretary. The ECSR then transmits a report containing its decision to the parties and the Committee of Ministers of the Council of Europe.¹⁷



Further reading

Online Resources

- Decisions, Reports and further information on the Collective Complaints Procedure and Reporting System are available on the website of the Council of Europe.¹⁸
- Cullen, H., "The Collective Complaints System of the European Social Charter: Interpretative Methods of the European Committee of Social Rights", *Human Rights Law Review*, Vol. 9, Issue 1, 1 January 2009, pp. 61–93.¹⁹
- The European Federation of National Organisations Working with the Homeless (FEANTSA) operates a database of collective complaints on its website.²⁰

¹⁴ Rule 31(1) of the Rules of Procedure.

¹⁵ Rule 31(2) and (3) of the Rules of Procedure.

¹⁶ Rule 33 of the Rules of Procedure.

¹⁷ Rule 35 of the Rules of Procedure.

¹⁸ Available at: <https://www.coe.int/en/web/turin-european-social-charter/european-committee-of-social-rights>

¹⁹ Available at: <https://academic.oup.com/hrlr/article-abstract/9/1/61/607953>

²⁰ Available at: http://housingrightswatch.org/jurisprudence?combine=feantsa&field_subject_jurisprudence_tid=All&field_country_node_nid=All&field_jurisdiction_tid=All



Hints and tips

- *“Since the Protocol provides for collective complaints and individual situations may not be submitted, it is important to frame complaints covering broad groups of persons – and preferably not to include reference to individual victims.”*
Professor Emerita Csilla Kollonay Lehoczky, former member of the ECSR (2001 – 2012)
- *“It is important that organisations bring an element of legal argumentation into their complaints, being particularly careful to link alleged rights violations to specific articles of the Charter.”*
Professor Colm O’Cinneide, former member of the ECSR (2007 – 2017)
- *“Organisations should be careful to avoid ‘result complaints’ which focus on the problem itself rather than how the state’s actions or inactions have caused the problem. Complaints should be precise in flagging exactly how the state has failed in its positive or negative obligations under the Charter.”*
Professor Colm O’Cinneide, former member of the ECSR (2007 – 2017)
- *“The Committee’s Secretariat is incredibly helpful and responsive. Of course, you should always ensure you have familiarised yourself with the rules and procedures before asking specific questions.”*
Joanna Whiteman, Co-Director, Equal Rights Trust
- *“Interventions by international organisations (e.g. the European Trade Union Confederation) in collective complaints can provide valuable material to the Committee.”*
Professor Emerita Csilla Kollonay Lehoczky, former member of the ECSR (2001 – 2012)
- *“It is important to remember that the Committee will assess the State’s compliance with the Charter at the time of its decision on the merits, not at the date of submission of the complaint (contrary to the reporting system when compliance at the time of the much earlier reporting period is assessed and changes after the reporting period are not taken into consideration.)”*
Professor Emerita Csilla Kollonay Lehoczky, former member of the ECSR (2001 – 2012)

Inter-American Regional Mechanisms



Inter-American Commission on Human Rights

1 BACKGROUND

The Inter-American Commission on Human Rights (the “**Commission**”) is a principal and autonomous organ of the Organization of American States (the “**OAS**”)¹ whose mission is to promote and protect human rights in the American hemisphere. Together with the Inter-American Court of Human Rights (the “**IACtHR**”), the Commission is one of the institutions within the Inter-American system for the protection of human rights.

The Commission’s mandate includes monitoring the human rights situation in the Member States of the OAS and conducting research and advocacy on priority thematic areas in addition to its individual petition system for victims of human rights violations.

The procedure for petitions before the Commission is prescribed in the following instruments:

- a. the Statute of the Inter-American Commission on Human Rights (the “**Commission Statute**”);² and
- b. the Rules of Procedure for the Inter-American Commission on Human Rights (the “**Commission Rules of Procedure**”).³

The Commission has also published a Petition and Case System Informational Brochure which contains useful information about procedures to be followed (the “**Commission Information Brochure**”).⁴ The Commission Statute, Commission Rules of Procedure and the Commission Information Brochure are together referred to as the “**Commission Documents**”.

2 WHO CAN BRING A CLAIM?

Any person or group of persons or NGO legally recognised in one or more of the Member States of the OAS may submit petitions to the Commission, on their behalf or on behalf of third persons, concerning alleged violations of a human right.⁵

The Commission may also, *motu proprio*, initiate the processing of a petition which, in its view, meets the necessary requirements.⁶

Victim eligibility

The alleged violation must be of a human right recognised in, as the case may be:⁷

- a. the American Declaration of the Rights and Duties of Man;⁸
- b. the American Convention on Human Rights;⁹
- c. the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights;¹⁰
- d. the Protocol to the American Convention on Human Rights to Abolish the Death Penalty;¹¹
- e. the Inter-American Convention to Prevent and Punish Torture;¹²
- f. the Inter-American Convention on Forced Disappearance of Persons;¹³ or
- g. the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women.¹⁴

(Together, the “**American Treaties**”).

1 The OAS brings together all 35 independent states of the Americas and constitutes the main political, juridical, and social governmental forum in the hemisphere. In addition, it has granted permanent observer status to 69 states, as well as to the European Union (EU). The signatories are listed at: http://www.oas.org/en/member_states/default.asp

2 Statute of the Inter-American Commission on Human Rights, Resolution 447, 1979, (the “**Commission Statute**”), available at: <http://www.oas.org/en/iachr/mandate/Basics/statuteiachr.asp>.

3 Rules of Procedure for the Inter-American Commission on Human Rights, 2009, (the “**Commission Rules of Procedure**”), available at: <http://www.oas.org/en/iachr/mandate/Basics/RulesIACHR2013.pdf>.

4 Organization of American States, Petition and Case System: Informational Brochure, 2010, (the “**Commission Information Brochure**”), available at: <https://www.oas.org/en/iachr/docs/pdf/HowTo.pdf>.

5 Article 23 of the Commission Rules of Procedure.

6 Article 24 of the Commission Rules of Procedure.

7 Article 23 of the Commission Rules of Procedure.

8 Available at <http://www.oas.org/en/iachr/mandate/Basics/american-declaration-rights-duties-of-man.pdf>.

9 Available at http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.pdf.

10 Available at <http://www.oas.org/en/iachr/mandate/Basics/protocol-San-Salvador-economic-social-cultural-rights.pdf>.

11 Available at <http://www.oas.org/en/iachr/mandate/Basics/american-convention-abolish-death-penalty.pdf>.

12 Available at <http://www.oas.org/en/iachr/mandate/Basics/convention-prevent-punish-torture.pdf>.

13 Available at <http://www.oas.org/en/iachr/mandate/Basics/inter-american-convention-forced-disappearance-persons.pdf>.

14 Available at <http://www.oas.org/en/iachr/mandate/Basics/inter-american-convention-violence-women-belém-do-pará.pdf>.

Inter-American Commission on Human Rights

The term “victim” is not defined in the Commission Statute or the Commission Rules of Procedure. However, the Information Brochure defines “alleged victim” as a “person or group or persons allegedly affected by the facts reported in the petition. The alleged victim shall be identified or identifiable.”¹⁵ The Commission Documents contain no requirement for each of the victims to be individually identified. Collective victims and communities of victims are contained within the scope of the definition.¹⁶ The concept of a victim has been elaborated significantly by the IACtHR.¹⁷

Can an NGO or other organisation act on behalf of a victim?

Yes. Any NGO legally recognised in one or more of the Member States of the OAS may submit petitions to the Commission on behalf of third persons. This includes situations where an NGO is instructed by a victim to act on their behalf.¹⁸

Further, in considering a request for Precautionary Measures (see Section 7 below), the Commission shall take into account “the consent of the potential beneficiaries when the request is presented by a third party unless the absence of consent is justified.”¹⁹

Can an NGO or other organisation bring a claim without a victim?

Yes. If an NGO is legally recognised in one or more of the Members States of the OAS, it may also submit petitions to the Commission on its own behalf where the petition concerns an alleged violation of the rights contained in one of the American Treaties.²⁰

Can an NGO or other organisation intervene in an existing claim brought by a victim?

The Commission Rules of Procedure and the Commission Statute do not directly address this scenario. However, NGOs have successfully submitted *amicus curiae* briefs to the Commission in the past.²¹

Further, the Commission has discretion to join petitions under the same file where the petitions address similar facts, involve the same persons, or reveal the same pattern of conduct.²² Depending on the circumstances of the case, NGOs may be able to submit a separate petition on their own behalf in the hope that the petitions are joined.

3 ADMISSIBILITY REQUIREMENTS

The admissibility requirements are specified in:

- a. the Commission Statute; and
- b. the Commission Rules of Procedure.

What are the requirements for bringing a claim?

The Commission shall only consider petitions when they fulfil the requirements set forth in the American Treaties, the Commission Statute and the Commission Rules of Procedure.²³

In order to be considered, petitions must contain the following information:²⁴

1. the name of the person or persons making the denunciation; or in cases where the petitioner is a nongovernmental entity, its legal representative(s) and the Member State in which it is legally recognised;
2. whether the petitioner wishes that his or her identity be withheld from the State, and the respective reasons;
3. the e-mail address for receiving correspondence from the Commission and, if available, a telephone number, facsimile number, and postal address;
4. an account of the fact or situation that is denounced, specifying the place and date of the alleged violations;
5. if possible, the name of the victim and of any public authority who has taken cognisance of the fact or situation alleged;

¹⁵ Section 2, Para 25 of the Commission Information Brochure.

¹⁶ However, see the section on the IACtHR for the evidential difficulties the IACtHR has found in awarding reparations to unnamed beneficiaries.

¹⁷ See the section on the IACtHR for further information.

¹⁸ Article 23 of the Commission Rules of Procedure.

¹⁹ Article 25(6)(c) of the Commission Rules of Procedure.

²⁰ Article 23 of the Commission Rules of Procedure.

²¹ See, for example, *Amicus Curiae* Brief Presented to the Inter-American Commission on Human Rights by the Redress Trust, in the case of *Khaled El-Masri v. United States* (April 2008).

²² Article 29(5) of the Commission Rules of Procedure.

²³ Article 27 of the Commission Rules of Procedure.

²⁴ Article 28 of the Commission Rules of Procedure.

Inter-American Commission on Human Rights

6. the State the petitioner considers responsible, by act or omission, for the violation of any of the human rights recognized in the American Convention on Human Rights and other applicable instruments, even if no specific reference is made to the article(s) alleged to have been violated;
7. compliance with the time period provided for in Article 32 of the Commission Rules of Procedure (see Section 5 below);
8. any steps taken to exhaust domestic remedies, or the impossibility of doing so as provided in Article 31 of the Commission Rules of Procedure (see Section 3 below); and
9. an indication of whether the complaint has been submitted to another international settlement proceeding as provided in Article 33 of the Commission Rules of Procedure (see Section 3 below).

Requests for precautionary measures (see Section 7 below) also require the following²⁵:

- a. identifying information for the persons proposed as beneficiaries or information that allows them to be determined;
- b. a detailed and chronological description of the facts that motivate the request and any other available information; and
- c. the description of the measures of protection requested.

In order for the petition to be admissible, the Commission must be able to verify that the remedies of the relevant domestic legal system have been pursued and exhausted in accordance with the generally recognised principles of international law.²⁶

One need only exhaust those remedies that are *adequate* and *effective*:²⁷

- a. a judicial remedy is *adequate* when pursuing it may protect the right allegedly violated.
- b. a judicial remedy is *effective* when it is capable of obtaining the result for which it was designed.

The exceptions to the requirement under the Commission Rules of Procedure to have exhausted Judicial Remedies are as follows:²⁸

- a. the domestic legislation of the State concerned does not afford due process of law for protection of the right(s) that have allegedly been violated;
- b. the party alleging violation of his or her rights has been denied access to the remedies under domestic law or has been prevented from exhausting them; or
- c. there has been unwarranted delay in rendering a final judgment under the domestic remedies.

The Commission will not consider a petition where the subject matter of the petition²⁹:

- a. is pending settlement pursuant to another procedure before an international governmental organisation of which the State concerned is a member; or
- b. essentially duplicates a petition pending or already examined and settled by the Commission or by another international governmental organisation of which the State concerned is a member, unless certain circumstances apply.³⁰

4 REPRESENTATION

The petitioner may designate an attorney or other person to represent them before the Commission, either in the petition itself or in a separate document.³¹

The Commission does not require the petitioner to be represented by a lawyer to process and file the petition.³²

²⁵ Article 25(4) of the Commission Rules of Procedure.

²⁶ Article 31(1) of the Commission Rules of Procedure.

²⁷ Section 2, Para 21 of the Commission Information Brochure.

²⁸ Article 31(2) of the Commission Rules of Procedure.

²⁹ Article 33(1) of the Commission Rules of Procedure.

³⁰ Article 33(2) of the Commission Rules of Procedure.

³¹ Article 23 of the Commission Rules of Procedure.

³² Section 2, Para 29 of the Commission Information Brochure.

Inter-American Commission on Human Rights

5 TIME LIMITS

What is the time limit for bringing a claim?

The Commission shall consider those petitions that are lodged within a period of six months following the date on which the alleged victim has been notified of the decision that exhausted the domestic remedies.³³

What is the time limit for making an intervention?

The Commission Documents do not prescribe a time limit (see Section 2 above). However, an intervention will need to be made prior to the Commission's publication of their Report (see Section 7 below).

6 FORM OF CLAIM AND INTERVENTION

What form should the complaint take?

The complaint should take the form of a petition and contain the information set out in Article 28 of the Commission Rules of Procedure (see Section 3 above).

Section 4 of the Information Brochure contains the Form for submitting a petition to the Commission. It also contains guidance on (*inter alia*) the presentation of evidence and required language of the submission.

What form should the intervention take?

See Section 2 above.

Forms of service / communications with the court

Petitions can be lodged and tracked through the Commission's online Individual Petition System Portal.³⁴ Alternatively, petitions can be submitted by mail, email or fax.³⁵

The contact details of the Commission are as follows:

Address: 1889 F St., NW,
Washington, D.C.,
USA 20006

Telephone: (202) 370-9000

Fax: (202)458-3992

Email: cidhoea@oas.org

7 WHAT HAPPENS NEXT?

What happens once a claim is submitted?

Initial Processing: The Commission shall receive and carry out the initial processing of the petitions presented. Each petition shall be registered, the date of receipt shall be recorded on the petition itself and an acknowledgement of receipt shall be sent to the petitioner.

Decisions are considered in the order in which they are received; however, the Commission may expedite the evaluation of a petition in certain urgent or serious situations.³⁶

Admissibility: The Commission shall forward the relevant parts of the petition to the State in question. The State shall submit its response within three months from the date the request is transmitted and there will be a period in which the Commission has the power to investigate the admissibility of the matter.³⁷

Precautionary Measures: the Commission may, on its own initiative or at the request of a party, request that a State adopt precautionary measures. Such measures, whether related to a petition or not, shall concern serious and urgent situations presenting a risk of irreparable harm to persons or to the subject matter of a pending petition or case before the organs of the inter-American system.³⁸

Procedure on Merits: Upon opening the case, the Commission shall set a period of four months for the petitioners to submit additional observations on the merits. The pertinent parts of those observations shall be transmitted to the State

³³ Article 32(1) of the Commission Rules of Procedure.

³⁴ Available at: <https://www.oas.org/ipsp/default.aspx?lang=en>

³⁵ See Section 4, "Instructions", of the Commission Information Brochure for more information.

³⁶ Article 29(2) of the Commission Rules of Procedure.

³⁷ Article 30 of the Commission Rules of Procedure.

³⁸ See Article 25 of the Commission Rules of Procedure for the exact requirements. Additionally, Part 3 of the Commission Information Brochure contains a useful summary of how to make a request for precautionary measures.

