

Redress Through International Human Rights Bodies and Mechanisms

Training Materials on Access to Justice for Migrant Children, Module 5

FAIR Project, April 2018

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Published in April 2018

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The FAIR (Fostering Access to Immigrant children's Rights) project has been implemented by the International Commission of Jurists – European Institutions in 2016-2018 and supported by the Rights, Equality and Citizenship (REC) Programme of the European Union and Open Society Foundations.



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Acronyms

Legal instruments

ICCPR	<i>International Covenant on Civil and Political Rights</i>
ICESCR	<i>International Covenant on Economic, Social and Cultural Rights</i>
ICERD	<i>International Convention on the Elimination of All Forms of Racial Discrimination</i>
	<i>CEDAW</i> <i>Convention on the Elimination of All Forms of Discrimination against Women</i>
CAT	<i>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</i>
CRC	<i>Convention on the Rights of the Child</i>
ICRMW	<i>International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families</i>
CPED	<i>International Convention for the Protection of All Persons from Enforced Disappearance</i>
CRPD	<i>Convention on the Rights of Persons with Disabilities</i>
ECHR	<i>European Convention for the Protection of Human Rights and Fundamental Freedoms</i>
ESC	<i>European Social Charter</i>
AP-ESC	<i>Additional Protocol to the ESC</i>

International bodies

HRC and CCPR	Human Rights Committee
CESCR	Committee on Economic, Social and Cultural Rights
CAT	Committee against Torture
CERD	Committee on the Elimination of Racial Discrimination
CEDAW	Committee on the Elimination of Discrimination against Women
CRC	Committee on the Rights of the Child
CMW	Committee on Migrant Workers
CED	Committee on Enforced Disappearances
CRPD	Committee on the Rights of Persons with Disabilities
ECSR	European Committee on Social Rights
ECtHR	European Court of Human Rights
OHCHR	Office of the UN High Commissioner for Human Rights
SPT	The Sub Committee to CAT on Prevention of Torture

This training module (a part of a series of training materials¹ relevant to protecting the rights of migrant children) provides an overview of international and regional human rights redress bodies and mechanisms that migrant children might turn to in an effort to redress violations of their rights, including when they have failed to get redress at the national level. It includes practical information about the mandates, requirements and procedures of these bodies and mechanisms.²

In addition to being used for training, this set of materials is intended to provide practical information for migrant children in EU Member States and their lawyers, that will assist them in identifying the international human rights body (bodies) or mechanism(s) and procedure(s) most likely to afford the individual the best opportunity to obtain redress for violations of their rights, in the particular circumstance.

I. Overview of mechanisms and their procedure

This Chapter contains a general overview of three different types of international human rights mechanisms to which child migrants might turn for redress. It describes the issues that each body may consider; who may bring a complaint before each body; and the admissibility requirements that must be fulfilled before a complaint is examined on the merits by each of the bodies or mechanisms. Section 2 of this Chapter describes the procedures used by the various types of international human rights redress mechanisms for examining a complaint. *Section 3* briefly explains the methods of redress for violations incident to a State's implementation of EU law.

1. Types of international mechanisms

International human rights mechanisms that may consider individual petitions include (See Table 1. For overview):

a) Judicial mechanisms

International human rights courts, including in particular the European Court of Human Rights, subject to a range of conditions and criteria, may examine petitions or applications alleging a violation of an individual's rights by a State which is bound by one or more of the treaties over which the court has competence. In cases in which the geographic, temporal and substantive, admissibility criteria (jurisdiction) are satisfied, the courts have competence to rule on whether the State Party has violated one or more of its treaty obligations and may prescribe remedies accordingly. Their decisions are binding (see i.a. Art 46 of the ECHR) on the State(s) and must be implemented by the concerned State. The judgments of these Courts also serve as clarification to other States Parties about the requirements and interpretations of the treaty provisions.

For information about the Court of Justice of the European Union, see below section 3.

b) Bodies and Mechanisms with quasi-judicial powers

A number of bodies in the international human rights system are quasi-judicial: they have similar

¹ These training materials on access to justice for migrant children were developed as part of the FAIR (Fostering Access to Immigrant children's Rights) project and include the following training modules:

0. Guiding principles and definitions,
I. Access to fair procedures including the right to be heard and to participate in proceedings,
II. Access to justice in detention,
III. Access to justice for economic, social and cultural rights,
IV. Access to justice in the protection of their right to private and family life,
V. Redress through international human rights bodies and mechanisms,
VI. Practical handbook for lawyers when representing a child.

² Children are persons under the age of 18. For more information on the definitions, please see Training module 0. Principles and Definitions.

competences to those of international human rights courts mechanisms. However, many States do not consider that their decisions have the same 'binding force' as those of international human rights courts.³

Quasi-judicial bodies

A number of treaty bodies that have been established and mandated by a human rights treaty to monitor the implementation of the treaty by States which are party to it. Most of these quasi-judicial bodies undertake the monitoring through the examination of periodic reports submitted by States Parties on the implementation of their treaty obligations. Some treaty bodies are also competent to consider **individual complaints about violations of treaty obligations allegedly committed by a State.**

The following UN human rights Treaty Bodies monitor implementation of the treaties indicated, including by adjudicating on admissible complaints concerning alleged violations of the provisions of the treaty by States which are party to the treaty and have given their consent for the monitoring body to exercise such jurisdiction:

- The Committee on the Rights of the Child (CRC), in relation to the Convention on the Rights of the Child;
- The Human Rights Committee, in relation to the International Covenant on Civil and Political Rights;
- The Committee on the Elimination of Discrimination Against Women (CEDAW) in relation to the Convention on the Elimination of All Forms of Discrimination against Women;
- The Committee on Elimination of Racial Discrimination (CERD) in relation to the International Convention on the Elimination of All Forms of Racial Discrimination;
- The Committee against Torture (CAT), in relation to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- The Committee on the Rights of Persons with Disabilities (CRPD), with respect to the Convention on the Rights of Persons with Disabilities;
- The Committee on Economic, Social and Cultural Rights (CESCR), with respect to the International Covenant on Economic, Social and Cultural Rights;
- The Committee on Enforced Disappearances (CED), with respect to the International Convention on the Protection of All Persons from Enforced Disappearance;
- The Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW), will be enabled to consider individual complaints alleging violations of States obligations of the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, in relation to States Parties that agree to such competence as expressed under Article 77 of the treaty, once 10 states have done so.

c) **WGAD**

Likewise, the **UN Working Group on Arbitrary Detention (WGAD)** is a special procedure mandated by the HR Council that includes consideration of individual complaints related to situations of deprivation of liberty alleged to have been imposed arbitrarily or being otherwise inconsistent with relevant international standards.

d) Quasi-judicial Treaty Body considering **Collective Complaints**

The European Committee on Social Rights is a treaty body that monitors implementation by States of their obligations under the European Social Charter and Revised Social Charter. It has quasi-judicial powers but

³ The treaties establishing the bodies require States to implement the provisions of the treaty and to provide a remedy for violations of the treaty. In addition, States which grant competence to a treaty body to consider individual complaints, are under a good faith obligation to cooperate with such complaints mechanism and procedures.

- unlike the above-mentioned bodies - it is empowered to only consider **collective complaints** alleging States' practices violation of one or more of the rights enshrined in the Charter. The State must have consented to be bound by the Committee's jurisdiction. The Committee is not competent to consider complaints submitted by individuals.