Inter-American Commission on Human Rights

in question so that it may submit its observations within four months.³⁹ The Commission will also give the Parties time to reach a friendly settlement.⁴⁰

Decision on Merits: The Commission shall deliberate on the merits of the case, to which end it shall prepare a report in which it will examine the arguments, the evidence presented by the parties, and the information obtained during hearings and on-site observations. In addition, the Commission may take into account other information that is a matter of public knowledge.⁴¹

If within three months from the transmittal of the preliminary report to the State in question the matter has not been solved or has not been referred by the Commission or by the State to the IACtHR for a decision, the Commission, by an absolute majority of votes, may issue a final report that contains its opinion and final conclusions and recommendations.⁴²

Referral to the IACtHR: If the IACtHR has jurisdiction (see the next section for a discussion of the IACtHR's jurisdiction) and the Commission considers that the State has not complied with the recommendations of the report approved in accordance with Article 50 of the American Convention, it shall refer the case to the IACtHR, unless there is a reasoned decision by an absolute majority of the members of the Commission to the contrary. The Commission will give fundamental consideration to obtaining justice in a particular case in making this decision.⁴³

Follow Up: Once the Commission has published a report on the settlement or on the merits on which it has made recommendations, it may adopt the follow-up measures it deems appropriate, such as requesting information from the parties and holding hearings in order to verify compliance with settlement agreements and their recommendations.⁴⁴



Further reading

Online Resources

- The Commission's website has an online library of its decisions related to: admissibility;⁴⁵ inadmissibility⁴⁶ and merits.⁴⁷ In addition, the Commission has produced a publication on the friendly settlement procedure.⁴⁸
- International Justice Resource Center, *Inter-American Human Rights System*.⁴⁹
- Columbia Law School, *Using Thematic Hearings at the Inter-American Human Rights Commission to Advance U.S. Human Rights Accountability*, March 2016.⁵⁰

39 Article 37(1) of the Commission Rules of Procedure.

40 Article 37(4) of the Commission Rules of Procedure.

41 Article 43(i) of the Rules of Procedure.

42 Article 47(i) of the Commission Rules of Procedure.

43 Article 45 of the Commission Rules of Procedure.

44 Article 48(i) of the Commission Rules of Procedure.

45 Inter-American Commission on Human Rights, *Admissibility Reports*. Available at: <http://www.oas.org/en/iachr/decisions/admissibilities.asp>

46 Inter-American Commission on Human Rights, *Inadmissibility Reports*. Available at: <http://www.oas.org/en/iachr/decisions/inadmissibilities.asp>

47 Inter-American Commission on Human Rights, *Merits Reports*. Available at: <http://www.oas.org/en/iachr/decisions/merits.asp>

48 Available at: http://www.oas.org/en/iachr/friendly_settlements/docs/Report-Friendly-Settlement.pdf

49 Available at: <https://ijrcenter.org/regional/inter-american-system/>

50 Available at: https://www.law.columbia.edu/sites/default/files/microsites/human-rights-institute/iachr_thematic_hearings_resource_1_o.pdf



Hints and tips

Communication with the Commission

- REDRESS recommended communicating with the Commission via the Individual Petition System Portal,⁵¹ including submitting the petition (using the online form) and most correspondence. In some circumstances, it is useful to contact the Commission via email (as above).
- *“Noted that, although the work of the Commission is undertaken in English and in Spanish, our experience is that communicating in English adds further delay to an already lengthy process we suggest that all communications are undertaken in Spanish if at all possible.”*

REDRESS

- *“Procedures before the Commission are quite formal, and despite efforts to streamline procedures, cases can take many years to reach a conclusion.”*

REDRESS

Precautionary measures

- *“It is important for individuals to be aware that a request for precautionary measures can be made without a claim having been submitted to the Commission – they are available for emergency situations where the human rights violation in question needs to be stopped urgently. There is no need to have exhausted domestic remedies first. However, it is possible to submit a claim to the Commission about the same subject-matter in the future, and the normal admissibility rules would apply to that claim.”*

Barbara Jimenez-Santiago, Equality Now

- It is possible to obtain an order for precautionary measures from the Commission even where domestic remedies are available, on the basis that they are ineffective.⁵²
- One interviewee indicated that, in their experience, the Commission may make grant an order for precautionary measures in a matter of weeks in urgent cases. However, another interviewee indicated that their experience of the procedure indicated that it should not be relied on as the sole means of protecting vulnerable person(s), as it can itself be lengthy and too slow to be of real benefit in an emergency situation.

Hearings

- *“If you want to have a hearing on the merits of your case, you need to specifically request one by presenting a motion to the Commission – otherwise the case will be decided on paper only. Having a hearing on the merits allows you to adduce more evidence, including witness testimony, and may increase the likelihood of the case being referred to the Inter-American Court.”*

Barbara Jimenez-Santiago, Equality Now

Case strategy

- *“It is important to have a holistic advocacy strategy when bringing a case before the Inter-American Commission. For example, it can be strategic to support a case by engaging simultaneously with relevant UN Special Procedures.”*

Harriet McCulloch, Deputy Director, Reprieve

- *“You should think about advocacy as part of your case strategy. For example, if you are considering bringing a claim before the Commission, or if you have already submitted one, it is useful to engage with the Commissioners through separate advocacy activities, such as arranging a thematic hearing or private meetings with special rapporteurs. This can be helpful in raising awareness of the broader issues in the case. It is also important to get good media coverage of the hearings.”*

Barbara Jimenez-Santiago, Equality Now

⁵¹ Available at: <http://www.oas.org/en/iachr/portal>.

⁵² See, for example, *Teleguz v United States*, Report No. 16/12, Petition P-1528-11, 2012, 21

Inter-American Commission on Human Rights



Decisions

- *“Lawyers or NGOs considering embarking on a claim should be aware, and should ensure that the claimant is aware, that the process takes a very long time – it may take between 5-10 years. You should not necessarily expect a quick decision to be made!”*

Barbara Jimenez-Santiago, Equality Now

- *“The Commission has developed progressive jurisprudence on a number of issues relevant to our practice, such as the requirement for clemency procedure in death penalty cases. We have subsequently cited this jurisprudence in submissions before other regional and international bodies.”*

Harriet McCulloch, Deputy Director, Reprieve

Inter-American Court of Human Rights

1 BACKGROUND

The Inter-American Court of Human Rights (the “**IACtHR**”), together with the Inter-American Commission on Human Rights (the “**Commission**”), is one of the institutions within the Inter-American system for the protection of human rights.

The IACtHR’s two main functions are adjudicatory and advisory. Under the former, it hears and rules on the specific cases of human rights violations referred to it. Under the latter, it issues opinions on matters of legal interpretation brought to its attention by other OAS bodies or member states.

The procedure for cases before the IACtHR is prescribed in the following instruments:

- a. the Statute of the IACtHR (the “**IACtHR Statute**”);⁵³
- b. the Rules of Procedure of the IACtHR (the “**IACtHR Rules of Procedure**”);⁵⁴ and
- c. the American Convention on Human Rights “Pact of San Jose, Costa Rica” (B-32) (the “**American Convention**”).⁵⁵

2 WHO CAN BRING A CLAIM?

Only States Parties to the American Convention and the Commission have the right to submit a case to the IACtHR.⁵⁶ Victims and NGOs wishing to bring a claim must therefore petition the Commission. As detailed in the section on the Commission above, the Commission may then decide to submit the case on to the IACtHR.

Victim eligibility

The IACtHR defines “alleged victim” as a “person whose rights under the [American Convention] or another treaty of the Inter-American System have allegedly been violated”.⁵⁷

The alleged victim(s) must be identified in the Report (as defined in Section 3 below) submitted to the IACtHR when a claim is brought.⁵⁸ However, where it has not been possible to identify one or more of the alleged victims because the case concerns massive or collective violations, the IACtHR has discretion as to whether to consider those individuals as victims.⁵⁹

There is substantial case law on the concept of a “victim”. Whilst initially reparations were awarded to “direct” victims, over time this definition has been expanded to include “next of kin” and close members of family of the direct victim.⁶⁰ The IACtHR requires the victim to be clearly identified.

However, the IACtHR has been willing to award reparations to collective groups or communities without the need to individually name the members thereof. In such circumstances, reparations can be placed at the disposal of leaders of the affected community.⁶¹ However, in cases where provisional measures are sought (see Section 7) it is noted that the IACtHR has found it “indispensable to identify individually the persons in danger of suffering irreparable damage”.⁶²

Can an NGO or other organisation act on behalf of a victim?

Yes. Once a case has been presented to the IACtHR, the alleged victim(s) or their representatives may submit their brief containing pleadings, motions, and evidence autonomously and continue to act autonomously throughout the proceedings.⁶³ NGOs who directly represent victims may act on their behalf in proceedings from that point onwards.

When there are several alleged victims or representatives, the IACtHR Rules of Procedure contain provisions relating to the agreement and appointment of common intervener(s), who are the only person(s) authorised to present pleadings, motions, and evidence during the proceedings.⁶⁴

Alternatively, NGOs or other third parties not acting directly on behalf of victim(s) may intervene in an existing claim through the submission of *amicus curiae* briefs (see Section 2 below).

53 Statute of the Inter-American Court of Human Rights, Resolution 448, 1979, (the “**IACtHR Statute**”), available at: <http://www.corteidh.or.cr/index.php/en/about-us/estatuto>.

54 Rules of Procedure of the Inter-American Court of Human Rights, 2009, (the “**IACtHR Rules of Procedure**”), available at: http://www.corteidh.or.cr/sitios/reglamento/nov_2009_ing.pdf.

55 American Convention on Human Rights, “Pact of San Jose, Costa Rica”, OAS Treaty Series 36, 1969, (the “**American Convention**”), available at: http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.pdf.

56 Article 61(1) of the American Convention.

57 Article 2(25) of the IACtHR Rules of Procedure.

58 Article 35(1) of the IACtHR Rules of Procedure.

59 Article 35(2) of the IACtHR Rules of Procedure.

60 Burgorgue-Larsen, L. and de Torres, A. U., *Inter-American Court of Human Rights: Case Law and Commentary*, 2011, p. 227.

61 Burgorgue-Larsen, L. and de Torres, A. U., *Inter-American Court of Human Rights: Case Law and Commentary*, 2011, p. 227.

62 *Haitians and Haitian-origin Dominicans v. Dominican Republic*, as cited in Dinah Shelton, “The Future of the Inter-American Human Rights System” (2014) (<https://humanrights.nd.edu/assets/134027/sheltonia.pdf>).

63 Article 25(1) of the IACtHR Rules of Procedure.

64 Article 25 (2) and (3) of the IACtHR Rules of Procedure.

Inter-American Court of Human Rights

Can an NGO or other organisation bring a claim without a victim?

Only the Commission or the State parties can refer a claim to the IACtHR.⁶⁵ Please refer to the section on the Commission in respect of the initial claim.

Member States of the Organization of American States and certain other organs may consult the IACtHR regarding the interpretation of the American Convention or of other treaties concerning the protection of Human Rights in the American states.⁶⁶ However, there is no provision allowing NGOs or victims to do this.

Can an NGO or other organisation intervene in an existing claim?

Any person or institution seeking to act *amicus curiae* may submit a brief to the IACtHR.⁶⁷ *Amicus curiae* briefs may be submitted during contentious proceedings in accordance with the time limitations set out at section 2 below.⁶⁸

The IACtHR Rules explicitly recognise that *amicus curiae* briefs may be submitted in relation to proceedings for monitoring the compliance of judgements and those regarding provisional measures (see Section 7 below).

3 ADMISSIBILITY REQUIREMENTS

What are the requirements for bringing a claim?

The IACtHR cannot accept a claim until the Commission has carried out a number of steps, including:

- i. requesting information pertaining to the case from the relevant States and the relevant States co-operating to provide this information;
- ii. examining the matter in order to verify the alleged facts; and
- iii. placing itself at the disposal of the parties concerned with a view to reaching a friendly settlement of the matter.⁶⁹

If settlement has not been reached upon completion of the steps mentioned in Section 3 above, the Commission must prepare a report setting forth the facts of the claim and stating its conclusions (the “**Report**”).⁷⁰

The case shall be presented to the IACtHR through the submission by the Commission of the Report, which must establish all the facts that allegedly give rise to a violation and identify the alleged victims.⁷¹ The IACtHR must receive the following information:

- a. the names of the persons designated by the Commission to represent it before the Court;
- b. the names, address, telephone number, electronic address, and facsimile number of the representatives of the alleged victims, if applicable;
- c. the reasons leading the Commission to submit the case before the IACtHR and its observations on the answer of the respondent State to the recommendations of the Report;
- d. a copy of the entire case file before the Commission, including all communications following the issue of the Report;
- e. the evidence received, including the audio and the transcription, with an indication of the alleged facts and arguments on which they bear. The Commission shall indicate whether the evidence was rendered in an adversarial proceeding;
- f. when the Inter-American public order of human rights is affected in a significant manner, the possible appointment of expert witnesses, the object of their statements, and their curricula vitae;
- g. the claims, including those relating to reparations.⁷²

The IACtHR only has jurisdiction where the State parties to the case recognise or have recognised the jurisdiction of the IACtHR, whether by a special declaration or by special agreement.⁷³ The special declaration must have been made in accordance with Article 62 of the American Convention.

⁶⁵ Article 61(1) of the American Convention.

⁶⁶ Article 64(1) of the American Convention.

⁶⁷ Article 44(1) of the IACtHR Rules of Procedure.

⁶⁸ Article 44(3) of the IACtHR Rules of Procedure.

⁶⁹ Article 48 of the American Convention.

⁷⁰ Article 50(1) of the American Convention.

⁷¹ If a State Party is submitting the claim, they must submit a “reasoned brief” containing the information proscribed under Article 36 of the IACtHR Rules of Procedure.

⁷² Article 35(1) of the IACtHR Rules of Procedure.

⁷³ Article 62(3) of the American Convention.

4 REPRESENTATION

It is not necessary for victims to be represented by lawyers at the IACtHR, although it is possible for victims to appoint duly accredited legal representatives on their behalf.

In cases where alleged victims are acting without duly accredited legal representation, the IACtHR may, on its own motion, appoint an Inter-American defender to represent them during the processing of the case.⁷⁴

5 TIME LIMITS

What is the time limit for bringing a claim?

A claim must ordinarily be brought within a period of three months from the date of the transmittal of the Report to the States concerned.⁷⁵ Case law suggests that there may be some flexibility in this regard and that the IACtHR will look at each case on its own merits in order to strike “a fair balance between the protection of human rights, which is the ultimate purpose of the system, and the legal certainty and procedural equity that will ensure the stability and reliability of the international protection mechanism”.⁷⁶

What is the time limit for making an intervention?

An *amicus curiae* brief (see Section 2 above) may be submitted:

- a. if the IACtHR holds a public hearing, at any time during within 15 days after the public hearing (but before the submission of final arguments); or
- b. if the IACtHR does not hold a public hearing, at any time within 15 days after the order setting the deadlines for the submission of final arguments.⁷⁷

6 FORM OF CLAIM AND INTERVENTION

What form should the complaint take?

Victims and their representatives should apply to the Commission at first instance.

What form should the intervention take?

In relation to an *amicus curiae* submission, see Section 2 and 5 above.

Forms of service / communications with the court

All briefs addressed to the Court (whether *amicus curiae* submissions or submissions by the victim or their representatives) may be presented in person or by courier, facsimile, post, or electronic mail, and must be signed in order to ensure their authenticity.⁷⁸

See Article 28 (Filing of Briefs) of the IACtHR Rules of Procedure for full details on the requirements for filing a brief. It is noted that communications that are deemed to be patently inadmissible may be rejected.⁷⁹ *Amicus Curiae* briefs are further subject to the following specific requirements:

- a. the amicus brief must be submitted in the working language of the case and must bear the names and signatures of its authors;
- b. if the amicus curiae brief is submitted by electronic means and is not signed, or if the brief is submitted without its annexes, the original and supporting documentation must be received by the Tribunal within seven days of its transmission; and
- c. if the brief is submitted out of time or is submitted without the required documentation, it shall be archived without further processing.⁸⁰

74 Article 37 of the IACtHR Rules of Procedure.

75 Article 51 of the American Convention.

76 *Cayara Case*, Preliminary Objections (3 February 1993), Series C No. 14, para. 39; *Caballero Delgado and Santana Case*, Preliminary Objections (21 January 1994) Series C No. 17. See discussion in paragraphs 32-55 of the Judgement. Available at http://hrlibrary.umn.edu/iachr/B_11_19a.htm

77 Article 44(3) of the IACtHR Rules of Procedure.

78 Article 28(1) of the IACtHR Rules of Procedure.

79 Article 28(4) of the IACtHR Rules of Procedure.

80 Article 44 of the IACtHR Rules of Procedure.

Inter-American Court of Human Rights

The contact details of the IACtHR are as follows:

Address: Apartado Postal 6906-1000,
San José,
Costa Rica.⁸¹

Telephone: +506 2527 1600

Fax: +506 2280 5074

Email: corteidh@corteidh.or.cr⁸²

7 WHAT HAPPENS NEXT?

What happens once a claim is submitted?

Following receipt of the Report, the IACtHR shall serve notice of the presentation of the case on (*inter alia*) the respondent State, the Commission and the alleged victim or his or her representatives.⁸³

At any stage of proceedings involving cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the IACtHR may, on its own motion, order such provisional measures as it deems necessary.⁸⁴ Victims may also submit requests for provisional measures.⁸⁵

Following notice of the presentation of the case to the alleged victim or his or her representatives, the alleged victim shall have a non-renewable term of two months to autonomously submit to the Court the brief containing pleadings, motions and evidence (see Section 2 above for the alleged victim's right to act autonomously before the IACtHR) (the **"Applicant's Brief"**).⁸⁶

The respondent State will then have a period in which to file their brief containing their answer to the Applicant's Brief (including any Preliminary Objections) (the **"Respondent's Brief"**). Further written submissions may be made at the leave of the Court.⁸⁷

There will be a period for oral proceedings to be made in hearings before the IACtHR. Articles 45 to 55 of the IACtHR Rules of Procedure govern the oral proceedings and include provisions pertaining the selection and protection of witnesses, the proceedings at hearings and the rules for interrogation of witnesses.⁸⁸

The States involved, alleged victim(s) and the Commission will then have the opportunity to present final written arguments within the term established by the IACtHR.

When a case is ready for judgment, the Court shall deliberate in private and approve the judgment.⁸⁹

⁸¹ It is advised to confirm the correct address with the IACtHR prior to making a filing.

⁸² However, one interviewee advised that communication with the IACtHR is best conducted via email, using the address: tramite@corteidh.or.cr.

⁸³ Article 39(1) of the IACtHR Rules of Procedure.

⁸⁴ Article 63(2) of the American Convention.

⁸⁵ Article 63(2) of the American Convention and Article 27(3) of the IACtHR Rules of Procedure.