This procedure can be especially useful in cases of systemic violations of the economic, social or cultural rights of children. For instance, the Committee decided on the health rights of migrant children in *Defence for Children International v. Belgium*, Complaint No. 69/2011, Views of 23 October 2012.

e) Other (Non-judicial) mechanisms

A number of non-judicial human rights bodies and mechanisms have been established (mostly by inter-governmental bodies rather than treaties) to monitor and advise on human rights. The mandates of these bodies often span particular geographic and/or thematic issues. Their influence generally derives from the international or regional (intergovernmental) organization which mandates them, and from their expertise and independence. In addition to undertaking country visits, making recommendations to address structural issues within a state that facilitate human rights violations, conducting thematic studies and contributing to the reinforcement and development of international human rights standards, many - though not all of them - may have jurisdiction to hear individual cases, including by bringing them to the attention of the authorities.

Examples of such non-judicial human rights mechanisms that may take up individual cases and bring alleged violations of human rights, including those of child migrants, within the scope of their thematic mandates to the attention of governments include the following UN Special Procedures established by the UN Human Rights Council. Although they do not have an adjudicatory role, these mechanisms may urge States to redress a violation:

- the UN Special Rapporteur on human rights of migrants,
- the UN Special Rapporteur on the right to health,
- the UN Special Rapporteur on torture.

f) Bodies to whom migrant children can turn to for redress of violations of their rights

On the basis of information received from individuals, the following mechanisms can take up general issues and make recommendations to the authorities within the scope of their respective mandates. None of these bodies are mandated to order redress, nor can they take up individual complaints.

The **Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment** ("SPT") is a new treaty body in the United Nations human rights system. It has a preventive mandate focused on an innovative, sustained and proactive approach to the prevention of torture and ill treatment and started to function in February 2007. The SPT was established pursuant to the provisions of the [Optional Protocol to the Convention against Torture](#) ("OPCAT"). The Subcommittee has two primary operational functions: first, it may undertake visits to States which are parties to the OPCAT and may visit any place where persons may be deprived of their liberty; second, it has an advisory function which involves providing assistance and advice to States Parties on the establishment of [National Preventive Mechanisms](#) ("NPM"), which the OPCAT requires, and also to provide advice and assistance to both the NPM and the State Party regarding the working of the NPM.

The Council of Europe's Commissioner for Human Rights undergoes country visits and reports on human rights concerns and makes recommendations in the 47 Council of Europe member states, including issues of treatment towards migrants and children across Europe, with a view to ensuring enhanced respect and protection of their rights. While the Commissioner is not mandated to take up individuals' cases, *per se*, the Commissioner has the possibility to intervene as a third party in cases pending before the European Court of Human Rights.

Table 1. Overview of international human rights mechanisms

	Judicial mechanisms	Quasi-judicial mechanisms	Non-judicial mechanisms
UN		<p><u>UN Treaty bodies (individual complaints):</u></p> <ul style="list-style-type: none"> • Committee on the Rights of the Child (CRC) • Human Rights Committee (HRC) • Committee on the Elimination of Discrimination Against Women (CEDAW) • Committee on Elimination of Racial Discrimination (CERD) • Committee against Torture (CAT), • Committee on Enforced Disappearances (CED) • Committee on the Rights of Persons with Disabilities (CRPD) • Committee on Economic, Social and Cultural Rights (CESCR) 	<p>Special Procedures established and mandated by the UN Human Rights Council to work on specific issues.</p> <p>The Sub Committee to CAT on Prevention of Torture (SPT)</p>
CoE	European Court of Human Rights (ECSR)	Collective Complaints: European Committee on Social Rights (ECSR)	The CoE's Commissioner for Human Rights

2. [Preliminary requirements and considerations](#)

2.1.1 *Jurisdiction (Temporal, material and territorial)*

This subsection describes the temporal, material and territorial jurisdiction of various international human rights mechanisms. This information will assist in identifying which mechanism migrant children might turn to seek redress for particular violations of their rights.

Temporal jurisdiction ("ratione temporis")

With respect to redress for alleged violations of treaty obligations, international courts and most quasi-judicial bodies will, as a general rule, have jurisdiction to adjudicate alleged violations of international treaty obligations that occurred as a result of acts that occurred after the State's ratification of the particular international norm under the particular treaty and its grant of jurisdiction to the body considering the complaint came into effect.⁴

The complaint must address facts that arose after the entry into force of the OP as to the state (art 4(c) of the OP to CEDAW; art 2(b) OP to ICESCR; Article 7(7) of OP3 to CRC; Art 2 (f) to OP to CRPD).

However, the principle applies differently to different situations:

- **Instantaneous fact/act:** the simplest situation occurs when the fact or act to be contested is an instantaneous one. Under these circumstances, it suffices to check whether the act occurred before or after the entry into force of the relevant treaty obligation;
- **Continuous fact/act:** when the breach of the obligation is of a continuing character, the wrongful fact or act continues until the situation of violation is ended. Examples include enforced disappearances, when the person continues to be disappeared (his or her fate and whereabouts continue to be unknown), or arbitrary detentions, regardless of whether the disappearance or

⁴ This is the case for complaints brought before CEDAW (art 4(a) of the OP to CEDAW); ICESCR (art 2(b) OP to ICESCR); CRC (Article 7(7) of OP3 to CRC); CRPD (Art 2 (f) to OP to CRPD); and also is the practice of HRC, CERD and CAT.

arbitrary detention originated before that date (see the jurisprudence of the ECtHR in the cases of *X v. Switzerland*, ECommHR, Application No.7601/75, Admissibility Decision, 12 July 1976; *Varnava and others v. Turkey*, ECtHR, Applications Nos.16064/90, 16065/90, 16066/90, 16068/90, 16069/90, 16070/90, 16071/90, 16072/90 and 16073/90, Judgment of 18 September 2009; or *Palić v. Bosnia and Herzegovina*, ECtHR, Application No.4704/07, Judgment of 15 February 2011).

- **Breach of the obligation to prevent:** this situation occurs when the State has a treaty obligation to prevent a certain conduct but fails to do so. The breach extends over the entire period during which the event continues and remains in violation of that obligation.⁵

The provisions of an international human rights treaty, as a general rule, become binding on a State upon its entry into force following its ratification or accession. *For the 7 countries covered in the FAIR project, please refer to the ratifications listed in Table 3.*

Table 2. Status of ratifications: International legal instruments

This table sets out information about status of ratifications of core UN human rights treaties and the ECHR by the 7 countries that are the focus of the FAIR project: Italy (IT), Germany (DE), Spain (ES), Bulgaria (BG), Greece (EL), Malta (MT), Ireland (IR).

(The check mark denotes that the treaty is in force in the country and the date in brackets is the date on which it entered into force with respect to that country). The information included in the table is current as of 5 February 2018.

Updates of this information and information about the status of ratification of human rights treaties by other countries may be found by searching on the country name for UN treaties at

<http://indicators.ohchr.org/>, and Council of Europe Treaties at

https://www.coe.int/en/web/conventions/search-on-states/-/conventions/treaty/search/states_coe.

	International instrument	Monitoring Body	IT	DE	ES	BG	EL	MT	IR
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination	CERD	✓ (1976)	✓ (1969)	✓ (1968)	✓ (1966)	✓ (1970)	✓ (1971)	✓ (2000)
	Declarations under article 14 CERD		✓	✓	✓	✓	X	✓	✓
ICCPR	International Covenant on Civil and Political Rights	HRC	✓ (1978)	✓ (1973)	✓ (1977)	✓ (1970)	✓ (1997)	✓ (1990)	✓ (1989)
ICCPR-OP1	Optional Protocol to the International Covenant on Civil and Political Rights	HRC	✓ (1978)	✓ (1993)	✓ (1985)	✓ (1992)	✓ (1997)	✓ (1990)	✓ (1989)
ICCPR-OP2	Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty	HRC	✓ (1995)	✓ (1992)	✓ (1991)	✓ (1999)	✓ (1997)	✓ (1994)	✓ (1993)
ICESCR	International Covenant on Economic, Social and Cultural Rights	CESCR	✓ (1978)	✓ (1973)	✓ (1977)	✓ (1970)	✓ (1985)	✓ (1990)	✓ (1989)

⁵ For example, the obligation to prevent transboundary damage by air pollution, dealt with in the Trail Smelter arbitration, was breached for as long as the pollution continued to be emitted. See: Trail Smelter, UNRIAA, vol. III (Sales No. 1949.V.2), p. 1905 (1938, 1941). See also: Article 14.3, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, adopted by the International Law Commission at its 53rd session in 2001, in *Yearbook of the International Law Commission*, 2001, vol. II, Part Two (ILC Draft Articles on State Responsibility).

ICESCR - OP	Optional Protocol to the Covenant on Economic, Social and Cultural Rights	CESCR	✓ (2015)	X	✓ (2010)	X	X	X	Signed (2012)
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women	CEDAW	✓ (1985)	✓ (1985)	✓ (1984)	✓ (1982)	✓ (1983)	✓ (1991)	✓ (1985)
OP-CEDAW	Optional Protocol to the Convention on the Elimination of Discrimination against Women	CEDAW	✓ (2000)	✓ (2002)	✓ (2001)	✓ (2006)	✓ (2002)	X	✓ (2000)
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	CAT	✓ (1989)	✓ (1990)	✓ (1987)	✓ (1986)	✓ (1988)	✓ (1990)	✓ (2002)
	Declarations under article 22 of CAT		✓	✓	✓	✓	X	✓	✓
OP-CAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	SPT	✓ (2013)	✓ (2008)	✓ (2006)	✓ (2011)	✓ (2014)	✓ (2003)	Signed (2007)
CRC	Convention on the Rights of the Child	CRC	✓ (1991)	✓ (1992)	✓ (1990)	✓ (1991)	✓ (1993)	✓ (1990)	✓ (1992)
OP-CRC-AC	Optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	CRC	✓ (2002)	✓ (2004)	✓ (2002)	✓ (2002)	✓ (2003)	✓ (2002)	✓ (2002)
OP-CRC-SC	Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	CRC	✓ (2002)	✓ (2009)	✓ (2001)	✓ (2002)	✓ (2008)	✓ (2010)	Signed (2000)
OP-CRC-IC	Optional Protocol to the Convention on the Rights of the Child on a communications procedure	CRC	✓ (2016)	✓ (2013)	✓ (2013)	X	X	Signed (2012)	✓ (2014)
CMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	CMW	X	X	X	X	X	X	X
CED	International Convention for the Protection of All Persons from Enforced Disappearance	CED	✓ (2015)	✓ (2009)	✓ (2009)	Signed (2008)	✓ (2015)	✓ (2015)	Signed (2007)
Article 31 CED	Complaints mechanism in the CED	Article 31 CED	X	✓	✓	X	X	X	X
CRPD	Convention on the Rights of Persons with Disabilities	CRPD	✓ (2009)	✓ (2009)	✓ (2007)	✓ (2012)	✓ (2012)	✓ (2012)	Signed (2007)
OP-CRPD	Optional Protocol to the Convention on the Rights of Persons with Disabilities	CRPD	✓ (2009)	✓ (2009)	✓ (2007)	Signed (2008)	✓ (2012)	✓ (2012)	X
ECHR	European Convention on Human Rights		✓	✓	✓	✓	✓	✓	✓

		(1955)	(1952)	(1979)	(1992)	(1974)	(1967)	(1953)
ESC	European Social Charter	✓ (1965)	✓ (1965)	✓ (1980)	✓ (2000)	✓ (1984)	✓ (1988)	✓ (1964)
	Acceptance of the collective complaint mechanism	✓ (1997)	X	X	✓ (2000)	✓ (1998)	X	✓ (2000)

Working Group on Arbitrary Detention

In contrast to the judicial and other quasi-judicial complaints mechanisms mentioned above, the mandate of the **Working Group on Arbitrary Detention** (WGAD) does not depend on the State Party being a party to a treaty.⁶

Information about particular time limits for filing applications to various mechanisms are set out in Section 1.2 Admissibility requirements.

Material jurisdiction ("ratione materiae")

The substantive (material) issues which most international human rights bodies **with judicial or quasi judicial powers** may address are limited to violations of provisions of particular treaties. This means that, as a general rule, it is not possible to raise allegations of violations of human rights that are not guaranteed by the particular treaty which the international human rights body is mandated to monitor. This rule applies in particular to the European Court of Human Rights, the UN treaty monitoring bodies, including the CRC and Human Rights Committee, and the European Committee on Social Rights; but it does not apply to WGAD, (whose mandate and jurisdiction to consider complaints is not limited to violations of particular treaties but rather to assessing whether the detention of an individual is arbitrary).

In assessing whether there is material jurisdiction, it should be borne in mind that evolutive interpretation has led to an expansion of the scope of certain human rights.

⁶ The Working Group on Arbitrary Detention (WGAD) was established by [resolution 1991/42](#) of the predecessor of the UN Human Rights Council, the UN Commission on Human Rights. Its mandate was clarified and extended by Commission's [resolution 1997/50](#), and has been repeatedly been extended by the Human Rights Council including most recently in 2016 in [resolution 33/30](#). It's mandate includes to (a) To investigate cases of deprivation of liberty imposed arbitrarily or otherwise inconsistently with the relevant international standards set forth in the Universal Declaration of Human Rights or in the relevant international legal instruments accepted by the States concerned; (b) To seek and receive information from Governments and intergovernmental and non-governmental organizations, and receive information from the individuals concerned, their families or their representatives; (c) To act on information submitted to its attention regarding alleged cases of arbitrary detention by sending urgent appeals and communications to concerned Governments to clarify and to bring to their attention these cases; (d) To conduct field missions upon the invitation of Government, in order to understand better the situations prevailing in countries, as well as the underlying reasons for instances of arbitrary deprivation of liberty; (e) To formulate deliberations on issues of a general nature in order to assist States to prevent and guard against the practice of arbitrary deprivation of liberty and to facilitate consideration of future cases; (f) To present an annual report to the Human Rights Council presenting its activities, findings, conclusions and recommendations. Additional information about the WGAD, including its mandate, its individual complaints and urgent appeals procedures, jurisprudence and reports can be found at: <http://www.ohchr.org/EN/Issues/Detention/Pages/WGADIndex.aspx>

Table 3. Material jurisdiction of judicial and quasi-judicial human rights bodies

International body	Competent <i>ratione materiae</i> for breaches of
UN Committee on the Rights of the Child (CRC)	<ul style="list-style-type: none"> • <i>Convention on the Rights of the Child (CRC)</i>; • <i>Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OP-CRC-SC)</i>; • <i>Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OP-CRC-AC)</i>
UN Human Rights Committee (HRC)	<i>International Covenant on Civil and Political Rights (ICCPR)</i>
UN Committee against Torture (CAT)	<i>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)</i>
UN Committee on the Elimination of Racial Discrimination (CERD)	<i>International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)</i>
UN Committee on the Elimination of Discrimination against Women (CEDAW)	<i>Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)</i>
UN Committee on the Rights of Persons with Disabilities (CRPD)	<i>Convention on the Rights of Persons with Disabilities (CRPD)</i>
UN Committee on Enforced Disappearances (CED)	<i>International Convention on the Protection of All Persons from Enforced Disappearance (CED)</i>
UN Committee on Economic, Social and Cultural Rights (CESCR)	<i>International Covenant on Economic, Social and Cultural Rights (ICESCR)</i>
European Court of Human Rights (ECtHR) (Council of Europe)	<i>European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and its Protocols</i>
European Committee on Social Rights (ECSR) (Council of Europe)	(Collective complaints) the European Social Charter and the (revised) European Social Charter
Working Group on Arbitrary Detention (WGAD)	Individual complaints alleging arbitrary detention, throughout the world. The State concerned need not be a party to a particular human rights treaty that sets out the prohibition of arbitrary detention. (see Box 2. WGAD on p.39)

Box 1. Optional Protocol 3 to the Convention of the Rights of the Child

On 19 December 2011, the UN General Assembly approved a third Optional Protocol to the Convention on the Rights of the Child on [a communications procedure](#), which allows individual children to submit complaints regarding specific violations of their rights under the Convention and its first two optional protocols by those countries which are State Parties to the 3rd Optional Protocol. The Protocol entered into force in April 2014. Therefore, it is now possible to bring individual complaints to the [Committee on the Rights of the Child](#) (CRC) against States which are Parties to this treaty.