⁸⁶ Article 40 of the IACtHR Rules of Procedure.

⁸⁷ Articles 41 to 44 of the IACtHR Rules of Procedure.

⁸⁸ Articles 44 to 55 of the IACtHR Rules of Procedure.

⁸⁹ Article 67(1) of the IACtHR Rules of Procedure.



Further reading

Online Resources

- The IACtHR has information about the petitions system on its website,⁹⁰ including a flow chart detailing steps in the procedure.⁹¹
- Mayer, L.M., “NGO Standing and Influence in Regional Human Rights Courts and Commissions”, *Notre Dame Law School Scholarly Works*, Paper 54, 2011.⁹²

Other

- Burgorgue-Larsen, L. and de Torres, A.U., *Inter-American Court of Human Rights: Case Law and Commentary*, 2011.



Hints and tips

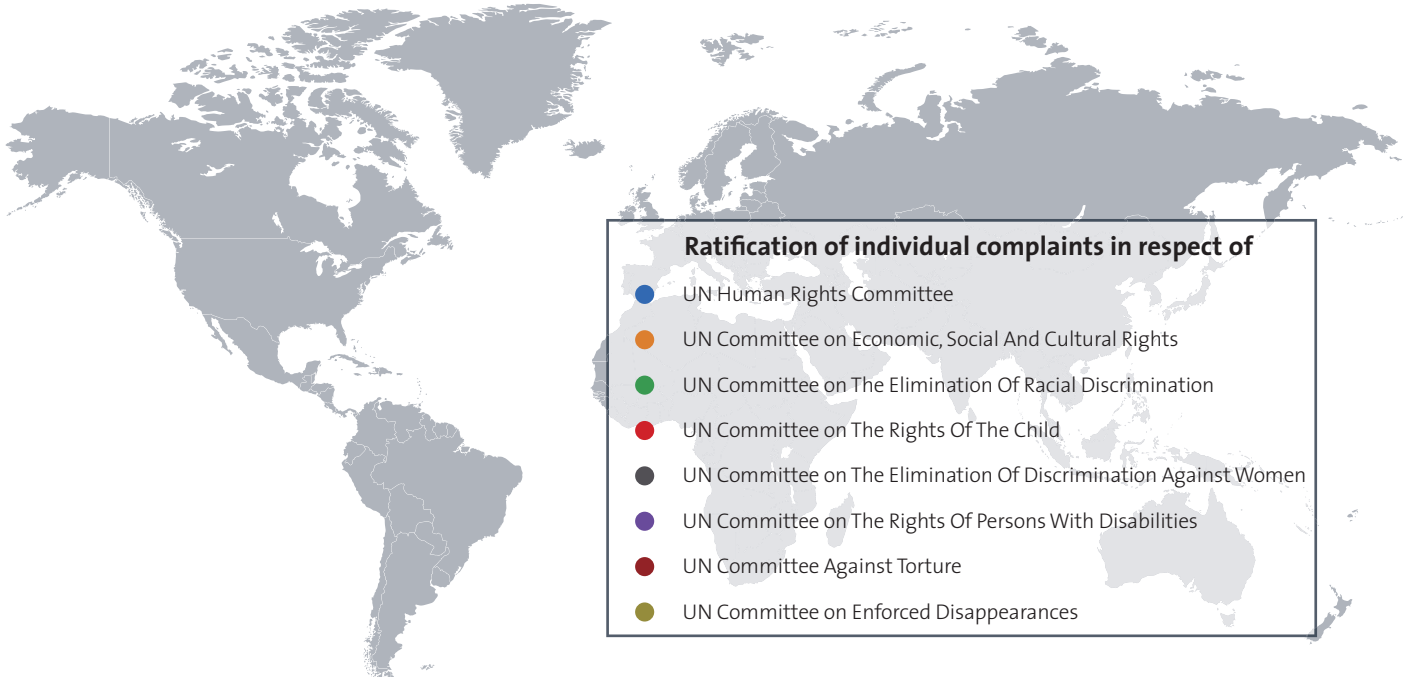
- Communicate by email (see above) and ensure that the relevant case name and reference number is included in the subject heading.
- As with the Commission, one interviewee noted that, although the work of the Court is undertaken in English and in Spanish, their experience is that communicating in English adds further delay to an already lengthy process and recommends that all communications are undertaken in Spanish if at all possible.
- As with the Commission, procedures before the Court are quite formal, and despite efforts to streamline procedures, cases can take many years to reach a conclusion.

⁹⁰ Available at: <http://www.corteidh.or.cr/index.php/en/about-us/how-to-access-the-inter-american-system/denuncias-consultas>

⁹¹ Available at: <http://www.corteidh.or.cr/index.php/en/about-us/how-to-access-the-inter-american-system/diagram-of-proceedings-before-the-i-a-court>

⁹² Available at: https://scholarship.law.nd.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1053&context=law_faculty_scholarship. This paper contains an analysis of NGO involvement in Human Rights institutions, including the IACtHR. See in particular pp. 928-929 for a table setting out the NGO involvement in cases between 2000-2009.

UN Treaty Body Mechanisms



- Ratification of individual complaints in respect of**
- UN Human Rights Committee
 - UN Committee on Economic, Social And Cultural Rights
 - UN Committee on The Elimination Of Racial Discrimination
 - UN Committee on The Rights Of The Child
 - UN Committee on The Elimination Of Discrimination Against Women
 - UN Committee on The Rights Of Persons With Disabilities
 - UN Committee Against Torture
 - UN Committee on Enforced Disappearances

Afghanistan									•			
Albania	•				•			•				•
Algeria	•		•								•	
Andorra	•		•	•		•		•		•		
Angola	•						•		•			
Antigua and Barbuda							•					
Argentina	•	•	•	•		•		•		•		•
Armenia	•						•					•
Australia	•		•				•		•		•	
Austria	•		•				•		•		•	•
Azerbaijan	•		•				•		•		•	
Bahamas												
Bahrain												
Bangladesh										•		
Barbados	•											
Belarus	•						•					
Belgium	•	•	•	•		•		•		•		•
Belize							•					
Benin	•								•			
Bhutan												
Bolivia (Plurinational State of)	•	•	•	•		•		•		•		•
Bosnia and Herzegovina	•	•				•		•		•		•
Botswana							•					
Brazil	•		•	•		•		•		•		•
Brunei Darussalam												
Bulgaria	•		•				•				•	
Burkina Faso	•						•		•			•
Burundi									•		•	
Cabo Verde	•						•					
Cambodia							•					•
Cameroon	•						•				•	
Canada	•						•				•	
Central African Republic	•								•			
Chad	•											
Chile	•		•	•					•		•	•

China												
Colombia										•		•
Comoros												
Congo										•		
Costa Rica	•		•	•		•		•		•		•
Côte D'Ivoire	•							•				
Croatia	•							•		•		•
Cuba												•
Cyprus	•		•	•		•		•		•		
Czech Republic	•		•	•				•		•		•
Democratic People's Republic of Korea												
Democratic Republic of the Congo	•									•		
Denmark	•		•	•		•		•		•		•
Djibouti	•									•		
Dominica										•		
Dominican Republic	•							•		•		
Ecuador	•	•	•					•		•		•
Egypt												
El Salvador	•	•	•	•						•		
Equatorial Guinea	•									•		
Eritrea												
Estonia	•		•							•		
Eswatini (the Kingdom of)										•		
Ethiopia												
Fiji												
Finland	•	•	•	•		•		•		•		•
France	•		•	•		•		•		•		•
Gabon								•		•		•
Gambia (Republic of The)	•									•		
Georgia	•		•	•		•		•		•		•
Germany	•		•	•		•		•		•		•
Ghana	•							•		•		•
Greece	•							•		•		•
Grenada												

Guatemala	●				●	●	●	
Guinea	●				●			
Guinea Bissau					●			
Guyana	●							
Haiti					●			
Honduras	●				●		●	
Hungary	●	●			●	●	●	
Iceland	●	●			●		●	
India								
Indonesia								
Iran (Islamic Republic of)								
Iraq								●
Ireland	●	●	●		●		●	
Israel								
Italy	●	●	●		●	●	●	●
Jamaica								
Japan								●
Jordan								
Kazakhstan	●	●			●		●	●
Kenya								
Kiribaiti								
Kuwait								
Kyrgyzstan	●				●			
Lao People's Democratic Republic								
Latvia	●				●			
Lebanon								
Lesotho	●				●			●
Liberia								
Libya	●				●			
Liechtenstein	●	●	●		●		●	
Lithuania	●				●	●		●
Luxembourg	●	●	●		●	●	●	
Madagascar	●							
Malawi	●							
Malaysia								
Maldives	●				●			
Mali	●				●	●		●
Malta	●	●			●	●		
Mashall Islands								
Mauritania					●			●
Mauritius	●				●			
Mexico	●	●			●	●	●	●
Micronesia (Federated States of)								
Monaco		●	●		●		●	
Mongolia	●	●			●	●		
Montenegro	●	●	●		●	●	●	●
Morocco		●			●	●	●	●
Mozambique					●	●		
Myanmar								
Namibia	●				●	●		
Nauru								
Nepal	●				●	●		
Netherlands	●	●			●		●	●
New Zealand	●				●	●	●	
Nicaragua	●				●			
Niger	●				●	●		●
Nigeria					●	●		●
Norway	●	●			●		●	
Oman								
Pakistan								
Palau					●			
Panama	●	●	●		●	●	●	●
Papua New Guinea								

Paraguay	●				●	●	●	●
Peru	●	●	●		●	●	●	●
Philippines	●				●			
Poland	●	●			●		●	
Portugal	●	●	●		●	●	●	●
Qatar								
Republic of Korea	●	●			●		●	
Republic of Moldova	●	●			●		●	
Romania	●	●			●			
Russian Federation	●	●			●		●	
Rwanda					●	●		
Saint Kitts and Nevis					●			
Saint Lucia								
Saint Vincent and the Grenadines	●					●		
Samoa								●
San Marino	●	●	●		●	●	●	
Sao Tome and Principe	●				●			
Saudi Arabia						●		
Senegal	●	●			●		●	●
Serbia	●	●			●	●	●	●
Seychelles	●				●		●	●
Sierra Leone	●							
Singapore								
Slovakia	●	●	●		●	●	●	●
Slovenia	●	●	●		●	●	●	
Solomon Islands						●		
Somalia	●							
South Africa	●	●			●	●	●	
South Sudan						●		
Spain	●	●	●		●	●	●	●
Sri Lanka	●					●		
Sudan							●	
Suriname	●							
Sweden	●	●			●	●	●	
Switzerland		●	●		●		●	
Syrian Arab Republic							●	
Tajikistan	●							
Thailand						●	●	
The former Yugoslav Republic of Macedonia	●	●			●	●		
Timor-Leste						●		
Togo	●	●				●	●	●
Tonga								
Trinidad and Tobago	●							
Tunisia	●					●	●	●
Turkey	●					●	●	●
Turkmenistan	●					●	●	
Tuvalu								
Uganda	●						●	
Ukraine	●	●	●		●	●	●	●
United Arab Emirates								
United Kingdom of Great Britain and Northern Ireland						●	●	
United Republic of Tanzania						●	●	
United States of America								
Uruguay	●	●	●		●	●	●	●
Uzbekistan	●							
Vanuatu						●		
Venezuela, Bolivarian Republic of	●	●			●	●	●	
Viet Nam								
Yemen							●	
Zambia	●							●
Zimbabwe							●	

Complaint Procedures under the UN Human Rights Treaties

1 GENERAL INFORMATION

The following sections focus on complaint procedures under eight core UN human rights treaties (the “**Treaties**”, each a “**Treaty**”):

- a. the International Covenant on Civil and Political Rights (“**ICCPR**”);
- b. the International Covenant on Economic, Social and Cultural Rights (“**ICESCR**”);
- c. the International Convention on the Elimination of All Forms of Racial Discrimination (“**ICERD**”);
- d. the Convention on the Elimination of All Forms of Discrimination against Women (“**CEDAW**”);
- e. the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“**CAT**”);
- f. the Convention on the Rights of the Child and its Optional Protocols (“**CRC**”);
- g. the Convention on the Rights of Persons with Disabilities (“**CRPD**”); and
- h. the International Convention for the Protection of All Persons from Enforced Disappearances (“**ICPPED**”).

The Treaties establish treaty bodies responsible for monitoring the implementation of Treaty rights. The treaty bodies oversee the implementation of the Treaties in a number of ways, including by receiving and reviewing periodic reports on implementation submitted by state parties; developing general comments or recommendations to elaborate on or clarify the Treaties or state obligations; and arranging general/thematic debates on issues of relevance to the implementation of Conventions. The treaty bodies are also empowered to receive and consider complaints or “communications” relating to alleged violations of Treaty rights. Given the focus of this Handbook, the following sections focus on these complaints procedures.

Each treaty body has developed its own body of rules of procedure and jurisprudence with respect to individual complaints procedures. This Handbook is intended to provide guidance as to key issues to consider and a reference point for further reading. It is, in no way, a replacement for review of the applicable rules of procedure of each treaty body and relevant jurisprudence.

The Office of the United Nations High Commissioner for Human Rights (the “**OHCHR**”) has produced a number of useful resources for the individual complaints procedures, including a publication on the similarities and differences between the different procedures.¹ It is also possible to search for jurisprudence from each treaty body in relation to all key admissibility requirements, in addition to other aspects of its jurisprudence, via the online jurisprudence database operated by the OHCHR (“**Jurisprudence Database**”).² In addition, the World Organisation Against Torture has produced a handbook relating to the complaints procedures under the ICCPR, CAT and CEDAW, which provides useful additional guidance.³

While there are differences between the procedures for lodging complaints under different Treaties, there are some broad principles to note that apply in respect of complaint procedures across the Treaties, as detailed below.

¹ The Office of the High Commissioner of Human Rights, *Individual Complaint Procedures under the United Nations Human Rights Treaties (Fact Sheet No. 7)*, 2013, available at: <https://www.ohchr.org/Documents/Publications/FactSheet7Rev.2.pdf>.

² Available at: <http://juris.ohchr.org/search/Documents>.

³ Joseph, S, et al., *Seeking Remedies for Torture Victims: A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies*, World Organisation Against Torture, 2006, available at: <http://www.omct.org/monitoring-protection-mechanisms/reports-and-publications/2006/11/d18503/>.

Complaint Procedures under the UN Human Rights Treaties

2 WHAT ARE THE PROCEDURES FOR BRINGING A COMPLAINT?

There are three main procedures for complaints regarding violations of human rights protected by the Treaties: (a) “individual communications”; (b) “state-to-state complaints”; and (c) “inquiries”.

- a. **Individual communications:** the treaty bodies can, subject to certain requirements, receive and consider individual complaints or “communications”.
- b. **State-to-state complaints:** several of the Treaties also provide mechanisms for complaints from State Parties in relation to alleged Treaty violations by another State Party. However, until April 2018 – when a complaint was lodged against Israel under the ICERD⁴ – none of these procedures had been used.
- c. **Inquiries:** some of the Treaties enable the treaty bodies to, on their own initiative, initiate inquiries upon the receipt of reliable information of serious, grave or systemic violations by a State Party of the convention they monitor. However, no such inquiry procedure is provided for under the ICCPR or the ICERD (though it should be noted that the CERD has established an alternate “early warning” procedure).

3 AGAINST WHOM CAN A COMPLAINT BE BROUGHT?

A complaint can only be brought under any of the Treaties if:

- a. the State against which the complaint is brought is a party (through ratification or accession) to the relevant Treaty; and
- b. the relevant State Party has recognised the competence of the treaty body responsible for monitoring the relevant Treaty, to hear such a complaint. Depending on the Treaty, this may be through becoming a party to a separate treaty or by making a declaration under a specific article to the relevant convention.

4 WHO CAN BRING A COMPLAINT?

The rules on who can lodge a complaint are outlined in relation to each complaint procedure below.

It is important to note that there has been some significant elaboration on who will be considered to be a “victim” for the purpose of bringing a complaint, in individual treaty body decisions. The Human Rights Committee has made some important elaborations on the term in its jurisprudence and this is likely to be persuasive to other treaty bodies. Accordingly, see the section on the Human Rights Committee below in particular, for more detail.

5 WHAT INFORMATION MUST BE PROVIDED IN A COMPLAINT?

None of the treaty bodies prescribe a particular format for complaints. However, the OHCHR has prepared model complaint forms to be used in relation to certain treaty bodies⁵ and has prepared guidance on what should be included in a complaint.⁶

In general, claims should be in legible writing (preferably typed), signed, and presented in one of the UN languages (Arabic, Chinese, English, French, Russian or Spanish). The complaint should provide basic personal information and specify the State Party against which the complaint is directed.

The complaint should set out, in chronological order, all the facts on which the complaint is based and the reason why the complainant considers that a violation of the Treaty in question has occurred.

The complainant should also detail the steps taken to exhaust domestic remedies and supply copies of all documents relevant to their claim.

In general, complaints should be submitted as soon as possible after the exhaustion of domestic remedies. Some treaty bodies prescribe specific time limits, as detailed in the sections that follow.

⁴ Holmes, O., “Palestine files complaint against Israel under anti-racism treaty”, *The Guardian*, 23 April 2018, available at: <https://www.theguardian.com/world/2018/apr/23/palestinians-file-complaint-against-israel-under-anti-racism-treaty>.

⁵ The model complaint forms are annexed to the following guidance: The Office of the High Commissioner of Human Rights, *Individual Complaint Procedures under the United Nations Human Rights Treaties (Fact Sheet No. 7)*, 2013, available at: <https://www.ohchr.org/Documents/Publications/FactSheet7Rev.2.pdf>.

⁶ *Ibid*, p 4-5.

Complaint Procedures under the UN Human Rights Treaties

6 WHAT HAPPENS NEXT?

After registration of a case, it will be submitted to the State Party concerned for its observations. The relevant treaty body will then decide on: (i) the admissibility of the complaint; and (ii) the merits of the complaint. The complainant will have an opportunity to comment on any observations received from the State Party.

After receipt of comments from both parties, the treaty body will make a decision on the complaint, without possibility of appeal. If it has found a violation, the treaty body will invite the State Party to supply information on steps it has taken to implement its recommendations. Note that decisions are not enforceable, but do represent an authoritative interpretation of the relevant Treaty.

It is important to note that decisions are not enforceable, though they do represent an authoritative interpretation of the relevant Treaty.



Further Reading

Online Resources

- Resources produced by the Office of the High Commissioner for Human Rights, including:
 - Detailed handbook on individual complaints procedures;⁷
 - General guidance on the individual complaints procedure;⁸ and
 - The Jurisprudence Database.⁹
- The World Organisation Against Torture has produced a comprehensive handbook relating to the complaints procedures under the ICCPR, CAT and CEDAW.¹⁰
- The International Service for Human Rights has produced a guide on engaging with the UN human rights system which includes guidance on individual communications.¹¹

⁷ *Ibid.*

⁸ Available at: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#proceduregenerale>.

⁹ Available at: <http://juris.ohchr.org/search/Documents>.

¹⁰ Joseph, S. et al., *Seeking Remedies for Torture Victims: A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies*, World Organisation Against Torture, 2006, available at: <http://www.omct.org/monitoring-protection-mechanisms/reports-and-publications/2006/11/d18503/>.

¹¹ Available at: http://www.ishr.ch/sites/default/files/documents/ishr_simpleguide_eng_final_final_dec15.pdf.



General hints and tips

- *“Try to ensure that the complaint clearly outlines which right has been violated and how, and what relief is being sought.”*
Tess McEvoy, Programme manager and legal counsel, International Service for Human Rights
- *“While treaty bodies are not required to follow each other’s decisions, it is advisable to consider and refer to the decisions of other treaty bodies where they may be instructive in your case. There are many commonalities between the complaints procedures of the bodies, so decisions relating to matters of admissibility from other treaty bodies are likely to be useful as well as those on the substantive rights. This is particularly true of the Human Rights Committee’s decisions, which are numerous.”*
Joanna Whiteman, Co-Director, Equal Rights Trust
- *“In some cases, there is only a very limited number of existing decisions of the treaty body. This is most notable of newer mechanisms such as that of the Committee on the Rights of Persons with Disabilities. In bringing your complaint, don’t forget that it may provide the first opportunity for the Committee to expound a particular Convention right. You can and should assist the Committee by referring, where possible, to specialist documents of international best practice and soft law, as well as relevant jurisprudence from other international and regional human rights.”*
Joanna Whiteman, Co-Director, Equal Rights Trust
- *“The timeframes for a Committee to publish its view on an individual case varies. Some like the Human Rights Committee, which has a number of pending cases, will take longer. This should be taken into consideration when determining whether to submit a complaint.”*
Tess McEvoy, Programme manager and legal counsel, International Service for Human Rights

1 BACKGROUND

The United Nations Human Rights Committee (the “**Committee**”) is a body of 18 experts which monitors State Parties’ compliance with the International Covenant on Civil and Political Rights (the “**Covenant**”)¹ and considers individual petitions concerning State Parties to the Optional Protocol to the Covenant (the “**Optional Protocol**”)², among other functions.

Under the Optional Protocol, the Committee has jurisdiction to examine individual complaints or “communications” with regard to alleged violations of the Covenant by States which are party to the Optional Protocol.³ In this section, we will refer to these as “complaints”.

The procedures relating to individual complaints submitted to the Committee are governed by:

- a. the Optional Protocol; and
- b. the Committee’s Rules of Procedure. Part XVII governs the procedure for the consideration of communications received under the Optional Protocol.⁴

All references to “Rules” are to the Committee’s Rules of Procedure.

The Committee has developed an extensive body of jurisprudence with respect to the admissibility of complaints. The following is intended as a guidance to key issues and is, in no way, a replacement for review of the Rules of Procedure and relevant jurisprudence, including by reference to the further reading recommended below. The Office of the High Commissioner for Human Rights (the “**OHCHR**”) has produced a number of useful resources which are listed in Further Reading below.

It is possible to search for jurisprudence of the Committee in relation to all key admissibility requirements, in addition to other aspects of its jurisprudence, via the online jurisprudence database operated by the OHCHR (“**Jurisprudence Database**”).⁵ Using the search function on the database, it is possible to filter for decisions by “Body” (e.g. CCPR) and then by “Issues” (e.g. admissibility – exhaustion of domestic remedies).

2 WHO CAN BRING A COMPLAINT?

As above, the Committee has developed an extensive body of jurisprudence with respect to who can bring a complaint which are searchable via the Jurisprudence Database by filtering under “Issues”.

Individuals or groups of individuals

The claimant must be a natural person, rather than a legal person (such as a corporation, trade union or a non-governmental organisation).⁶

Groups of individuals who are similarly affected may collectively submit a complaint.⁷ However, each individual complainant must identify himself or herself and agree to the complaint being brought on his or her behalf if represented by another person, such as an advocate.⁸

1 International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 1966, (the “**Covenant**”), available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

2 Optional Protocol I to the International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), 1996, (the “**Optional Protocol**”), available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCCPR1.aspx>.

3 In order to establish whether a state has ratified the Optional Protocol, see: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-5&chapter=4&clang=_en.

4 Human Rights Committee, *Rules of procedure of the Human Rights Committee*, CCPR/C/3/Rev.10, 2012 (the “**Rules of Procedure**”), available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=65.

5 Available at: <http://juris.ohchr.org/search/Documents>.

6 Human Rights Committee, *Mariategui et al. v Argentina*, Communication No. 1371/2005, U.N. Doc. A/60/40, 2005, Para 4.3, in which the Committee referred to its jurisprudence in relation to this requirement, as follows: Human Rights Committee, *Franz Wallmann et al. v Austria*, Communication No. 1002/2001, U.N. Doc. CCPR/C/80/D/1002/2001, 2004, Para 8.13; Human Rights Committee, *Michelle Lamagna v Australia*, Communication No. 737/1997, U.N. Doc. CCPR/C/65/D/737/1997, 1999, Para 6.2; and Human Rights Committee, *S. M. v Barbados*, Communication No. 502/1992, U.N. Doc. CCPR/C/50/D/502/1992, 1994, Para 6.2; Human Rights Committee, *A publication and a printing company v Trinidad and Tobago*, Communication No. 361/1989, U.N. Doc. Supp. No. 40 (A/44/40), 1989, Para 3.2; Human Rights Committee, *A newspaper publishing company v Trinidad and Tobago*, Communication No. 360/1989, U.N. Doc. CCPR/C/36/D/360/1989, 1989, Para 3.2.

7 Human Rights Committee, *Lubicon Lake Band v Canada*, Communication No. 167/1984, U.N. Doc. Supp. No. 40 (A/45/40), 1990, Para 32.1: “There is, however, no objection to a group of individuals, who claim to be similarly affected, collectively to submit a communication about alleged breaches of their rights”.

8 Human Rights Committee, *Erkki Hartikainen v Finland*, Communication No. 40/1978, U.N. Doc. CCPR/C/OP/1, 1984, Para 3. The HRC held that it could not consider the communication in so far as it had been submitted by an individual in his capacity as the General Secretary of the Union of Free Thinkers in Finland “unless he furnished the names and addresses of the persons he claimed to represent together with information as to his authority for acting on their behalf”. For further explanation about the case and this point, please see Joseph, S. et al., *Seeking Remedies for Torture Victims: A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies*, World Organisation Against Torture, 2006, available at: <http://www.omct.org/monitoring-protection-mechanisms/reports-and-publications/2006/11/d18503/>, p. 55.

Subject to the jurisdiction of the State to which the complaint relates

Pursuant to the Covenant and the Optional Protocol, the individual or group of individuals must be “subject to the jurisdiction” of the State to which the complaint relates; however, it is not necessary to be a national of the State.

Under Article 2(1) of the Covenant, States Parties are required to ensure the rights in the Covenant to “all individuals within its territory and subject to its jurisdiction”. In General Comment 15, the Committee referred to this provision and reiterated that, “[i]n general, the rights set forth in the Covenant apply to everyone, irrespective of reciprocity, and irrespective of his or her nationality or statelessness.”⁹

Article 1 of the Optional Protocol provides that States Parties to the Covenant that become Parties to the Optional Protocol recognise the competence of the Committee 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.” (Emphasis added).

Violation of rights

The Committee has developed substantial jurisprudence in relation to this requirement, including the degree of connection required between the victim and the act, omission, policy or practice of the State. This requirement is sometimes expressed in terms that the alleged victim must be “personally and directly affected by the law, policy, practice, act or omission of the State party”.¹⁰

The Committee has formulated the general principle as follows:

... the Committee observes that a person may not claim to be a victim within the meaning of article 1 of the Optional Protocol unless his rights have actually been violated. However, no person may, in theoretical terms and by *actio popularis*, object to a law or practice which he holds to be at variance with the Covenant. Any person claiming to be a victim of a violation of a right protected by the Covenant must demonstrate either that a State party has by an act or omission already impaired the exercise of his right or that such impairment is imminent, basing his argument for example on legislation in force or on a judicial or administrative decision or practice.¹¹

The Committee subsequently referred to this jurisprudence in a decision published in November 2017.¹²

For detailed consideration of this issue, including the status of “direct” and “indirect” victims and the degree of connection required between the victim and the act or omission of the State, please see the handbook produced by the World Organisation Against Torture (the “**OMCT Handbook**”)¹³ and consult the further reading below.

Anonymity

Article 3 of the Optional Protocol provides that the Committee “shall consider inadmissible any communication under the present Optional Protocol which is anonymous”.

However, the OMCT Handbook advises that:

The relevant Committee however will normally agree, if requested, to suppress the name of the alleged victim in published documents. It is not possible however to keep the name of the alleged victim from the relevant State, as the State cannot investigate the allegations if it does not know who that person is.¹⁴

Can an NGO or other organisation act on behalf of a victim?

Yes. Rule 96(b) provides that a complaint may be submitted by an individual or their representative. It states as follows:

Normally, the communication should be submitted by the individual personally or by that individual's representative; a communication submitted on behalf of an alleged victim may, however, be accepted when it appears that the individual in question is unable to submit the communication personally.

Can an NGO or other organisation intervene in an existing claim brought by a victim?

Yes - see “Hints and Tips” below for more information.

⁹ Human Rights Committee, *CCPR General Comment No. 15: The Position of Aliens Under the Covenant*, 11 April 1986, Para 1.

¹⁰ The Office of the High Commissioner of Human Rights, *Individual Complaint Procedures under the United Nations Human Rights Treaties (Fact Sheet No. 7)*, 2013, p. 7, available at: <https://www.ohchr.org/Documents/Publications/FactSheet7Rev.2.pdf>.

¹¹ Human Rights Committee, *Raymond-Jacques Picq v France*, Communication No. 1632/2007, U.N. Doc. CCPR/C/94/D/1632/2007, 2008, Para 6.3 (emphasis added).

¹² Human Rights Committee, *Reyes et al v Chile*, Communication No. 2627/2015, CCPR/C/121/D/2627/2015, 2017, Para 6.4.

¹³ Joseph, S. et al., *Seeking Remedies for Torture Victims: A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies*, World Organisation Against Torture, 2006, pp. 54–57, available at: <http://www.omct.org/monitoring-protection-mechanisms/reports-and-publications/2006/11/d18503/>.

¹⁴ Joseph, S. et al., *Seeking Remedies for Torture Victims: A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies*, World Organisation Against Torture, 2006, p. 55, available at: <http://www.omct.org/monitoring-protection-mechanisms/reports-and-publications/2006/11/d18503/>.

3 ADMISSIBILITY REQUIREMENTS

What are the requirements for making a complaint?

The Optional Protocol establishes the jurisdiction of the Committee to receive complaints. Part XVII of the Rules of Procedure, in particular Rule 96, elaborates further on the admissibility requirements for a complaint.

A complaint relating to a violation of rights protected by the Covenant may be considered inadmissible on the basis of: (a) jurisdiction; or (b) procedural grounds. It is noteworthy that the Committee will, however, usually consider admissibility together with merits in one hearing rather than as a preliminary consideration.

Jurisdictional grounds

In order for jurisdictional grounds to be established, the relevant respondent State must:

- a. be a party to the Covenant;¹⁵
- b. have accepted the jurisdiction of the Committee by acceding to the Optional Protocol;¹⁶ and
- c. not have made a reservation limiting the Committee's competence to examine the complaint.¹⁷

Procedural grounds

The complaint may be inadmissible on the following procedural grounds:

- a. it is anonymous, is an abuse of the right of submission, or is incompatible with the provisions of the Covenant;¹⁸
- b. the same matter is being examined under another procedure of international investigation or settlement;¹⁹ or
- c. the complainant has not exhausted all available domestic remedies, unless such domestic remedies are unreasonably prolonged.²⁰

4 TIME LIMITS

Under the Optional Protocol, there is no time limit to submit a complaint to the Committee.

However, Rule 96(c) provides that the Committee shall consider the time within which a complaint is submitted when determining admissibility, as follows:

An abuse of the right of submission is not, in principle, a basis of a decision of inadmissibility ratione temporis on grounds of delay in submission. However, a communication may constitute an abuse of the right of submission, when it is submitted after 5 years from the exhaustion of domestic remedies by the author of the communication, or, where applicable, after 3 years from the conclusion of another procedure of international investigation or settlement, unless there are reasons justifying the delay taking into account all the circumstances of the communication. (Emphasis added)

As with other requirements, the Committee has developed jurisprudence in relation to time limits which should be consulted.

¹⁵ Article 1 of the Optional Protocol.

¹⁶ Article 1 of the Optional Protocol; Rules 84(3) and 96(a) of the Rules of Procedure.

¹⁷ The list of reservations to a specific treaty is available at <https://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>.

¹⁸ Article 3 of the Optional Protocol.

¹⁹ Article 5(2)(a) of the Optional Protocol.

²⁰ Article 5(2)(b) of the Optional Protocol.

5 FORM OF COMPLAINT

What form should the complaint take?

A complaint does not need to be presented in a particular format, but the OHCHR's Fact Sheet recommends that a complainant uses the model complaint form which is available in the Fact Sheet²¹ and on its website.²² The OHCHR has also prepared general guidance on what should be included in a complaint.²³

Form of service

A complaint may be submitted by email, fax or post to the following address:

Address: Petitions and Inquiries Section,
Office of the High Commissioner for Human Rights;
United Nations Office at Geneva,
1211 Geneva 10,
Switzerland

Fax: + 41 22 917 90 22

Email: petitions@ohchr.org

6 WHAT HAPPENS NEXT?

What happens once a complaint is submitted?

The Optional Protocol and the Rules of Procedure outline the procedure once a complaint is submitted and make provision for interim measures to be requested.²⁴

Following the submission of a complaint, the complainant will be advised if it has been registered (i.e. formally listed as a case for consideration by the Committee) and the complaint will also be sent to the State concerned for comment.

Under Article 4 of the Optional Protocol, the respondent State has six months to submit written explanations or statements that relate both to the admissibility and merits of the complaint and any remedy that may have been provided in the matter.²⁵ If the respondent State wishes to challenge the admissibility of the complaint, it may apply for the communication to be rejected as inadmissible, setting out the grounds for such inadmissibility, within two months of receiving the relevant complaint from the Committee. Once the Committee has received comments from the respondent State these comments will be provided to the complainant who can then provide a response.²⁶

Once a decision has been made, the Committee will communicate the decision to the individual and the State Party concerned.²⁷

The Committee's decision represents an authoritative interpretation of the Covenant. The decision contains recommendations to the State Party (if it has been decided that the State breached the Covenant), though these recommendations are not enforceable. Rule 101 provides for follow-up procedures once the Committee's views are adopted.²⁸

21 The Office of the High Commissioner of Human Rights, Individual Complaint Procedures under the United Nations Human Rights Treaties (Fact Sheet No. 7), 2013, p 4, available at: <https://www.ohchr.org/Documents/Publications/FactSheet7Rev.2.pdf>.

22 Available at: http://www.ohchr.org/Documents/HRBodies/ComplaintFormOPICPR_CAT_CERD.doc.

23 The Office of the High Commissioner of Human Rights, Individual Complaint Procedures under the United Nations Human Rights Treaties (Fact Sheet No. 7), 2013, pp 4-5, available at: <https://www.ohchr.org/Documents/Publications/FactSheet7Rev.2.pdf>.