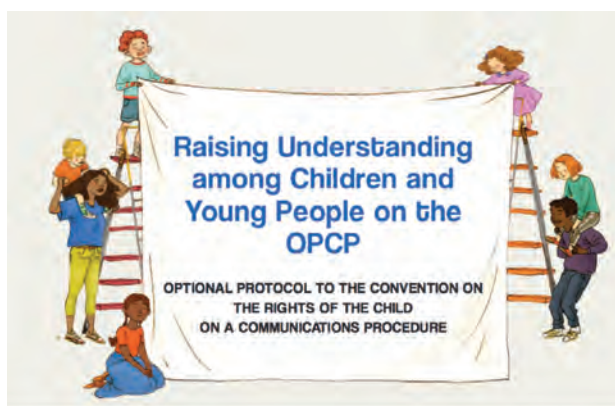
The following link shows which States are Parties to the 3rd Optional Protocol to the CRC and can thus be the subject of individual complaints:

http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/Treaty.aspx?Treaty=CRC&Lang=en

The following is the link to the Rules of Procedure for individual complaints before the CRC: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/62/3&Lang=en

See the Rules of procedure [here](#).

A child-friendly version of the Optional protocol can be found [here](#).



Inquiry mechanisms

A number of UN treaty bodies also have competence, under certain conditions, to conduct inquiries into allegations of grave or systematic violations by States Parties of obligations under the particular treaty that the treaty body is mandated to monitor. These include: the CRC⁷ CAT, ICESCR, CRPD, CEDAW, and CED.

For example, the OP-CRC-3 established an inquiry procedure in relation to reliable allegations of grave or systematic violations of the CRC by States Parties to this Optional Protocol. Any person or group with reliable information that a State –that is Party to the CRC that is also a Party to OP-CRC-3 and has not made a Declaration opting out of this procedure– is carrying out grave or systematic violations of rights under the CRC may submit a request to the Committee for an inquiry to be started.

Unlike the requirements of the individual complaint procedures, the entity/organization submitting the information need not themselves allege that they are victims of violations. Neither do they need to name concrete victim(s).

Inquiry procedures are of a confidential nature. Those submitting the inquiry will not be informed of the scope or results of the inquiry unless the State agrees to the publication of a summary of the findings.

Inquiry procedures, though they do not ensure redress in individual cases, have the potential to address systematic problems and achieve change of laws and practices. However, it must be noted that, in practice, such inquiries are considered to be procedures of last resort and requests for the launching of an inquiry are granted only exceptionally.

Article 13 of the 3rd Optional Protocol to the CRC Inquiry procedure for grave or systematic violations

1. If the Committee receives reliable information indicating grave or systematic violations by a State party of rights set forth in the Convention or in the Optional Protocols thereto on the sale of children, child prostitution and child pornography or on the involvement of children in armed conflict, the Committee shall invite the State party to cooperate in the examination of the information and, to this end, to submit observations without delay with regard to the information concerned.
2. Taking into account any observations that may have been submitted by the State party concerned, as well as any other reliable information available to it, the Committee may designate one or more of its members to conduct an inquiry and to report urgently to the Committee. Where warranted and with the consent of the State party, the inquiry may include a visit to its territory.
3. Such an inquiry shall be conducted confidentially, and the cooperation of the State party shall be sought at all stages of the proceedings.
4. After examining the findings of such an inquiry, the Committee shall transmit without delay these findings to the State party concerned, together with any comments and recommendations.
5. The State party concerned shall, as soon as possible and within six months of receiving the findings, comments and recommendations transmitted by the Committee, submit its observations to the Committee.
6. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2 of the present article, the Committee may, after consultation with the State party concerned, decide to include a summary account of the results of the proceedings in its report provided for in article 16 of the present Protocol.

⁷ As of 26 July 2016, the inquiry procedure for CRC-OP-IC (article 13) has been accepted by Albania, Andorra, Argentina, Belgium, Bolivia, Czech Republic, Denmark, Finland, France, Gabon, Germany, Ireland, Italy, Luxembourg, Monaco, Mongolia, Montenegro, Peru, Portugal, Samoa, Slovakia, Spain and Thailand.

7. Each State party may, at the time of signature or ratification of the present Protocol or accession thereto, declare that it does not recognize the competence of the Committee provided for in the present article in respect of the rights set forth in some or all of the instruments listed in paragraph 1.
8. Any State party having made a declaration in accordance with paragraph 7 of the present article may, at any time, withdraw this declaration by notification to the Secretary-General of the United Nations.

Territorial jurisdiction ("ratione loci")

Related to the consideration of material jurisdiction of international human rights redress mechanisms is the issue of whether the matter raised in a complaint falls within the geographical ambit of the State's treaty obligations.

The term jurisdiction *ratione loci* describes the geographical reach of the State's human rights obligations under a particular treaty. As clarified in a series of judgments of the European Court of Human Rights, the International Court of Justice and a number of treaty monitoring bodies, a State's obligations under human rights treaties not only extend to people within the territorial boundaries of the State but also to places where the State or its agents exercise effective control, as well as to those persons outside of the State who are within the effective control of the State or State agents.⁸

The human rights treaty obligations of a State will apply to a foreigner when he or she accesses the territory of the State. The European Court has ruled that the State's obligations under the European Convention on Human Rights apply to aliens detained in an "international zone" or "transit zone" of an airport (*Amuur v. France*, ECtHR, Application No.19776/92, Judgment of 26 June 1996 paras. 52-53).

It has been clarified that a State's human rights treaty obligations, including those under the ICCPR, the ECHR and the CAT, apply to a State when it exercises authority over people or places outside its borders. For example, when it is a *de facto* occupying power or when the State operates a detention center in a foreign country. In particular, the European Court of Human Rights has also ruled that a State's human rights obligations under the European Convention extend beyond the territory of the State and indeed beyond the Council of Europe region in various situations – including where the State has exercised authority or effective control over a person or a territory in Kenya (*Öcalan v. Turkey*, ECtHR, Application No.46221/99, Judgment of 12 May 2005), Sudan (*Ramirez v. France*, ECommHR, Application No.28780/95, Decision on admissibility of 24 June 1996), Iran (*Pad and Others v. Turkey*, ECtHR, Application No.60167/00, Judgment of 28 June 2007), in a UN neutral buffer zone (*Isaak v. Turkey*, ECtHR, Application No.44587/98, Judgment of 24 June 2008), and in international waters (*Khavara and Others v. Italy and Albania*, ECtHR, Application No.39473/98, Judgment of 11 January 2011).

The European Court of Human Rights summarized some of its jurisprudence on the extraterritorial application of a State's obligations under the European Court of Human Rights in the case of *Hirsi Jamaa and Others v. Italy*.

⁸ *Al-Saadoon and Mufdhi v. the United Kingdom*, ECtHR, Application No.61498/08, Judgment of 2 March 2010; *Medvedyev and Others v. France*, ECtHR, Application No.3394/03, Judgment of 29 March 2010; International Court of Justice: *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (Advisory Opinion)* (9 July 2004); HRC: *Concluding Observations of the Human Rights Committee: Israel*, UN Doc. CCPR/CO/78/ISR (21 August 2003); HRC: *Observations of the Human Rights Committee: US*, UN Doc. CCPR/C/USA/CO/3 (15 September 2006); HRC: *General Comment 31: Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, UN doc. CCPR/C/21/Rev.1/Add.13 (26 May 2004), para. 10.

***Hirsi Jamaa and Others v. Italy*, ECtHR, Application no. 27765/09, (23 February 2012), paras 74-82.**

Summary: The case concerned Somali and Eritrean migrants travelling from Libya who had been intercepted at sea by the Italian authorities and sent back to Libya. The Court concluded that the migrants were within the effective control of the Italian authorities from the time the authorities boarded the ships and handed the migrants over to the Libyan authorities. It held that returning the migrants to Libya without examining their cases exposed them to a risk of ill-treatment and amounted to a collective expulsion.

74. Whenever the State through its agents operating outside its territory exercises control and authority over an individual, and thus jurisdiction, the State is under an obligation under Article 1 to secure to that individual the rights and freedoms under Section 1 of the Convention that are relevant to the situation of that individual. In this sense, therefore, the Court has now accepted that Convention rights can be “divided and tailored” (...).

75. There are other instances in the Court’s case-law of the extra-territorial exercise of jurisdiction by a State in cases involving the activities of its diplomatic or consular agents abroad and on board craft and vessels registered in, or flying the flag of, that State. In these specific situations, the Court, basing itself on customary international law and treaty provisions, has recognized the extra-territorial exercise of jurisdiction by the relevant State(...).

76. It is not disputed before the Court that the events at issue occurred on the high seas, on board military ships flying the Italian flag. The respondent Government acknowledge, furthermore, that the Revenue Police and Coastguard ships onto which the applicants were embarked were fully within Italian jurisdiction.

77. The Court observes that by virtue of the relevant provisions of the law of the sea, a vessel sailing on the high seas is subject to the exclusive jurisdiction of the State of the flag it is flying. This principle of international law has led the Court to recognise, in cases concerning acts carried out on board vessels flying a State’s flag, in the same way as registered aircraft, cases of extra-territorial exercise of the jurisdiction of that State (...). Where there is control over another, this is *de jure* control exercised by the State in question over the individuals concerned.

78. The Court observes, furthermore, that the aforementioned principle is enshrined in domestic law in Article 4 of the Italian Navigation Code, and is not disputed by the respondent Government (...). It concludes that the instant case does indeed constitute a case of extra-territorial exercise of jurisdiction by Italy capable of engaging that State’s responsibility under the Convention.

79. Moreover, Italy cannot circumvent its “jurisdiction” under the Convention by describing the events at issue as rescue operations on the high seas. In particular, the Court cannot subscribe to the Government’s argument that Italy was not responsible for the fate of the applicants on account of the allegedly minimal control exercised by the authorities over the parties concerned at the material time.

80. In that connection, it is sufficient to observe that in the case of *Medvedyev and Others (...)*, the events at issue took place on board the Winner, a vessel flying the flag of a third State but whose crew had been placed under the control of French military personnel. In the particular circumstances of that case, the Court examined the nature and scope of the actions carried out by the French officials in order to ascertain whether there was at least *de facto* continued and uninterrupted control exercised by France over the Winner and its crew (...).

81. The Court observes that in the instant case the events took place entirely on board ships of the Italian armed forces, the crews of which were composed exclusively of Italian military personnel. In the Court’s opinion, in the period between boarding the ships of the Italian armed forces and being handed over to the Libyan authorities, the applicants were under the continuous and exclusive *de jure* and *de facto* control of the Italian authorities. Speculation as to the nature and purpose of the intervention of the Italian ships on the high seas would not lead the Court to any other conclusion.

82. Accordingly, the events giving rise to the alleged violations fall within Italy’s “jurisdiction” within the meaning of Article 1 of the Convention.

Similarly, the Committee against Torture has clarified that a State Party’s obligations (and the Committee’s

competence to consider complaints related to alleged violations of such obligations) extend not only on the territory of Spain but also to places and people over which it exercises effective control.

J.H.A. v. Spain, UN Committee Against Torture (CAT), UN Doc. CAT/C/41/D/323/2007, (21 November 2008) para 8.2

8.2 The Committee takes note of the State party's argument that the complainant lacks competence to represent the alleged victims because the incidents forming the substance of the complaint occurred outside Spanish territory. Nevertheless, the Committee recalls its general comment No. 2, in which it states that the jurisdiction of a State party refers to any territory in which it exercises, directly or indirectly, in whole or in part, de jure or de facto effective control, in accordance with international law. [3] In particular, it considers that such jurisdiction must also include situations where a State party exercises, directly or indirectly, de facto or de jure control over persons in detention. This interpretation of the concept of jurisdiction is applicable in respect not only of article 2, but of all provisions of the Convention, including article 22. In the present case, the Committee observes that the State party maintained control over the persons on board the *Marine I* from the time the vessel was rescued and throughout the identification and repatriation process that took place at Nouadhibou. In particular, the State party exercised, by virtue of a diplomatic agreement concluded with Mauritania, constant de facto control over the alleged victims during their detention in Nouadhibou. Consequently, the Committee considers that the alleged victims are subject to Spanish jurisdiction insofar as the complaint that forms the subject of the present communication is concerned.

2.1.2 Standing

Some international human rights mechanisms limit who may file a complaint alleging a violation of an individual's rights. In legal terminology the term "standing" is used to address questions of who is entitled to submit a complaint alleging a human rights violation before an international mechanism.

Individual Complaints

Victims

Individual complaints can be lodged before competent international redress mechanisms by the alleged victims of a human rights violation.

Most mechanisms also allow others, to lodge a complaint on behalf of a victim or victims with their authorization. Complaints filed on behalf of an alleged victim without his or her direct authorization, may, in some circumstances be permissible but the applicant must explain why such authorization was not possible or would be difficult to obtain. A victim, for the purposes of lodging a complaint, is a person affected by an action or omission of a State or State agent. It can include:

1. A person directly affected by the violation by the State or State agent of the human rights concerned.⁹
2. An individual whose rights have been or are imminently likely to be affected by a law that potentially impedes the individual in asserting his or her rights, although the State has not yet breached the law (when the risk of the law being applied is more than a theoretical possibility).
3. A person who is likely to be affected or belongs to a category of persons prone to being targeted by a law even when the individual is not aware of it, because the law makes such awareness impossible, for example, in surveillance-related cases.

⁹ Companies might be victims too, but due to the scope of these training materials we will deal only with individuals.

4. The relatives of a victim of torture and enforced disappearance may also be found to be victims of violations of their right not to be subject to ill-treatment.¹⁰
5. In cases of non-executed expulsion, an individual can be a victim despite the fact that potential and not actual violations are at issue.

International human rights standards clarify that¹¹:

“Victims are persons individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.

A person shall be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted and regardless of the familial relationship between the perpetrator and the victim.”

As noted above, a person filing a complaint on behalf of another must, within the complaint, either provide proof of the consent to act or otherwise justify why acting on the individual’s behalf with such consent. The following case is illustrative of cases in which a parent has filed a complaint to an international redress body on behalf of a child.