24 Rule 92 of the Rules of Procedure.

25 Rule 97(2) of the Rules of Procedure.

26 Rule 97(6) of the Rules of Procedure.

27 Rules 98(1) and 100(3) of the Rules of Procedure.

28 See also Human Rights Committee, Note by the Human Rights Committee on the procedure for follow-up to concluding observations, CCPR/C/108/2, 2013.



Further reading

Online Resources

- The Committee's Rules of Procedure, particularly Part XVII.²⁹
- Resources produced by the Office of the High Commissioner for Human Rights, including:
 - Detailed handbook on individual complaints procedures;³⁰
 - General guidance on the individual complaints procedure;³¹ and
 - The Jurisprudence Database.³²
- The World Organisation Against Torture has produced a comprehensive handbook relating to the complaints procedures operated by the Committee, as well as the CAT Committee and the CEDAW Committee.³³

Other Resources

- Joseph S. and Castan M., *The International Covenant on Civil and Political Rights: Cases, Commentary and Materials*, Oxford University Press, 2013.
- The International Service for Human Rights intervened in a complaint before the Committee regarding the violation of the rights to freedom of association, assembly and expression under the ICCPR. For further details about the intervention, please see the press release on their website.³⁴



Hints and tips

- *“Decisions on interim measures can be made reasonably quickly, even within days in some cases.”*
Freya Dinshaw, Senior Lawyer, Human Rights Law Centre
- *“We have found the Petitions and Inquiries Section to be responsive and the procedure in Article 4 of the Optional Protocol, by which the state is given six months to respond and the applicant then a right to further respond, to be operating smoothly. Accordingly, while you will have to wait a long time for a decision, you are at least aware of the stage of the process which your complaint has reached.”*
Joanna Whiteman, Co-director, Equal Rights Trust
- *“It generally takes at least four years from the lodgement of an individual communication until the Committee publishes its view.”*
Freya Dinshaw, Senior Lawyer, Human Rights Law Centre

²⁹ Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=65.

³⁰ Available at: <https://www.ohchr.org/Documents/Publications/FactSheet7Rev.2.pdf>.

³¹ Available at: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#proceduregenerale>

³² Available at: <http://juris.ohchr.org/search/Documents>.

³³ Joseph, S. et al., *Seeking Remedies for Torture Victims: A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies*, World Organisation Against Torture, 2006, available at: <http://www.omct.org/monitoring-protection-mechanisms/reports-and-publications/2006/11/d18503/>.

³⁴ Available at: <https://www.ishr.ch/news/lgbti-rights-ishr-intervenes-international-legal-proceedings-against-russia>.

UN Committee on Economic, Social and Cultural Rights

1 BACKGROUND

The United Nations Committee on Economic, Social and Cultural Rights (the “CESCR”) is a body of 18 independent experts which monitors the implementation of the International Covenant on Economic, Social and Cultural Rights (the “Covenant”).¹ The CESCR was established under ECOSOC Resolution 1985/17 of 28 May 1985.

The complaints mechanism for the Covenant is contained in the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (the “Optional Protocol”),² which was adopted on 10 December 2008.

Under the Protocol, the CESCR has jurisdiction, among other things, to examine individual complaints or “communications” with regard to alleged violations of the Covenant by States which are party to the Protocol.³ In this Handbook, we will refer to these as “complaints”.

The procedure relating to individual complaints submitted to the CESCR are governed by:

- a. the Covenant; and
- b. the Optional Protocol.

The requirements of these instruments are elaborated upon in the provisional rules of procedure under the Optional Protocol, which were adopted by the CESCR and published on 15 January 2013 (the “Rules of Procedure”).⁴

All references to “Rules” are to the Committee’s Rules of Procedure.

2 WHO CAN BRING A COMPLAINT?

Subject to the below, an individual or group of individuals can lodge a complaint with CESCR against a State Party, provided:

- a. the complaint concerns a State Party to the Covenant (through ratification or accession); and
- b. the State Party has accepted the CESCR’s competence to examine individual complaints, either through ratification or accession to the Optional Protocol.

With respect to individuals who can lodge a complaint, Article 2 of the Optional Protocol provides as follows (emphasis added):

Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the economic, social and cultural rights set forth in the Covenant by that State Party...

Anonymous complaints are not permitted.⁵

Can an NGO or other organisation act on behalf of a victim?

Yes. Article 2 of the Optional Protocol provides, in part, as follows:

Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.

Can an NGO or other organisation intervene in an existing claim brought by a victim?

Yes – see “Hints and Tips” below for more information.

1 International Covenant on Economic, Social and Cultural Rights, G.A. Res. 2200A (XXI), 1966 (the “Covenant”), available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>.

2 Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, G.A. Res. 63/117, 2008 (the “Optional Protocol”), available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCESCR.aspx>.

3 In order to establish whether a state has ratified the Optional Protocol, see: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-3-a&chapter=4&lang=en.

4 Provisional rules of procedure under the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, UN Doc E/C.12/49/3, 2013 (the “Rules of Procedure”), available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=65.

5 Article 3(2)(g) of the Optional Protocol.

3 ADMISSIBILITY REQUIREMENTS

What are the requirements for bringing a claim? What may the CESCR consider?

Article 3 of the Optional Protocol outlines the admissibility requirements as follows:

- a. *The Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted. This shall not be the rule where the application of such remedies is unreasonably prolonged.*
- b. *The Committee shall declare a communication inadmissible when:*
 - i. *It is not submitted within one year after the exhaustion of domestic remedies, except in cases where the author can demonstrate that it had not been possible to submit the communication within that time limit;*
 - ii. *The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date;*
 - iii. *The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;*
 - iv. *It is incompatible with the provisions of the Covenant;*
 - v. *It is manifestly ill-founded, not sufficiently substantiated or exclusively based on reports disseminated by mass media;*
 - vi. *It is an abuse of the right to submit a communication; or when*
 - vii. *It is anonymous or not in writing.*

4 REPRESENTATION

There is no requirement for legal representation.

5 TIME LIMITS

What is the time limit for filing a communication?

A communication must be submitted within one year after the exhaustion of domestic remedies “except in cases where the author can demonstrate that it had not been possible to submit the communication within that time limit”.⁶

What is the time limit for making an intervention?

An intervention can be made at any time after the receipt of a communication and before a conclusion on the merits has been reached, provided that the CESCR allows the State Party and the complainant an opportunity to comment on such documentation.

6 FORM OF CLAIM AND INTERVENTION

What form should the communication take?

There is no prescribed form for a communication before CESCR, nor has the Office of the United Nations High Commissioner for Human Rights produced a model complaint form (as it has done for other complaints mechanisms.⁷) However, the OHCHR has prepared general guidance on what should be included in a complaint which should be considered.⁸

What form should the intervention take?

The CESCR has produced guidance on third party interventions,⁹ and the procedure to be followed. Additional resources on third party interventions are provided in the Further Reading.

⁶ Article 3(2)(a) of the Optional Protocol.

⁷ The Office of the High Commissioner of Human Rights, Individual Complaint Procedures under the United Nations Human Rights Treaties (Fact Sheet No. 7), 2013, available at: <https://www.ohchr.org/Documents/Publications/FactSheet7Rev.2.pdf>.

⁸ The Office of the High Commissioner of Human Rights, Individual Complaint Procedures under the United Nations Human Rights Treaties (Fact Sheet No. 7), 2013, pp. 4-5, available at: <https://www.ohchr.org/Documents/Publications/FactSheet7Rev.2.pdf>.

⁹ Available at: <http://www.ohchr.org/Documents/HRBodies/CESCR/Guidance3rdPartyInterventions.doc>.

7 FORMS OF SERVICE/COMMUNICATIONS

How must documents be communicated?

Communications should be sent to:

Address: Petitions and Inquiries Section,
Office of the High Commissioner for Human Rights,
United Nations Office at Geneva,
1211 Geneva 10,
Switzerland

E-mail: petitions@ohchr.org

Fax: +41 22 917 90 22

The complaints procedure is written only; the OHCHR does not meet complainants or conduct interviews. For procedural advice, call +41 22 917 1234 and ask for the Petitions Team.

8 WHAT HAPPENS NEXT?

What happens once a complaint is submitted?

The Optional Protocol and the Rules of Procedure outline the procedure once a complaint is submitted, including the procedure governing interim measures,¹⁰ and friendly settlement.¹¹

Unless the CESCR considers a communication inadmissible, it will bring any communication submitted to it confidentially to the attention of the State Party concerned. Within six months, the State Party must submit to the CESCR written explanations or statements clarifying the matter and the remedy, if any, that may have been provided by it.¹²

After examining a communication, the CESCR will transmit its views on the communication, together with its recommendations, if any, to the parties concerned.¹³ Article 9 of the Optional Protocol provides for follow-up procedure once the CESCR has provided its views.

¹⁰ Article 5 of the Optional Protocol.

¹¹ Article 7 of the Optional Protocol.

¹² Article 6 of the Optional Protocol.

¹³ Article 9 of the Optional Protocol.



Further reading

Online Resources

- The website of the CESCR contains further information on individual communications,¹⁴ and guidance on third party interventions.¹⁵ The CESCR's Rules of Procedure are also available online.¹⁶
- Resources of the Office of the High Commissioner for Human Rights include:
 - Detailed handbook on individual complaints procedures;¹⁷
 - General guidance on the individual complaints procedure;¹⁸ and
 - The Jurisprudence Database.¹⁹
- The website of ESCR-Net contains a database on domestic, regional and international legal decisions regarding economic, social and cultural rights,²⁰ and publications on claiming economic, social and cultural rights at the United Nations,²¹ and on claiming women's economic, social and cultural rights.²²
- ESCR-Net also facilitates joint third party interventions by members of its network in cases before the CESCR. The Strategic Litigation Workshop Group of ESCR-Net shares case summaries focusing on progressive ESCR-related jurisprudence in its caselaw database, and is increasingly sharing case studies on collective strategic litigation, interventions and case implementation (including, where possible, case documents and interventions) on its website.²³
- The Global Initiative for Economic, Social and Cultural Rights publishes a quarterly newsletter which includes information on the guidelines of the CESCR, summaries of recent decisions and useful information on how CESCR is analysing cases.²⁴
- The International Network of Human Rights has created an app called Geneva Human Rights Agenda which provides information on all CESCR sessions.²⁵

14 Available at: <http://www.ohchr.org/EN/HRBodies/CESCR/Pages/CESCRIndex.aspx>.

15 Available at: <https://www.ohchr.org/Documents/HRBodies/CESCR/Guidance3rdPartyInterventions.doc>.

16 Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=g&DocTypeID=65

17 Available at: <https://www.ohchr.org/Documents/Publications/FactSheet7Rev.2.pdf>.

18 Available at: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#proceduregenerale>

19 Available at: <http://juris.ohchr.org/search/Documents>.

20 Available at: <https://www.escr-net.org/caselaw>.

21 Available at: <https://www.escr-net.org/news/2014/manual-claiming-escr-United-nations>.

22 Available at: <https://www.escr-net.org/sites/default/files/Guide%20on%20Women's%20ESCR%20-%20Final.pdf>.

23 For further information, please see <https://www.escr-net.org/strategiclitigation>.

24 Available at: <http://globalinitiative-escr.org/news/>.

25 Available at: <http://ridh.org/en/>.



Hints and tips

Communications and submissions

- *“It is important for individuals to check that the state against whom they wish to submit a complaint has actually ratified the ICESCR Optional Protocol, and to check that their complaint relates to facts which occurred after the entry into force of the Optional Protocol – otherwise the CESCR will not have jurisdiction over the complaint.”*

Virgínia Brás Gomes, Chair of the CESCR

- *“I would strongly encourage claimants and third party interveners to include in their submissions proposals for structural remedies that are aimed at preventing similar violation(s) from occurring in the future, such as changes to relevant laws, policies or practices. The more information that the Committee has about measures that would address the situation, the more specific they can be in their general recommendations issued to State parties in the Views.”*

Susie Talbot, Legal Director, ESCR-Net

Third party interventions

- *“Third Party Interventions in cases relating to economic, social and cultural rights (ESCRs) are fundamental: it can often be challenging for complainants to pinpoint the exact nature of the ESCR violation, and Third Party Interveners can provide useful expert input in framing the claim.”*

Virgínia Brás Gomes, Chair of the CESCR

- *“There are a number of principles to keep in mind regarding the content of submissions by third party interveners before the CESCR. First, it is important to provide the Committee with relevant comparative international, regional and domestic legal analysis caselaw and other materials that will support a determination of the case, rather than merely reiterating the Committee’s previous decisions and commentary. Secondly, to provide persuasive information concerning the State party’s Article 2(1) obligations to ‘progressively realise’ the rights in the ICESCR, in accordance with their ‘maximum available resources’, it can be particularly helpful to review the Committee’s 2007 statement (available on its website) which provides a list, non-exhaustive, of considerations the Committee will take into account in assessing the ‘reasonableness’ of the measures taken by the State party in the circumstances (as required under Article 8(4) of the OP-ICESCR; Thirdly, in some cases, the Committee may seek or accept submissions from groups with expertise that relate to the factual context of the case, such as developments and technical matters pertaining to the State party’s economic policies, austerity measures, national policies related to ESCR, and so on. This latter element may be contrasted with the practice of the ECtHR in relation to third party interventions whereby the Court generally instructs proposed interveners not to comment on the facts of the case.”*

Susie Talbot, Legal Director, ESCR-Net

- The starting point for a third party intervention is to review the table of pending cases and guidance on third-party interventions on the CESCR’s website. The request for leave to intervene must specify the issue(s) to be addressed, the nature of the information or analysis to be submitted, and the reasons why the intervention is desirable. As there is a one-page maximum, it can be useful to provide further information about the proposed intervener or coalition of interveners in an annex.
- The Committee is gradually changing its practice with respect to third party interventions and is increasingly providing more information about the facts of pending cases, to facilitate third party interventions. There is no set period of time for requesting to intervene in a case, so it is helpful to contact the Petitions Unit to determine when the Committee expects to be examining the case and an appropriate time by which to submit the request to intervene, taking into account that any intervention must be forwarded by the Committee to the parties, who are entitled to provide comments in reply.

UN Committee on Economic, Social and Cultural Rights



- Once a request to intervene is granted, the Committee usually provides about one month to submit the intervention. With the short deadline, it is advisable to commence research and drafting the submission at the time that the request to intervene is made, particularly if working in coalition.

Decisions

- The time period for decisions by the Committee appears to be approximately three years. The most recent case was decided in March 2018 and it was submitted in July 2015.

UN Committee on the Elimination of Racial Discrimination

1 BACKGROUND

The UN Committee on the Elimination of Racial Discrimination (the “**CERD**”) is a body of 18 independent experts who monitor the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (the “**Convention**”) by State Parties.¹

The Convention allows for:

- a. individual communications; and
- b. state-to-state complaints.

In addition, in 1993, the Committee adopted an early-warning and urgent action procedure to address serious violations of the Convention in an urgent manner.² In 2007, the Committee adopted new guidelines for the operation of the early-warning procedure, which set out the indicators which the Committee will use to determine “when it deems it necessary to address serious violations of the Convention in an urgent manner”.³

Under Article 14 of the Convention, the CERD has jurisdiction to examine individual complaints or “communications” with regard to alleged violations of the Convention by any State Party which has accepted the Committee’s competence to examine complaints by making a declaration to that effect under Article 14(1) of the Convention.⁴ In this Handbook, we will refer to these as “complaints”.

The procedure relating to individual complaints submitted to the CERD are governed by:

- a. the Convention; and
- b. the CERD’s Rules of Procedure (the “**Rules of Procedure**”).⁵

All references to “Rules” are to the CERD’s Rules of Procedure.

2 WHO CAN BRING A COMPLAINT?

Subject to the below, an individual or group of individuals can lodge a complaint with the CERD against a State Party, provided:

- a. the complaint concerns a State Party to the Convention (through ratification or accession); and
- b. the State Party has accepted the CERD’s competence to examine individual complaints by making a declaration to that effect under Article 14(1) of the Convention.

A State Party may withdraw a declaration recognising the competence of the CERD at any time, but such a withdrawal will not affect communications pending before the CERD.⁶

Victim eligibility

Article 14(1) of the Convention outlines a number of elements of victim eligibility as follows:

A State Party may at any time declare that it recognizes the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation by that State Party of any of the rights set forth in this Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. (Emphasis added)

Anonymous complaints are not permitted.⁷

¹ International Convention on the Elimination of All Forms of Racial Discrimination, G.A. Res. 2106 (XX), 1965 (the “**Convention**”), available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>.

² Committee on the Elimination of Racial Discrimination, *Prevention of racial discrimination, including early warning and urgent procedures: working paper*, UN Doc A/62/18, Annexes Chapter III, available at: https://www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/A_48_18_Annex_III_English.pdf.

³ Committee on the Elimination of Racial Discrimination, *Guidelines for the Early Warning and Urgent Action Procedures*, UN Doc A/62/18, Annexes Chapter III, available at: https://www.ohchr.org/Documents/HRBodies/CERD/EarlyWarning/Revised_Guidelines_2007_en.doc.

⁴ In order to establish whether a state has made a declaration recognising the competence of the CERD, see: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-2&chapter=4&clang=_en.

⁵ *Rules of Procedure of the Committee on the Elimination of Racial Discrimination*, UN Doc CERD/C/35/Rev.3, 1986 (the “**Rules of Procedure**”), available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=6&DocTypeID=65

⁶ Article 14(3) of the Convention.

⁷ Article 14(6)(a) of the Convention.