L.P. v. The Czech Republic (Human Rights Committee), Communication No.946/2000, UN Doc. CCPR/C/75/D/946/2000 (25 July 2002), para. 6.4

L.P. separated from his wife, who was awarded custody of their child. A national court ruled on provisional access rights prior to the finalization of the divorce and L.P. was allowed access to his son at specified times. R.P. refused L.P. this access, and a series of bitter legal disputes arose during which R.P. was fined several times for her refusal to allow L.P. to see his son. Proceedings in the Czech Republic continued for nine years before a complaint was made to the Human Rights Committee. In the complaint, L.P. alleged that his rights and the rights of his son under the ICCPR had been violated. While the Human Rights Committee considered the complaint by L.P. to be admissible and found his rights to family life and to an effective remedy had been violated, it deemed inadmissible that part of the complaint alleging violations of his son’s rights on grounds that L.P. had not claimed that he was representing his son.

Individual complaints to international human rights treaty bodies (see Table 4 above)

Complaints may be submitted by individuals who claim to be victims of violations of a right or rights enshrined in a relevant treaty. If the violation concerns a group of people, they can submit as a group.

Complaints may also be submitted by the individual(s) personally or by a third party acting on behalf of the alleged victim(s), with their authorization.

Treaty bodies will also generally consider complaints that are submitted on behalf of a victim, without the victim’s authorization on condition that the person or entity submitting the complaint supplies sufficient justification of the reasons for the absence of authorization.

¹⁰ See *Quinteros Almeida v. Uruguay*, CCPR, Communication No.107/1981, Views of 21 July 1983, para. 14; *Staselovich and Lyashkevich v. Belarus*, CCPR, Communication No.887/1999, Views of 3 April 2003, para. 9.2; *Kurt v. Turkey*, ECtHR, Application No.24276/94, Judgment of 25 May 1998, para. 124.

¹¹ Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, Adopted by General Assembly resolution 40/34 of 29 November 1985.

Applications may not be anonymous, but the UN treaty body may grant leave of anonymity to the claimant in respect of communications about the case and the case documents available to the public, when the applicant has adduced sufficient reasons to justify this.

Rule 96(c) of the [HRC Rules of Procedure](#) states: "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."

Article 5 of the [Optional Protocol to the Convention on the Rights of the Child on a communications procedure](#) states that:

"Individual communications

1. 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:
 - The Convention;
 - The Optional Protocol to the Convention on the sale of children, child prostitution and child pornography;
 - The Optional Protocol to the Convention on the involvement of children in armed conflict.
2. 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."

Similarly, **rule 13 of the [Rules of procedure under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure](#)** further provides that:

"Communications may be submitted by an individual or group of individuals, within the jurisdiction of a State party, claiming to be victim(s) of a violation of the provisions of the Convention and/or the substantive Optional Protocols thereto by this State party, regardless of whether their legal capacity is recognized in the State party against which the communication is directed.

Communications may also be submitted by their designated representatives, or by others acting on behalf of the alleged victim(s) with their express consent. Where there is a concern that representation, despite the victim's(s') consent may be a result of improper pressure or inducement, the Committee may instruct the Secretary-General to request additional information or documents, including from third party sources in accordance with rule 23, paragraph 1, of the present rules, that show that the submission of a communication on the alleged victim's(s') behalf is not a result of improper pressure or inducement and is in the best interests of the child. Any such request shall remain confidential and does not in any way imply that these third parties become a party to the proceedings.

Notwithstanding paragraph 2 of the present rule, communications may be submitted on behalf of the alleged victim(s) without such express consent, provided that the author(s) can justify her/his/their action and the Committee deems it to be in the best interests of the child. If possible, the alleged victim(s) on whose behalf the communication is presented may be informed of the communication and her/his/their views shall be given due weight in accordance with her/his/their age and maturity."

Complaints to the European Court of Human Rights

Complaints of alleged violations of the provisions of the European Convention on Human Rights may be filed with the Court by identified individuals, or a group of individuals, who claim to be a victim of violations of their ECHR rights. Applications may be initially presented directly by the victim or through a representative (article 36 [ECtHR Rules of Procedure](#)).¹²

¹² The European Court of Human Rights' rules on representation are set out in Rule 36 and the Rules on Legal Aid are set out in Rules 100-105.

As discussed more in detail under **Section 2.2**, the European Court of Human Rights requires that an applicant be represented after the application has been notified to the Respondent State. The representative must be an advocate authorized to practice in any of the States which are parties to the ECHR and resident in the territory of one of them, or any other person approved by the President of the Chamber of the Court (rule 36.4(a) of the Rules of Court. Legal Aid is available from the Court for those who qualify. For further information about the requirement of a lawyer and the availability to obtain Legal Aid from the Court, see Section 2.2.

It should be noted that the representative must be in contact with the applicant throughout the time that the case remains pending before the Court. A failure to do so may result in the case being dismissed.¹³

An applicant may request that the court allow him or her to present his or her own case, which can be granted by the President of the Chamber only "exceptionally" (rule 36.3 of the Rules of Court).

Applications that are submitted to the Court will not be admissible if they are anonymous, but the applicant may request that the Court keep their identity from being disclosed to the public (rule 47.4 of the Rules of Court).

Rule 47 of the European Court of Human Rights' Rules of Court provides that:

"1. An application under Article 34 of the Convention shall be made on the application form provided by the Registry, unless the Court decides otherwise. It shall contain all of the information requested in the relevant parts of the application form and set out

(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; 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;"[...]

Collective Complaints Mechanism

As noted above in Section 1, The European Committee on Social Rights is competent to consider **collective complaints** against States Parties to the European Social Charter or Revised Social Charter that have accepted the competence of the Committee to do so, with regard to laws or practice which are alleged to violate one or more provisions of the European Social Charter or Revised Social Charter that the State has agreed to be bound by. This procedure can be especially useful in cases of systemic violations of the economic, social or cultural rights of children. For instance, there has been a case before the ESCR on the health rights of migrant children: [Defence for Children International v. Belgium](#), Application No.69/2011, 23 October 2012.

The Committee is however not competent to consider complaints by individuals or to address an individual's complaint that his or her rights under the European Social Charter have been violated.

Only certain groups have standing to file collective complaints to the European Committee on Social Rights; complaints submitted by individuals or groups other than those authorized under the Social Charter are not accepted by the Committee.

¹³ A constant failure, through a long period of time, of the applicant to contact his or her representative might lead the Court to rule that she or he has lost interest in the proceedings, leading to the case's. See *Ramzy v. the Netherlands*, ECtHR, Application No.25424/05, Decision of 20 July 2010.

The following have standing to make a collective complaint to the European Committee on Social Rights:

- International organizations of employers and trade unions (article 1(a) of the [Additional Protocol to the ESC](#) (AP-ESC);
- Representative national organizations of employers and trade unions within the jurisdiction of the Contracting Party against which they have lodged a complaint (article 1(c) of the AP-ESC);
- [International non-governmental organizations \(INGOs\)](#) holding participatory status with the Council of Europe that have been placed on a list established for this purpose by the Governmental Committee;(article 1(b) AP-ESC). It should be noted that the last two above-mentioned types of groups of organizations may only submit complaints in respect of those matters upon which they have been recognized to be competent.¹⁴
- In addition, a State may also agree to recognize the right of other national non-governmental organizations with competence in the matters governed by the Charter to be allowed to lodge complaints against it (article 2, AP-ESC).¹⁵

2.2 [Admissibility requirements](#)

The admissibility requirements for the **collective complaint** procedure must be fulfilled before its merits are examined.

The admissibility requirements of **most complaint procedures** require that the complaint be:

- In writing;
- Submitted by or on behalf of a person with standing;
- Set out allegations of facts (and the date on which they occurred) which constitute violations of the particular treaty/subject matter over which the adjudicating body has competence;
- Indicative of the remedies and results sought at domestic level;
- Signed and dated (and if submitted by a representative, to contain a signed authorization from the victim or if no authorization has been obtained to explain the reasons thereof).

Communications to the UN treaty bodies must be presented in one of the official languages of the United Nations (Arabic, Chinese, English, French, Russian and Spanish). Collective complaints to the European Committee on Social Rights may be submitted in one of the official languages of the Council of Europe (English and French, according to rule 24 of the [Rules of the ESC](#)).

Special Procedures: Special Rapporteurs

Any individual, group, civil-society organization, inter-governmental entity or national human rights bodies can submit information to the Special Procedures. The Office of the High Commissioner of Human Rights recommends that applications be "as comprehensive, detailed and precise as possible".¹⁶ Since the submissions received are periodically published in a report prepared for the sessions of the Human Rights Council, it is fundamental for applicants to clearly state whether they do consent or not that their names be disclosed.

Table 4. Treaties establishing a complaint procedure and Rules of Procedure for complaints

The following table sets out the treaty or treaty provision establishing the complaint procedure for each body listed, and also includes the name of (and link to) the currently applicable Rules of Procedure governing each complaint procedure.

¹⁴ Article 3 AP-ESC.

¹⁵ To date, only Finland has agreed to grant national organizations with the competence under Article 2 of the Additional Protocol to the European Social Charter to file collective complaints before the European Committee on Social Rights. START HERE Exhaustion of Domestic remedies and X re time limits for submission of individual complaints) rement to exhaust do

¹⁶ OHCHR, Submission of information to the Special Procedures.

Treaty body	Treaty establishing the procedure Rules of procedure of the body
ICCPR (HRC)	Optional Protocol 1 to the ICCPR Human Rights Committee's Rules of Procedure (11 Jan 2012)
ICESCR (CESCR)	Optional Protocol to CESCR CESCR Rules of Procedure (15 January 2013)
CRC	Optional Protocol 3 to the CRC on a Communication Procedure, Rules of Procedure under Optional Protocol 3 to the CRC (April 2013)
CEDAW	Optional Protocol to CEDAW CEDAW Rules of Procedure
Committee against Torture (CAT)	Article 22 CAT CAT Rules of Procedure
CERD	CERD Rules of Procedure
European Committee on Social Rights (ECSR)	Additional Protocol to the European Social Charter Providing for a System of Collective Complaints, Part IV, Article D of the (Revised) European Social Charter Rules of Procedure of the ECSR (6 July 2016)
European Court on Human Rights (ECtHR)	Articles 19-51 ECHR Rules of Court (14 November 2016) Institution of proceedings (Individual applications under Article 34 of the Convention, 19 September 2016)

Box 2. Practical tools and additional information

The following table includes links to additional practical information and tools related to submitting individual complaints to UN Treaty Bodies.

Practical tools and information about Individual Complaints to UN treaty Bodies :

- General information about UN treaty bodies which can consider individual complaints and conduct inquiries published by the UN Office of the High Commissioner for Human Rights (UN OHCHR) is available: <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx>;
- Additional guidance on submitting communications to UN treaty bodies has also been published by the OHCHR <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#proceduregenerale>;
- A [model complaint form](#) (for complaints to CEDAW) may also serve as a helpful guide to the contents of individual complaints to other international human rights redress bodies: <http://www.un.org/womenwatch/daw/cedaw/protocol/modelform-E.PDF>;
- A table that compares the existing complaint mechanisms before UN Treaty Bodies has been compiled by the Child Rights International Network (CRIN): https://www.crin.org/en/docs/FileManager/OP3CRC_Toolkit_Annex_II.pdf

2.2.1 Exhaustion of domestic remedies

Most international human rights judicial and quasi-judicial redress procedures that examine individual complaints require that the applicant exhaust the domestic remedies available in the State concerned before bringing a complaint before the international mechanism.

Domestic remedies must be exhausted in individual complaints to the ECtHR and to UN Treaty bodies. Of the other redress mechanisms, **neither WGAD**, nor **the collective complaint procedure of the European Committee on Social Rights** require complainants to first exhaust remedies available at national level.

The rationale behind the requirement to exhaust domestic remedies lies in the fact that the authorities of the State, including the courts of the State, bear primary responsibility for ensuring respect and protection rights enshrined in international human rights treaties. These obligations include securing effective investigation of complaints of human rights violations and redress for violations of rights. Therefore, the State should have an opportunity to examine a complaint of an alleged human rights violation in an accessible procedure and effectively and adequately redress any such violation before a person seeks redress before an international body.

However, only those remedies that are accessible, adequate and effective need to be exhausted.

- A domestic remedy is “**adequate**” only when it is able to address human rights violations according to international human rights law standards.¹⁷
- The domestic remedy must also be “**effective**”, i.e. able to ascertain and redress the potential violation once established. It must have the power to give binding orders that reverse the situation of violation of the person’s rights or, if that is impossible, provide adequate reparations.¹⁸
- The remedy must also have certain characteristics of **due process of law**. It must be independent, which means that it must not be adjudicated by or subject to interference by the authorities against whom the complaint is brought;¹⁹ it must also afford due process of law, it must be accessible and it must not constitute a denial of justice.²⁰ This will require the provision of free legal advice, where necessary to ensure access to the procedure. The remedy must afford the applicant sufficient time to prepare the case, so as to allow a realistic possibility of using the remedy.²¹

A domestic remedy need not be pursued:

- If it can be incontrovertibly proven that it was **bound to fail**.²² This might occur when the remedy is subject to a consistent practice or jurisprudence, or the legal system has a normative framework, which would make it virtually impossible for the individual case to succeed.²³
- If such a **legal system fails to provide conditions for the effectiveness of the remedy**, e.g. because of lack of effective investigation, or where it is a consistent practice not to follow or implement court orders in particular situations, or where there is a situation of conflict or impunity.²⁴ The European Court has held that remedies where the granting of relief is purely

¹⁷ *Danyal Shafiq v. Australia*, HRC, Communication No. 1324/2004, Views of 13 November 2006, UN Doc. CCPR/C/88/1324/2004, para. 6.4. See also ICJ’s Practitioners Guide No. 6, Migration and International Human Rights Law (2014).

¹⁸ Articles 19-23, *UN Basic Principles and Guidelines on the Right to a Remedy and Reparation*. See also, ICJ’s, *Practitioner’s Guide No. 2, The Right to a Remedy and to Reparation for Gross Human Rights Violations* (2006) , chapters VI and VII.

¹⁹ Human Rights Committee, *General Comment No. 31, Nature of the General Legal Obligations Imposed on State Parties to the Covenant*, CCPR, UN Doc. CCPR/C/21/Rev.1/Add.13, (2004), para 15; *Keenan v. United Kingdom*, ECtHR, Application No. 27229/95, Judgment of 3 April 2001, para. 122.

²⁰ See, *Airey v. Ireland*, ECtHR, Application No. 6289/73, Judgment of 9 October 1979.

²¹ See, *Muminov v. Russia*, ECtHR, Application No. 42502/06, Judgment of 11 December 2008, para. 90; *Bahaddar v. the Netherlands*, ECtHR, Application No. 25894/94, Judgment of 19 February 1998, para. 45; *Alzery v. Sweden*, CCPR, Communication No. 1416/2005, Views of 25 October 2006, UN Doc CCPR/C/88/D/1416/2005, para. 8.2.