UN Committee on the Elimination of Racial Discrimination

Can an NGO or other organisation act on behalf of a victim?

Yes. Complaints may be submitted by the “designated representatives” of an individual, or, in exceptional circumstances, be submitted by others on behalf of an alleged victim when it appears that the victim is unable to submit the communication himself, and the author justifies his acting on the victim’s behalf.⁸

Can an NGO or other organisation intervene in an existing complaint brought by a victim?

Neither the Convention nor the Rules make clear whether NGOs can intervene in an existing complaint. However, Rule 95(2) provides that the Committee may, at any time, obtain “any documentation that may assist in the disposal of the case” from UN bodies or specialised agencies.

3 ADMISSIBILITY REQUIREMENTS

What are the requirements for bringing a complaint? What may the CERD consider?

Rule 91 of the Rules of Procedure sets out the relevant conditions for admissibility of communications as follows:

With a view to reaching a decision on the admissibility of a communication, the Committee or its Working Group shall ascertain:

- a. *That the communication is not anonymous and that it emanates from an individual or group of individuals subject to the jurisdiction of a State party recognizing the competence of the Committee under article 14 of the Convention;*
- b. *That the individual claims to be a victim of a violation by the State party concerned of any of the rights set forth in the Convention. As a general rule, the communication should be submitted by the individual himself or by his relatives or designated representatives; the Committee may, however, in exceptional cases accept to consider a communication submitted by others on behalf of an alleged victim when it appears that the victim is unable to submit the communication himself, and the author of the communication justifies his acting on the victim’s behalf;*
- c. *That the communication is compatible with the provisions of the Convention;*
- d. *That the communication is not an abuse of the right to submit a communication in conformity with article 14;*
- e. *That the individual has exhausted all available domestic remedies, including, when applicable, those mentioned in paragraph 2 of article 14. However, this shall not be the rule where the application of the remedies is unreasonably prolonged;*
- f. *That the communication is, except in the case of duly verified exceptional circumstances, submitted within six months after all available domestic remedies have been exhausted, including, when applicable, those indicated in paragraph 2 of article 14.*

Under Rule 92 of the Rules of Procedure, the CERD or its Working Group may request from the State Party or the author of the communication, additional information or clarifications relevant to the question of admissibility.

4 REPRESENTATION

There is no requirement for legal representation.

5 TIME LIMITS

What is the time limit for bringing a complaint?

A complaint must be submitted within six months after all domestic remedies have been exhausted, except in the case of duly verified exceptional circumstances.⁹

What is the time limit for making an intervention?

As noted above, neither the Convention nor the Rules establish a clear route for third parties to make an intervention, other than at the request of the Committee.

⁸ Rule 91(b) of the Rules of Procedure.

⁹ Rule 91(f) of the Rules of Procedure.

UN Committee on the Elimination of Racial Discrimination

6 FORM OF COMPLAINT AND INTERVENTION

What form should the complaint take?

A complaint does not need to be presented in a particular format, but the OHCHR's Fact Sheet recommends that a complainant uses the model complaint form for the CERD which is available in the Fact Sheet¹⁰ and on its website.¹¹ The OHCHR has also prepared general guidance on what should be included in a complaint.¹²

What form should the intervention take?

As noted above, neither the Convention nor the Rules establish a clear route for third parties to make an intervention, other than at the request of the Committee.

7 FORMS OF SERVICE/COMMUNICATIONS

How must documents be communicated?

Individual complaints should be submitted to the Petitions Team:

Address: Petitions and Inquiries Section,
Office of the High Commissioner for Human Rights,
United Nations Office at Geneva,
1211 Geneva 10,
Switzerland

Email: petitions@ohchr.org;
tb-petitions@ohchr.org;
cerd@ohchr.org; and
registry@ohchr.org

8 WHAT HAPPENS NEXT?

What happens once a complaint is submitted?

The Convention and the Rules of Procedure outline the procedure once a complaint is submitted, including the procedure governing interim measures.¹³

Unless the CERD considers a communication to be inadmissible, it will confidentially bring any communication referred to it to the attention of the relevant State Party.¹⁴ Within three months, the receiving State shall submit its written explanations or statements clarifying the matter and the remedy, if any, that may have been taken.¹⁵

The CERD will consider communications in light of all information made available to it by the State Party and the petitioner.¹⁶ The CERD will then forward its suggestions and recommendations, if any, to the State Party concerned and to the petitioner.¹⁷

Rules 94 and 95 of the Rules of Procedure elaborate further on the method of dealing with admissible communications and the process of issuing suggestions and recommendations.

¹⁰ The Office of the High Commissioner of Human Rights, Individual Complaint Procedures under the United Nations Human Rights Treaties (Fact Sheet No. 7), 2013, p 25, available at: <https://www.ohchr.org/Documents/Publications/FactSheet7Rev.2.pdf>.

¹¹ Available at: http://www.ohchr.org/Documents/HRBodies/ComplaintFormOPICPR_CAT_CERD.doc

¹² The Office of the High Commissioner of Human Rights, Individual Complaint Procedures under the United Nations Human Rights Treaties (Fact Sheet No. 7), 2013, p 4-5, available at: <https://www.ohchr.org/Documents/Publications/FactSheet7Rev.2.pdf>.

¹³ Rule 94(3) of the Rules of Procedure.

¹⁴ Article 14(6)(a) of the Convention.

¹⁵ Article 14(6)(b) of the Convention.

¹⁶ Article 14(7)(a) of the Convention.

¹⁷ Article 14(7)(b) of the Convention.



Further reading

Online Resources

- The website of the CERD provides further information on individual communications and its jurisprudence.¹⁸ The CERD's Rules of Procedure are also available online.¹⁹
- Resources of the Office of the High Commissioner for Human Rights include:
 - Detailed handbook on individual complaints procedures;²⁰
 - General guidance on the individual complaints procedure;²¹ and
 - The Jurisprudence Database.²²
- Lecture by Judge Linos-Alexandre Sicilianos, former Rapporteur of the CERD and judge at the European Court of Human Rights, entitled *The Application of the United Nations Convention on the Elimination of All Forms of Racial Discrimination: Challenges Ahead* in the Lecture Series of the United Nations Audiovisual Library of International Law.²³

¹⁸ Available at: <http://www.ohchr.org/EN/HRBodies/CERD/Pages/Jurisprudence.aspx> and http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=6&DocTypeID=17.

¹⁹ Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=6&DocTypeID=65

²⁰ Available at: <https://www.ohchr.org/Documents/Publications/FactSheet7Rev.2.pdf>.

²¹ Available at: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#proceduregenerale>

²² Available at: <http://juris.ohchr.org/search/Documents>.

²³ Available at: http://legal.un.org/avl/ls/Sicilianos_HR.html.

UN Committee on the Elimination of Discrimination Against Women

1 BACKGROUND

The United Nations Committee on the Elimination of Discrimination against Women (the “**CEDAW Committee**”) is a body of 23 independent experts which monitors the implementation of the Convention on the Elimination of All Forms of Discrimination against Women (the “**Convention**”).¹

The complaints mechanism for the Convention is contained in the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (the “**Optional Protocol**”),² which was adopted on 6 October 1999. Under the Protocol, the CEDAW has jurisdiction, among other things, to examine individual complaints or “communications” with regard to alleged violations of the Convention by States which are party to the Protocol.³

The Optional Protocol provides for two procedures: complaints and inquiries.

- a. The complaints procedure allows individuals to submit claims of violations of rights protected under Convention to the CEDAW Committee.
- b. The inquiry procedure enables the CEDAW Committee to initiate inquiries into situations of grave or systematic violations of women’s rights.

The procedure relating to individual complaints submitted to the CEDAW Committee is governed by:

- a. the Optional Protocol; and
- b. the CEDAW Committee’s Rules of Procedure (the “**Rules of Procedure**”).⁴

All references to “Rules” are to the CEDAW Committee’s Rules of Procedure.

In addition to the general resources that are listed below under the Further Reading heading, the Office of the High Commissioner for Human Rights provides guidance to the Protocol in the following Fact Sheet: “*How to submit individual complaints under the Optional Protocol to CEDAW*” (the “**CEDAW Fact Sheet**”).⁵ The World Organisation Against Torture has also produced a comprehensive handbook relating to the complaint procedure under the Convention, among others (“**OMCT Handbook**”).⁶

2 WHO CAN BRING A CLAIM?

An individual or group of individuals claiming to be victims of a violation of any of the rights set forth in the Convention by that State Party can lodge a complaint with the CEDAW Committee against a State Party, provided:

- a. the complaint concerns a State Party to the Convention (through ratification or accession); and
- b. the State Party has accepted the Committee’s competence to examine individual complaints, either through ratification or accession to the Optional Protocol.⁷

Victim eligibility

Article 2 of the Optional Protocol outlines the elements of victim eligibility as follows:

Communications may be submitted by or on behalf of individuals or groups of individuals, under the jurisdiction of a State Party, claiming to be victims of a violation of any of the rights set forth in the Convention by that State Party. Where a communication is submitted on behalf of individuals or groups of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.

1 Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 34/180, 1979 (the “**Convention**”), available at: <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>.

2 Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res. 54/4, 1999 (the “**Optional Protocol**”), available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCEDAW.aspx>.

3 In order to establish whether a state has ratified the Optional Protocol, see: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-8-b&chapter=4&lang=en.

4 Rules of Procedure of the Committee on the Elimination of Discrimination Against Women, G. A. Res. 56/38 (Part I) (the “**Rules of Procedure**”), available here: <http://www2.ohchr.org/english/bodies/cedaw/rules.htm>.

5 Available at: http://www.ohchr.org/documents/HRBodies/CEDAW/InfoNote_OP_en.doc.

6 Joseph, S. et al., *Seeking Remedies for Torture Victims: A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies*, World Organisation Against Torture, 2006, see page 265 and following, available at: <http://www.omct.org/monitoring-protection-mechanisms/reports-and-publications/2006/11/d18503/>.

7 Article 3 of the Optional Protocol.

UN Committee on the Elimination of Discrimination Against Women

Rule 68 provides further as follows:

Communications may be submitted by individuals or groups of individuals who claim to be victims of violations of the rights set forth in the Convention, or by their designated representatives, or by others on behalf of an alleged victim where the alleged victim consents.

In cases where the author can justify such action, communications may be submitted on behalf of an alleged victim without her consent.

Where an author seeks to submit a communication in accordance with paragraph 2 of the present rule, she or he shall provide written reasons justifying such action.

Anonymous complaints are not permitted.⁸ However, persons may request that identifying information is concealed in the Committee's final opinion.

Can an NGO/other organisation act on behalf of a victim?

Yes, as specified in Article 2 of the Optional Protocol (see above).

Can an NGO/other organisation bring a claim absent a victim?

No. For more detailed analysis of the prohibition on theoretical complaints in relation to the CEDAW Committee, please see the OMCT Handbook and references cited therein.⁹

Can an NGO/other organisation intervene in an existing claim brought by a victim?

Neither the Convention, nor the Protocol, nor the Rules provide a mechanism for NGOs to intervene in an existing complaint.

3 ADMISSIBILITY REQUIREMENTS

What are the requirements for bringing a claim?

Article 4 of the Optional Protocol provides the following regarding the admissibility of claims:

- a. *The Committee shall not consider a communication unless it has ascertained that all available domestic remedies have been exhausted unless the application of such remedies is unreasonably prolonged or unlikely to bring effective relief.*
- b. *The Committee shall declare a communication inadmissible where:*
 - i. *The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;*
 - ii. *It is incompatible with the provisions of the Convention;*
 - iii. *It is manifestly ill-founded or not sufficiently substantiated;*
 - iv. *It is an abuse of the right to submit a communication;*
 - v. *The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date.*

A communication must be submitted in writing.¹⁰

4 REPRESENTATION

There is no requirement for legal representation.

⁸ Article 3 of the Optional Protocol.

⁹ Joseph, S. et al., *Seeking Remedies for Torture Victims: A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies*, World Organisation Against Torture, 2006, p 273, available at: <http://www.omct.org/monitoring-protection-mechanisms/reports-and-publications/2006/11/d18503/>.

¹⁰ Article 3 of the Optional Protocol.

UN Committee on the Elimination of Discrimination Against Women

5 TIME LIMITS

What is the time limit for bringing a claim?

There is no time limit as such for the submission of communications, but it is best to file complaints expeditiously, following exhaustion of domestic remedies.

As noted above, the Committee will only consider complaints where the alleged violation of rights(s) dealt with in the communication took place after the Optional Protocol entered into force for the State Party concerned.¹¹

What is the time limit for making an intervention?

As noted above, the Optional Protocol does not establish a route for third parties to make an intervention.

6 FORM OF COMPLAINT AND INTERVENTION

What form should the complaint take?

A complaint does not need to be presented in a particular format, but the OHCHR's Fact Sheet recommends that a complainant uses the model complaint form for the CEDAW Committee which is available in the Fact Sheet.¹² The OHCHR has also prepared general guidance on what should be included in a complaint.¹³

What form should the intervention take?

As noted above, the Optional Protocol does not establish a route for third parties to make an intervention.

7 FORMS OF SERVICE / COMMUNICATIONS

Complaints should be addressed to:

Address: Petitions and Inquiries Section,
Office of the High Commissioner for Human Rights,
United Nations Office at Geneva,
1211 Geneva 10,
Switzerland

Phone: + 41 22 917 90 22

Email: petitions@ohchr.org

In the case of an urgent action, complaints should be by email, but the complaint cannot be registered until the signed original has been received by the Secretariat.

¹¹ Article 4(2)(e) of the Optional Protocol.

¹² The Office of the High Commissioner of Human Rights, *Individual Complaint Procedures under the United Nations Human Rights Treaties (Fact Sheet No. 7)*, 2013, p 28, available at: <https://www.ohchr.org/Documents/Publications/FactSheet7Rev.2.pdf>; see also: <http://www.un.org/womenwatch/daw/cedaw/protocol/modelform-E.PDF>.

¹³ The Office of the High Commissioner of Human Rights, *Individual Complaint Procedures under the United Nations Human Rights Treaties (Fact Sheet No. 7)*, 2013, pp 4-5, available at: <https://www.ohchr.org/Documents/Publications/FactSheet7Rev.2.pdf>; see also: <http://www.un.org/womenwatch/daw/cedaw/protocol/modelform-E.PDF>.

8 WHAT HAPPENS NEXT?

What happens once a claim is submitted?

As set out in Articles 5 to 8 of the Protocol:

- a. *The Committee may, at any time after receipt of a communication, transmit an urgent request for the State Party to “take such interim measures as may be necessary to avoid possible irreparable damage to the victim or victims of the alleged violation”. Such a decision may be taken prior to a determination of admissibility or merits, and without prejudice to such a determination.*
- b. *Unless the Committee considers a communication inadmissible – and provided that the individual(s) consent to the disclosure of their identity – the Committee will transmit the communication to the State Party. The State Party has six months to respond with “written explanations or statements clarifying the matter and the remedy, if any, that may have been provided”. If the State Party wishes to challenge the admissibility of the claim, it should do so within two months.¹⁴*
- c. *Where the Committee considers that the communication is admissible, the Committee will move on to the merits stage. In considering the merits, the Committee considers communications taking into account “all information made available to it by or on behalf of individuals or groups of individuals and by the State Party concerned, provided that this information is transmitted to the parties concerned”.*
- d. *After examining a communication, the Committee transmits its views and recommendations, if any. Within six months, the State is required to submit a written response indicating any action taken in light of the recommendations by the Committee*



Further reading

Online Resources

- The website of the CEDAW Committee has a virtual library with its annual and sessional reports,¹⁵ in addition to recent jurisprudence.¹⁶
- Resources of the Office of the High Commissioner for Human Rights include:
 - The CEDAW Factsheet;¹⁷
 - Detailed handbook on individual complaints procedures;¹⁸
 - General guidance on the individual complaints procedure;¹⁹ and
 - The Jurisprudence Database.²⁰
- The World Organisation Against Torture has produced a handbook relating to the complaints procedures operated by the Committee, as well as the CAT Committee and the Human Rights Committee.²¹

¹⁴ Rule 69.5 of the Rules of Procedure.

¹⁵ Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=3&DocTypeID=27.

¹⁶ Available at: <http://juris.ohchr.org/en/search/results?Bodies=3&sortOrder=Date>.

¹⁷ Available at: http://www.ohchr.org/documents/HRBodies/CEDAW/InfoNote_OP_en.doc.

¹⁸ Available at: <https://www.ohchr.org/Documents/Publications/FactSheet7Rev.2.pdf>.

¹⁹ Available at: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#proceduregenerale>.

²⁰ Available at: <http://juris.ohchr.org/search/Documents>.

²¹ Joseph, S. et al., *Seeking Remedies for Torture Victims: A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies*, World Organisation Against Torture, 2006, available at: <http://www.omct.org/monitoring-protection-mechanisms/reports-and-publications/2006/11/d18503/>.

UN Committee Against Torture

1 BACKGROUND

The Committee Against Torture (the “**CAT Committee**”) is a body of 10 independent experts which monitors the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the “**Convention**”).¹

The CAT Committee has several roles, including:

- a. to examine periodic reports on the measures that parties to the Convention are taking to implement the provisions of the Convention;²
- b. to undertake confidential inquiries when reliable information is received leading to a well-founded indication that torture is being systematically practiced in a State Party;³ and
- c. to consider individual complaints of violations of the Convention, in the case of States Parties which have made a declaration recognising the competence of the Committee to receive such complaints.⁴

Under Article 22 of the Convention, the CAT Committee has jurisdiction to examine individual complaints or “communications” with regard to alleged violations of the Convention by States Parties which have accepted the its competence to do so by making a declaration.⁵ In this Handbook, we will refer to these as “complaints”.

The procedure relating to individual complaints is governed by:

- a. the Convention; and
- b. the CAT Committee’s Rules of Procedure (“**Rules of Procedure**”),⁶ in particular, Chapter 21.

All references to “Rules” are to the CAT Committee’s Rules of Procedure.

2 WHO CAN BRING A COMPLAINT?

An individual can lodge a complaint with the CAT Committee against a State Party, provided:

- a. the complaint concerns a State Party to the Convention (through ratification or accession); and
- b. the State Party has accepted the CAT Committee’s competence to examine individual complaints by making a declaration to that effect under Article 22 of the Convention.

Victim eligibility

Article 22(1) of the Convention provides as follows (emphasis added):

A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention.

Furthermore, Rule 113(a) further provides that the Committee should ascertain, as a condition for admissibility:

That the individual claims to be a victim of a violation by the State party concerned of the provisions of the Convention. The complaint should be submitted by the individual himself/herself or by his/her relatives or designated representatives, or by others on behalf of an alleged victim when it appears that the victim is unable personally to submit the complaint, and, when appropriate authorization is submitted to the Committee.

Anonymous complaints are not permitted.⁷

Can an NGO or other organisation act on behalf of a victim?

Yes, as provided in Article 22(1) of the Convention and Rule 113(a) above, NGOs may submit complaints “on behalf of individuals”.

Can an NGO or other organisation intervene in an existing complaint brought by a victim?

Neither the Convention nor the Rules provide a mechanism for NGOs to intervene in an existing complaint.

¹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. Res. 39/46, 1984, (the “**Convention**”), available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>.

² Article 19 of the Convention.

³ Article 20 of the Convention.

⁴ Article 22 of the Convention.

⁵ In order to establish whether a state has made a declaration recognising the competence of the CAT Committee, see: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&lang=en.

⁶ Committee Against Torture, *Rules of Procedure*, CAT/C/3/Rev.6, 2014, (“**Rules of Procedure**”), available at: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=CAT/C/3/Rev.6&Lang=E>

⁷ Article 22(2) of the Convention.

3 ADMISSIBILITY REQUIREMENTS

What are the requirements for bringing a complaint?

Article 22 of the Convention contains a number of requirements for admissibility. Rule 113 outlines these conditions as follows (emphasis added):

With a view to reaching a decision on the admissibility of a complaint, the Committee, its Working Group or a Rapporteur designated under rules 104 or 112, paragraph 3, shall ascertain:

- a. *That the individual claims to be a victim of a violation by the State party concerned of the provisions of the Convention. The complaint should be submitted by the individual himself/herself or by his/her relatives or designated representatives, or by others on behalf of an alleged victim when it appears that the victim is unable personally to submit the complaint, and, when appropriate authorization is submitted to the Committee;*
- b. *That the complaint is not an abuse of the Committee's process or manifestly unfounded;*
- c. *That the complaint is not incompatible with the provisions of the Convention;*
- d. *That the same matter has not been and is not being examined under another procedure of international investigation or settlement;*
- e. *That the individual has exhausted all available domestic remedies. However, this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;*
- f. *That the time elapsed since the exhaustion of domestic remedies is not so unreasonably prolonged as to render consideration of the claims unduly difficult by the Committee or the State party.*

Complaints must be submitted in writing.⁸

4 REPRESENTATION

There is no requirement for legal representation.

5 TIME LIMITS

What is the time limit for bringing a claim?

There is no specified time limit for bringing a claim. However, the time elapsed since the exhaustion of domestic remedies must be "...not so unreasonably prolonged as to render consideration of the claims unduly difficult by the Committee or the State Party."⁹

What is the time limit for making an intervention?

As noted above, the Protocol does not establish a route for third parties to make an intervention.

6 FORM OF COMPLAINT AND INTERVENTION

What form should the complaint take?

A complaint does not need to be presented in a particular format. However, a Fact Sheet produced by the Office of the High Commissioner for Human Rights recommends that a complainant uses the model complaint form for the Convention provided with the Fact Sheet.¹⁰ The Fact Sheet also provides general guidance on what should be included in a complaint.¹¹ The World Organisation Against Torture has produced a handbook on the complaint procedure under the Convention which provides guidance on what to include in a complaint to the CAT Committee.¹²

⁸ Rule 104(2)(c) of the Rules of Procedure.

⁹ Rule 113(f) of the Rules of Procedure.

¹⁰ The Office of the High Commissioner of Human Rights, *Individual Complaint Procedures under the United Nations Human Rights Treaties (Fact Sheet No. 7)*, 2013, p 25, available at: <https://www.ohchr.org/Documents/Publications/FactSheet7Rev.2.pdf>.

¹¹ The Office of the High Commissioner of Human Rights, *Individual Complaint Procedures under the United Nations Human Rights Treaties (Fact Sheet No. 7)*, 2013, pp 4 - 5, available at: <https://www.ohchr.org/Documents/Publications/FactSheet7Rev.2.pdf>.

¹² See: Joseph, S. et al., *Seeking Remedies for Torture Victims: A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies*, World Organisation Against Torture, 2006, page 76 and following, available at: <http://www.omct.org/monitoring-protection-mechanisms/reports-and-publications/2006/11/d18503/>.

7 FORMS OF SERVICE / COMMUNICATIONS

For individual complaints to the CAT, direct correspondence and inquiries to:

Address: Petitions and Inquiries Section,
Office of the High Commissioner for Human Rights,
United Nations Office at Geneva,
1211 Geneva 10,
Switzerland

Phone: + 41 22 917 90 22

Email: petitions@ohchr.org

8 WHAT HAPPENS NEXT?

What happens once a complaint is submitted?

If the Committee decides that a complaint is admissible it brings the case to the attention of the State Party concerned. Within six months, the State Party should submit “written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State”.¹³

When considering the complaint, the Committee “shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the State Party concerned”.¹⁴ In addition, the author of the complaint or their representative, or the representatives of the State Party, may be invited by the Committee to be present during its consideration of the complaint.¹⁵

In the course of the consideration of either the admissibility or the merits of the complaint, and prior to any decision being taken, the CAT Committee may request the State Party concerned to take steps to avoid a possible irreparable damage to the alleged victim of the violation.¹⁶ This provision offers persons who claim a violation of the Convention protection even before the CAT Committee takes a decision on the admissibility or the merits of the case; any request to take interim measures does not prejudice the CAT Committee’s final decision.

In light of all information made available to it by the author and by the State Party concerned, the CAT Committee considers the complaint and formulates its views thereon.¹⁷ Any member of the CAT Committee may express an individual opinion.¹⁸ The proceedings conclude with the transmission of the decisions to the author of the complaint and the State Party concerned.¹⁹

The State Party is invited by the CAT Committee to inform it of the action it takes in conformity with the CAT Committee’s views.²⁰ The Committee may also designate one or more Rapporteur(s) for follow-up on the decisions adopted. The Rapporteur(s) shall regularly report to the CAT Committee.²¹

¹³ Article 22(3) of the Convention.

¹⁴ Article 22(4) of the Convention.

¹⁵ Rule 117(4) of the Rules of Procedure.

¹⁶ Rule 114 of the Rules of Procedure.

¹⁷ Article 22(4) of the Convention.

¹⁸ Rule 119 of the Rules of Procedure.

¹⁹ Article 22(7) of the Convention.

²⁰ Rule 118(5) of the Rules of Procedure.

²¹ Rule 120 of the Rules of Procedure.



Further reading

Online Resources

- The CAT Committee includes in its annual report a summary of the complaints examined, the explanations and statements of the State Parties concerned, and its own views which is available on its website.²²
- Resources of the Office of the High Commissioner for Human Rights include:
 - The CAT Committee Fact Sheet.²³
 - Detailed handbook on individual complaints procedures;²⁴
 - General guidance on the individual complaints procedure;²⁵ and
 - The Jurisprudence Database.²⁶
- The World Organisation Against Torture has produced a comprehensive handbook relating to the complaints procedures including the CAT Committee.²⁷

²² Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=1&DocTypeID=27.

²³ Available at: <http://www.ohchr.org/Documents/Publications/FactSheet17en.pdf>.

²⁴ Available at: <https://www.ohchr.org/Documents/Publications/FactSheet7Rev.2.pdf>.

²⁵ Available at: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#proceduregenerale>.

²⁶ Available at: <http://juris.ohchr.org/search/Documents>.

²⁷ Joseph, S. et al., *Seeking Remedies for Torture Victims: A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies*, World Organisation Against Torture, 2006, available at: <http://www.omct.org/monitoring-protection-mechanisms/reports-and-publications/2006/11/d18503/>.

UN Committee on the Rights of the Child

BACKGROUND

The United Nations Committee on the Rights of the Child (the “**CRC Committee**”) is a body of 18 independent experts that monitors the implementation of the Convention on the Rights of the Child (the “**Convention**”). The CRC Committee also monitors the implementation of two Optional Protocols to the Convention on the involvement of children in armed conflict and on sale of children, child prostitution and child pornography (the “**Optional Protocols**”;² together with the Convention, the “**Treaties**”).

The complaints mechanism for the Treaties is contained in the Optional Protocol to the Convention on the Rights of the Child on a communications procedure (the “**OPIC**”),³ which was adopted on 18 December 2011. The OPIC allows *inter alia* individuals to submit complaints to the CRC Committee regarding specific violations of the Treaties.⁴

The OPIC provides three procedures for bringing complaints of violations of the Treaties:

- a. Individual communications – individuals or group of individuals may claim to be victims of a violation by a State Party of their rights under the Treaties.⁵
- b. Inter-State complaints – a State Party may claim that another State Party is not fulfilling its obligations under the Treaties.⁶
- c. Inquiry procedure – the CRC Committee may conduct an inquiry if it receives reliable information indicating grave or systematic violations of the Treaties.⁷

The focus of this section is on the mechanism for individual communications which we refer to as “complaints”.

The procedure relating to individual complaints submitted to the CRC Committee is governed by:

- a. the OPIC; and
- b. the CRC Committee’s Rules of Procedure (“**Rules of Procedure**”).⁸

All references to “Rules” are to the CRC Committee’s Rules of Procedure.

2 WHO CAN BRING A COMPLAINT?

An individual or group of individuals can lodge a complaint with the CRC Committee provided:

- a. the complaint concerns a State Party to the Convention and, if applicable, relevant Optional Protocols (through ratification or accession); and
- b. the State Party has accepted the CRC Committee’s competence to examine individual complaints, either through ratification or accession to the OPIC.⁹

1 Convention on the Rights of the Child, G.A. Res. 44/25, 1989, (the “**Convention**”), available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>.

2 Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, G.A. Res. 54/263, 2000, (the “**Optional Protocols**”), available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPACCRC.aspx>; and Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, G.A. Res. 54/263, 2000, available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPSCCRC.aspx>.

3 Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, A/HRC/RES/17/18, 2011, (the “**OPIC**”), available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=A/RES/66/138&Lang=en.

4 In order to establish whether a state has ratified the Optional Protocol, see: https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-11-d&chapter=4&clang=_en.

5 Article 5 of the OPIC.

6 Article 12 of the OPIC.

7 Article 13 of the OPIC.

8 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, UN Doc CRC/C/62/3, 2013, (the “**Rules of Procedure**”), available at: <https://digitallibrary.un.org/record/774220>.

9 Article 5 of the OPIC.

UN Committee on the Rights of the Child

Victim eligibility

Article 5 of the OPIC provides as follows (emphasis added):

Communications may be submitted by or on behalf of an individual or group of individuals, within the jurisdiction of a State party, claiming to be victims of a violation by that State party of any of the rights set forth in any of the following instruments to which that State is a party:

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

Where a communication is submitted on behalf of an individual or group of individuals, this shall be with their consent unless the author can justify acting on their behalf without such consent.

Anonymous complaints are not permitted.¹⁰

Can an NGO/other organisation act on behalf of a victim?

Yes, as provided by Article 5 of the OPIC, as above.

Can an NGO/other organisation intervene in an existing complaint brought by a victim?

Yes. Rule 23(1) provides that (emphasis added):

At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee may consult or receive, as appropriate, relevant documentation emanating from all other United Nations organs, bodies, specialized agencies, funds, programmes and mechanisms, including the other treaty bodies instituted by international instruments and the special procedures of the United Nations, and other international organizations, including from regional human rights systems, as well as nongovernmental organizations, National Human Rights Institutions and other relevant specialized institutions mandated to promote and protect the rights of the child, and all relevant State institutions, agencies or offices that may assist in the examination of the communication.

3 ADMISSIBILITY REQUIREMENTS

What are the requirements for bringing a complaint?

Article 7 of the OPIC provides that:

The Committee shall consider a communication inadmissible when:

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

4 REPRESENTATION

There is no requirement for legal representation.

¹⁰ Article 7(1) of the OPIC.

5 TIME LIMITS

What is the time limit for bringing a complaint?

A complaint must be brought within a year after the exhaustion of domestic remedies, except in cases where the author can demonstrate that it had not been possible to submit the complaint within that time frame.¹¹

6 FORM OF COMPLAINT AND INTERVENTION

What form should the complaint take?

A complaint does not need to be presented in a particular format, but applicants are advised to use a model complaint form for the CRC Committee which is provided on the OHCHR website.¹² The OHCHR's Fact Sheet also includes general guidance on what should be included in a complaint.¹³

What form should the intervention take?

There is no prescribed format for third party interventions.

7 FORMS OF SERVICE/COMMUNICATIONS

Complaints may be submitted by fax or email.

Address: Petitions and Inquiries Section,
Office of the High Commissioner for Human Rights,
United Nations Office at Geneva,
1211 Geneva 10,
Switzerland

Phone: + 41 22 917 90 22

Fax: +41 22 917 90 22

Email: petitions@ohchr.org

8 WHAT HAPPENS NEXT?

If the complaint is declared admissible, the CRC Committee shall bring it to the attention of the State Party concerned as soon as possible.¹⁴ The State Party shall submit to the CRC Committee written explanations or statements clarifying the matter and the remedy, if any, that it may have provided. The State Party shall submit its response as soon as possible and within six months in any event.¹⁵

The CRC Committee shall attempt to reach a friendly settlement of the matter on the basis of respect for the obligations set forth in the Treaties.¹⁶

The CRC Committee shall consider the complaint received in closed meetings and will transfer its views on the complaint, together with recommendations to the parties concerned.¹⁷

The State Party shall consider the views of the CRC Committee and must submit a written response, including information on any action taken and envisaged in the light of the views and recommendations of the CRC Committee.¹⁸

In the event that the CRC Committee finds that the State Party has violated its obligations under the Treaties to which the State is party, it will make recommendations on the remedies for the alleged victim(s), such as, *inter alia*, rehabilitation, reparation, financial compensation, guarantee of non-repetition, requests to prosecute the perpetrator(s), as well as indicate the time limit for their application. The CRC Committee may also recommend that the State Party take legislative, institutional or any other kind of general measures to avoid the repetition of such violations.¹⁹

¹¹ Article 7(7) of the OPIC.

¹² Committee on the Rights of the Child, *Model Form for Submission of Individual Communications to the Committee on the Rights of the Child Under the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure*, 2015, available at: https://www.ohchr.org/Documents/HRBodies/CRC/ModelCommunicationForm_en.pdf.

¹³ The Office of the High Commissioner of Human Rights, *Individual Complaint Procedures under the United Nations Human Rights Treaties (Fact Sheet No. 7)*, 2013, pp 4 - 5, available at: <https://www.ohchr.org/Documents/Publications/FactSheet7Rev.2.pdf>.

¹⁴ Article 8(a) of the OPIC.

¹⁵ Article 8(b) of the OPIC.

¹⁶ Article 9 of the OPIC.

¹⁷ Art 10 of the OPIC.

¹⁸ Art 11 of the OPIC.

¹⁹ Rule 27(4) of the Rules of Procedure.



Further reading

Online Resources

- Annual and sessional reports of the CRC are available on its website,²⁰ in addition to recent jurisprudence.²¹
- Office of the High Commissioner for Human Rights, *18 Candles: The Convention on the Rights of the Child Reaches Majority*, 2005.²²
- Resources of the Office of the High Commissioner for Human Rights include:
 - The CRC Factsheet;²³
 - Detailed handbook on individual complaints procedures;²⁴
 - General guidance on the individual complaints procedure;²⁵ and
 - The Jurisprudence Database.²⁶

²⁰ Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=5&DocTypeID=27.

²¹ Available at: <http://juris.ohchr.org/en/search/results?Bodies=5&sortOrder=Date>.

²² Available at: <http://www.ohchr.org/Documents/Publications/crc18.pdf>.

²³ Available at: <https://www.ohchr.org/Documents/Publications/FactSheet10rev.1en.pdf>.

²⁴ Available at: <https://www.ohchr.org/Documents/Publications/FactSheet7Rev.2.pdf>.

²⁵ Available at: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#proceduregenerale>.

²⁶ Available at: <http://juris.ohchr.org/search/Documents>.

UN Committee on the Rights of Persons with Disabilities

1 BACKGROUND

The United Nations Committee on the Rights of Persons with Disabilities (the “**CRPD Committee**”) is a body of 18 independent experts who monitor the implementation of the Convention on the Rights of Persons with Disabilities (the “**Convention**”).¹

The CRPD Committee monitors State Parties’ compliance with the Convention in two principal ways:

- a. through the review of obligatory reports submitted to it by State Parties; and
- b. through a complaint mechanism established by the Optional Protocol to the Convention on the Rights of Persons with Disabilities (the “**Optional Protocol**”).²

The Optional Protocol confers jurisdiction on the Committee to, among other things, examine individual complaints or “communications” with regard to alleged violations of the Convention by any State Party which has ratified or acceded to the Optional Protocol.³ In this section, we will refer to these as “complaints”.

The procedure relating to individual complaints submitted to the CRPD Committee is governed by:

- a. the Optional Protocol;
- b. the CRPD Committee’s Rules of Procedure (“**Rules of Procedure**”);⁴ and
- c. the CRPD Committee’s revised guidelines for submission of complaints to the Committee (the “**Guidelines**”).⁵

All references to “Rules” are to the CRPD Committee’s Rules of Procedure.

2 WHO CAN BRING A COMPLAINT?

An individual or group of individuals can lodge a complaint with the CRPD Committee against a State Party, provided:

- a. the complaint concerns a State Party to the Convention (through ratification or accession); and
- b. the State Party has accepted the CRPD Committee’s competence to examine individual complaints, either through ratification or accession to the Optional Protocol.⁶

With respect to individuals who can lodge a complaint, Article 1(1) of the Optional Protocol provides as follows (emphasis added):

A State Party to the present Protocol (“State Party”) recognizes the competence of the Committee on the Rights of Persons with Disabilities (“the Committee”) to receive and consider communications from or on behalf of individuals or groups of individuals subject to its jurisdiction who claim to be victims of a violation by that State Party of the provisions of the Convention.

Anonymous complaints are not permitted.⁷

Can an NGO/other organisation act on behalf of a victim?

Yes, pursuant to Article 1(1) of the Optional Protocol, complaints may be submitted “on behalf” of an individual or group of individuals. When submitting the communication on behalf of the alleged victim(s), evidence showing the consent of the victim(s), or reasons that justify submitting the communication without such consent, must be provided.⁸

Can an NGO or other organisation intervene in an existing complaint brought by a victim?

Yes. The Committee may, at any time in the course of the examination of a complaint, accept interventions from third parties with regard to the complaint. The third-party intervention must be accompanied by written authority from one of the parties to the communication. If an intervention is accepted, the Committee shall afford each party an opportunity to comment on the third party intervention within fixed time limits.⁹

1 Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, 2006, (the “**Convention**”), available at: <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx>

2 Optional Protocol to the Convention on the Rights of Persons with Disabilities, G.A. Res. 61/106, 2006, (the “**Optional Protocol**”), available at: <http://www.ohchr.org/EN/HRBodies/CRPD/Pages/OptionalProtocolRightsPersonsWithDisabilities.aspx>

3 Article 1 of the Optional Protocol.

4 Revised Rules of Procedure of the Committee on the Rights of Persons with Disabilities, CRPD/C/1/Rev.1, 2016, (“**Rules of Procedure**”), available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/1/Rev.1&Lang=en

5 Revised guidelines for submission of communications to the Committee on the Rights of Persons with Disabilities under the Optional Protocol to the Convention adopted by the Committee on the Rights of Persons with Disabilities, CRPD/C/5/3/Rev.1, 2012, (the “**Guidelines**”), available at: http://www.ohchr.org/Documents/HRBodies/CRPD/CRPD-C-5-3-Rev.1_en.doc

6 Article 1 of the Optional Protocol.

7 Article 2(a) of the Optional Protocol.

8 Para 1 of the Guidelines.

9 Rule 72 of the Rules of Procedure.

UN Committee on the Rights of Persons with Disabilities

3 ADMISSIBILITY REQUIREMENTS

What are the requirements for bringing a complaint?

Article 2 of the Optional Protocol provides that:

The Committee shall consider a communication inadmissible when:

- a. *The communication is anonymous;*
- b. *The communication constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of the Convention;*
- c. *The same matter has already been examined by the Committee or has been or is being examined under another procedure of international investigation or settlement;*
- d. *All available domestic remedies have not been exhausted. This shall not be the rule where the application of the remedies is unreasonably prolonged or unlikely to bring effective relief;*
- e. *It is manifestly ill-founded or not sufficiently substantiated; or when*
- f. *The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State Party concerned unless those facts continued after that date.*

4 REPRESENTATION

There is no requirement for legal representation.

5 TIME LIMITS

What is the time limit for bringing a complaint?

There is no prescribed time limit for bringing a complaint. However, it is recommended that complaints are submitted expeditiously, following the exhaustion of all domestic remedies.

6 FORM OF COMPLAINT AND INTERVENTION

What form should the complaint take?

There is no prescribed form of the complaint. However, it should contain the following information:

- a. The name of the author(s), together with their date and place of birth, nationality/citizenship, sex, other relevant personal identification data (if any of the above details are not available), present address, mailing address for confidential correspondence (if other than present address), telephone or mobile number (if any), e-mail address (if any) and fax number (if any). If submitting on behalf of (alleged) victims, evidence showing the consent of the victim(s), or reasons that justify submitting the communication without such consent;¹⁰
- b. The name of the victim(s), together with their date and place of birth, nationality/citizenship, sex, (if appropriate) the nature of their disability, other relevant personal identification data (if any of the above details are not available), present address, mailing address for confidential correspondence (if other than present address), telephone or mobile number (if any), e-mail address (if any), fax number (if any). If the communication concerns a group of individuals claiming to be victims, please provide basic information about each individual, in line with the above list;¹¹
- c. Name of the State Party (country);¹²
- d. Information detailing the relevant facts to substantiate the complaint including what provision(s) of the Convention are alleged to have been violated by the State Party;¹³
- e. Steps taken to exhaust domestic remedies at the national level;¹⁴ and,
- f. Whether the matter is or has been before any other procedure of international investigation or settlement.¹⁵

Any specific requests or remedies being submitted for consideration must also be detailed in the complaint.¹⁶

¹⁰ Para 1 of the Guidelines.

¹¹ Para 2 of the Guidelines.

¹² Para 3 of the Guidelines.

¹³ Para 5 of the Guidelines.

¹⁴ Para 6 of the Guidelines.

¹⁵ Para 7 of the Guidelines.

¹⁶ Para 8 of the Guidelines.

UN Committee on the Rights of Persons with Disabilities

What form should the intervention take?

There is no prescribed form for interventions.

7 FORMS OF SERVICE/COMMUNICATIONS

Complaints are to be submitted in writing or in an alternative format that enables a legible copy of its content to be transmitted to the State Party. Complaints may be submitted by letter, fax or email.

Complaints must be addressed to the Petitions Team at the Office of the United Nations High Commissioner for Human Rights.

Address: Petitions Team,
Office of the United Nations High Commissioner for Human Rights,
United Nations Office at Geneva,
1211 Geneva 10,
Switzerland

Phone: +41 22 917 92 20

Fax: +41 22 917 90 22

Email: petitions@ohchr.org

There is no prescribed form for complaints, but it is recommended that complainants follow the Guidelines.

8 WHAT HAPPENS NEXT?

Once a case is registered by the CRPD Committee, it will bring the complaint to the attention of the State Party which then has six months in which to provide a written response on both the admissibility and merits of the complaint (two months if the State Party challenges admissibility). The State Party's response will then be submitted to the person lodging the complaint, who will be given an opportunity to comment, within a timeframe decided by the CRPD. The CRPD can request the State Party or the author of the complaint to submit additional written explanations or statements relevant to the issue of admissibility or merits and, if it does so, will give the other party an opportunity to comment within a fixed time frame.¹⁷

If the CRPD decides that the complaint is inadmissible, it shall communicate this decision and the reasons for it as soon as possible and the case is then concluded. If it decides that the complaint is admissible, the CRPD will move on to the merits stage and issue its view and recommendations on the merits. Within six months, the State Party is required to submit a written response indicating any action taken on the recommendations by the CRPD.¹⁸



Further reading

Online Resources

- The website of the CRPD contains further information on its jurisprudence.¹⁹
- Annual and sessional reports are also available on the website of the CRPD.²⁰
- Resources of the Office of the High Commissioner for Human Rights include:
 - Detailed handbook on individual complaints procedures;²¹
 - General guidance on the individual complaints procedure;²² and
 - The Jurisprudence Database.²³

¹⁷ Rules 70-72 of the Rules of Procedure.

¹⁸ Rule 73-75 of the Rules of Procedure.

¹⁹ Available at: https://www.ohchr.org/EN/HRBodies/CRPD/Pages/Jurisprudence.aspx_

²⁰ Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=4&DocTypeID=27

²¹ Available at: <https://www.ohchr.org/Documents/Publications/FactSheet7Rev.2.pdf>.

²² Available at: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#proceduregenerale>

²³ Available at: <http://juris.ohchr.org/search/Documents>

UN Committee on Enforced Disappearances

1 BACKGROUND

The Committee on Enforced Disappearances (the “CED”) is the body of independent experts which monitors implementation of the International Convention for the Protection of All Persons from Enforced Disappearances (the “Convention”) by the State Parties.¹

The Convention allows for:

- a. individual communications;²
- b. state-to-state complaints;³ and
- c. inquiries.⁴

Under Article 31 of the Convention, the CED has jurisdiction to examine individual complaints or “communications” with regard to alleged violations of the Convention by any State Party which has accepted the Committee’s competence to examine complaints by making a declaration to that effect under Article 31 of the Convention. In this section, we will refer to these as “complaints”. A list of which states have made a declaration under Article 31 can be found on the website of the Committee.⁵

The procedures relating to individual complaints submitted to the CED are governed by:

- a. the Convention; and
- b. the CED’s Rules of Procedure (the “Rules of Procedure”), in particular Part XXI.⁶

All references to “Rules” are to the CED’s Rules of Procedure.

In addition, the Office of the High Commissioner for Human Rights has prepared guidance in relation to the submission of complaints to the CED (the “Guidance”).⁷

2 WHO CAN BRING A COMPLAINT?

An individual or group of individuals can lodge a complaint with the CED against a State Party, provided:

- a. the complaint concerns a State Party to the Convention (through ratification or accession); and
- b. the State Party has accepted the CED’s competence to examine individual complaints by making a declaration to that effect under Article 31 of the Convention.

With respect to individuals who can lodge a complaint, Article 31(1) of the Convention provides (Emphasis added):

A State Party may at the time of ratification of this Convention or at any time afterwards declare that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction claiming to be victims of a violation by this State Party of provisions of this Convention. The Committee shall not admit any communication concerning a State Party which has not made such a declaration.

Anonymous complaints are not permitted.⁸

Can an NGO/other organisation act on behalf of a victim?

Yes, pursuant to Article 31(1) of the Convention, as above, complaints may be lodged on behalf of individuals.

Rule 68 provides further:

Communications may be submitted by individual(s), subject to the jurisdiction of a State party, claiming to be victim(s) of a violation of the provisions of the Convention by this State party, or by their designated representatives, or by others acting on behalf of the alleged victim(s).⁹

1 International Convention for the Protection of All Persons from Enforced Disappearances, G.A. Res. 61/177, 2006, (the “Convention”), available at: <http://www.ohchr.org/EN/HRBodies/CED/Pages/ConventionCED.aspx>.

2 Article 31 of the Convention.

3 Article 32 of the Convention.

4 Article 33 of the Convention.

5 In order to establish whether a state has made a declaration recognising the competence of the CED, see: https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4&clang=_en.

6 Committee on Enforced Disappearances, Rules of procedure, UN Doc CED/C/1, 2012, (the “Rules of Procedure”), available at: https://www.ohchr.org/Documents/HRBodies/CED/CED-C-1_en.pdf.

7 Office of the High Commissioner for Human Rights, *Guidance for the Submissions of Communications to the Committee on Enforced Disappearances*, available at: <http://www.ohchr.org/Documents/HRBodies/CED/Art31ModelComplaintsForm.doc>.

8 Article 31(2)(a) of the Convention.

9 Rule 76(1) of the Rules of Procedure.

UN Committee on Enforced Disappearances

Can an NGO/other organisation intervene in an existing claim brought by a victim

Neither the Convention nor the Rules make clear whether NGOs can intervene in an existing complaint. However, Rule 76(1) of the Rules of Procedure provides as follows:

At any time after the receipt of a communication and before a determination on the merits has been reached, the Committee, the Working Group or a Rapporteur, may consult, as appropriate, relevant documentation emanating from all relevant United Nations organs, bodies, specialized agencies, funds, programmes and mechanisms, including the other treaty bodies instituted by international instruments and the special procedures of the United Nations, and other international organizations, including the relevant regional intergovernmental organizations or bodies as well as all relevant State institutions, agencies or offices that may assist in the examination of the communication, provided that the Committee shall afford each party an opportunity to.

3 ADMISSIBILITY REQUIREMENTS

What are the requirements for bringing a claim?

Article 31(2) of the Convention sets out the relevant conditions for admissibility of communications as follows:

The Committee shall consider a communication inadmissible where:

- a. *The communication is anonymous;*
- b. *The communication constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of this Convention;*
- c. *The same matter is being examined under another procedure of international investigation or settlement of the same nature; or where*
- d. *All effective available domestic remedies have not been exhausted. This rule shall not apply where the application of the remedies is unreasonably prolonged.*

4 REPRESENTATION

There is no requirement for legal representation.

5 TIME LIMITS

What is the time limit for bringing a claim?

There is no prescribed time limit for bringing a claim.

6 FORM OF CLAIM AND INTERVENTION

What form should the complaint take?

A complaint does not need to be presented in a particular format, but the Guidance includes a model complaint form for the CED and recommendations in relation to content.¹⁰

What form should the intervention take?

There is no prescribed form of intervention.

7 FORMS OF SERVICE/COMMUNICATIONS

Complaints may be submitted to:

Address: Petitions and Inquiries Section,
Office of the High Commissioner for Human Rights,
United Nations Office at Geneva,
1211 Geneva 10,
Switzerland

Phone: + 41 22 917 90 22

Fax: +41 22 917 90 22

Email: petitions@ohchr.org

There is no prescribed manner in which complaints must be submitted.

¹⁰ Office of the High Commissioner for Human Rights, *Guidance for the Submissions of Communications to the Committee on Enforced Disappearances*, available at: <http://www.ohchr.org/Documents/HRBodies/CED/Art31ModelComplaintsForm.doc>.

UN Committee on Enforced Disappearances

8 WHAT HAPPENS NEXT?

If the complaint meets the requirements of admissibility, the CED will transmit the complaint to the State Party concerned requesting it to provide observations and comments within a time limit set by the Committee.¹¹

The Committee may transmit to the State Party concerned, for its urgent consideration, a request that the State Party will take such interim measures as may be necessary to avoid possible irreparable damage to the victims of the alleged violation.¹²

The Committee shall hold closed meetings when examining complaints. It has the duty of informing the author of a complaint of the responses provided by the State party concerned. When the Committee comes to a decision, it shall communicate its views to the State Party and to the author of the complaint.¹³



Further reading

Online Resources

- Annual and sessional reports of the CED are available on its website.¹⁴
- Resources of the Office of the High Commissioner for Human Rights include:
 - A factsheet on enforced or involuntary disappearances;¹⁵
 - Guidance on the submission of complaints to the CED;¹⁶
 - Detailed handbook on individual complaint procedures¹⁷ as well as general guidance on the individual complaint procedures;¹⁸ and
 - The Jurisprudence Database.¹⁹

¹¹ Article 31(3) of the Convention.

¹² Article 31(4) of the Convention.

¹³ Article 31(5) of the Convention.

¹⁴ Available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=2&DocTypeID=27.

¹⁵ Available at: <http://www.ohchr.org/Documents/Publications/FactSheet6Rev3.pdf>.

¹⁶ Available at: <http://www.ohchr.org/Documents/HRBodies/CED/Art31ModelComplaintsForm.doc>.

¹⁷ Available at: <https://www.ohchr.org/Documents/Publications/FactSheet7Rev2.pdf>.

¹⁸ Available at: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#proceduregenerale>.

¹⁹ Available at: <http://juris.ohchr.org/search/Documents>.

This handbook is published by Ashurst LLP and the Equal Rights Trust. It is intended to assist those lawyers and non-governmental organisations who are planning to take a complaint before one of the regional or international human rights complaints mechanisms and are new to doing so. The handbook combines a basic introduction to the relevant procedural rules, with hints, tips and guidance from experienced litigators around the world. We hope you find this handbook a useful starting point as you take the next step in your litigation journey. For example:

It's important to consider the admissibility criteria for cases carefully, as the African Commission on Human and Peoples' Rights takes a very rigorous approach to this.

Judy Gitau-Nkuranga, Regional Coordinator – Africa, Equality Now

Third Party Interventions in cases relating to economic, social and cultural rights (ESCRs) are fundamental: it can often be challenging for complainants to pinpoint the exact nature of the ESCR violation, and Third Party Interveners can provide useful expert input in framing the claim.

Virgínia Brás Gomes, Chair of the UN Committee on Economic Social and Cultural Rights