²² See, *Na v. United Kingdom*, ECtHR, Application No. 25904/07, Judgment of 17 July 2008, para. 89

²³ See, *Salah Sheekh v. the Netherlands*, ECtHR, Application No. 1948/04, Judgment of 11 January 2007, paras. 121-124;

²⁴ See, *Akdivar and Others v. Turkey*, ECtHR, Application No. 21893/93, Judgment of 16 September 1996, paras. 69-77;

discretionary need not be exhausted.²⁵

- If the process to obtain or access to the remedy is **unreasonably prolonged**.²⁶
- If the victim does **not have access to the remedy** due to a lack of legal representation, whether because of the unavailability of legal aid, threat of reprisals or restrictions on access to lawyers in detention.

2.2.2 Time limitations

Some international human rights redress mechanisms, most notably the European Court of Human Rights and some UN treaty bodies, require that complaints be filed within a specific time period. The time period for these bodies often starts to be counted from the date on which the victim exhausted the possibilities for redress available within the State subject of the complaint. For example, if there is an effective remedy available before the highest court of the State, the time limit will be counted from the date the individual is notified of the decision of the highest court.

The time limits generally aim ensure that the information about the case is available to the authorities. The failure to meet prescribed time limits for filing a complaint in the required form with a particular body will likely result in the complaint not being examined on its substance. Thus when selecting an avenue for redress of a human rights violation before an international human rights body it is important to be aware of and abide by any time limits set.

ECHR

As of October 2017, the **European Court of Human Rights** may only deal with an individual petition if it is submitted to the Court within a period of **six months**²⁷ after exhaustion of domestic remedies (article 35.1 ECHR). This period will change to 4 months following the coming into force of Protocol 15.²⁸

Where there are no available domestic remedies, the case should be submitted within six months of the facts complained of. The European Court clarified the six-month requirement in the case of [Kemevuako v. the Netherlands](#), ECtHR, Application No. 65938/09, Admissibility decision of 1 June 2010.

The date of submission is the date on which an application form, satisfying the [formal] requirements of [rule 47 of the Rules of Court], is sent to the Court. The date of dispatch shall be the date of the postmark. Where it finds it justified, the Court may nevertheless decide that a different date shall be considered to be the date of receipt²⁹.

CERD

A complaint to the Committee on the Elimination of Racial Discrimination must be submitted within **six months** of the exhaustion of domestic remedies, including the "national CERD body (...), except in cases of duly verified exceptional circumstances"(article 14.5 of the ICERD).

²⁵ *Buckley v. United Kingdom*, ECommHR, Application No. 20348/92, Admissibility decision of 3 March 1994.

²⁶ See, *Zundel v. Canada*, CCPR, Communication No. 1341/2005, Views of 4 April 2007, UN Doc. CCPR/C/89/D/1341/2005; *Z.U.B.S. v. Australia*, CERD, Communication No. 6/1995, Views of 25 January 2000, UN Doc. CERD/C/55/D/6/1995, para. 6.4.

²⁷ The time for filing an application to the European Court of Human Rights will be reduced from 6 months (from exhaustion of domestic remedies) to **4 months** once all States Parties to the ECHR have become parties to Protocol No. 15 to the ECHR. As of 26 October 2018, 41 of the 47 Parties to the ECHR were Parties to Protocol 15. In order to check on the entry into force of this Protocol see: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/213/signatures?p_auth=Xzst28q9

²⁸ See Protocol 15 here: https://www.echr.coe.int/Documents/Protocol_15_ENG.pdf

²⁹ Rule 47.6 of the *ECtHR Rules of Court*.

CESCR and CRC

Individual complaints to both the **UN Committee on Economic Social and Cultural Rights** and the **Committee on the Rights of the Child** must be filed within **one year** after the exhaustion of the domestic remedies, unless the applicant can demonstrate that it was not possible to submit the communication within that time (article 3.2(a) OP-ICESCR; article 7(h), OP-CRC-CP).

HRC

As a rule of thumb, individual complaints to the **Human Rights Committee** should be submitted to the Committee within **5 years** of exhaustion of domestic remedies or **3 years** following the conclusion of another procedure of international investigation or settlement, unless the applicant can justify the reasons for the delay. While neither the Optional Protocol to the ICCPR establishing the individual complaints procedure or the Human Rights Committee's Rules of Procedure Human Rights Committee set a specific time frame for submitting an individual complaint, rule 96 of the Rules of Procedure clarifies that complaints that are not filed within the time frame may be considered as an abuse of the right of petition.³⁰

CAT

The **Committee against Torture** does not apply a specific time limit, but has stated that it will not admit communications received after an "unreasonably prolonged" period.³¹

CEDAW, CED and CMW

No specific timeframes following the exhaustion of domestic remedies for filing individual complaints to the **Committee on the Elimination of Discrimination Against Women**, the **Committee on Enforced Disappearance** or the **Committee on the Rights of Migrant Workers** are set out in the Optional Protocols establishing these procedures.³² As a rule of thumb however, individual complaints should be filed within a reasonable time following the exhaustion of domestic remedies.

WGAD and ESCR

According to [Fact Sheet No. 26 on The Working Group on Arbitrary Detention](#), the body does not require local remedies to be exhausted in order for a communication to be declared admissible. The same situation also applies under the collective complaints procedure at the **European Committee of Social Rights**.

2.2.3 Duplication of complaints

A complaint will be deemed inadmissible by most of the judicial and quasi-judicial complaints mechanisms if the same matter has already been examined by the same or another international human rights redress mechanism with judicial or quasi judicial powers or has been or is being examined under another procedure of international investigation or settlement.

However, the **Human Rights Committee** has applied this rule to complaints **pending** before other international procedures. Interpreting article 5.2 of the Optional Protocol to the ICCPR, which precludes consideration of "any communication being examined under another procedure of international investigation or settlement", it concluded that if the procedure before another international body has ended, it is still possible for the Human Rights Committee to consider the same matter ([Correia de Matos v. Portugal](#), CCPR, Communication No. 1123/2002, Views of 18 April 2006, para. 6.2.).

³⁰ Rule 96(c) of the Rules of Procedure of the Human Rights Committee; Article 3 of the OP-ICCPR. See, *Gobin v. Mauritius*, CCPR, Communication No. 787/1997, Views of 20 August 2001, para. 6.3.

³¹ Rule 113(f), *CAT Rules of Procedure*.

³² The Committee will be able to consider [individual complaints](#) or communications from individuals claiming that their rights under the Convention have been violated once 10 States parties have accepted this procedure in accordance with article 77 of the Convention. This mechanism has not yet come into force.

The fact that Article 31.2(c) of the CED contains a similar language to Article 5(2) of the OP to the ICCPR, to pending complaints, suggests that the Committee on Enforced Disappearances may align its approach to that of the Human Rights Committee.

UN treaty bodies would still however take up on a case that has been presented to WGAD, to a Special Rapporteurs, or related issues that have been considered in the collective complaints procedure under the ESCR.

2.2.4 Significant disadvantage

Complaints to the European Court of Human Rights:

Protocol No. 14 to the ECHR, which entered into force in 2010, introduced a new admissibility requirement for individual complaints filed before the European Court of Human Rights: that of "significant disadvantage".

Under Article 35.3(b) of the ECHR (as amended by [Protocol No. 14](#)) the Court must declare an individual application inadmissible if it considers that:

"the applicant has not suffered a **significant disadvantage**, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal."

In considering whether the applicant has suffered a significant disadvantage, the Court has held that it must take into consideration "both the applicant's subjective perceptions and what is objectively at stake in a particular case".³³ The Court has recognized that "a violation of the Convention may concern important questions of principle and thus cause a significant disadvantage without affecting pecuniary interest".³⁴ Furthermore, even in cases in which it considers there has been no significant disadvantage, the Court will also have to consider whether the examination is, nonetheless, required by the respect for human rights as defined in the Convention and the Protocols.

It must be noted that once Protocol 15 to the ECHR comes into force, the "significant disadvantage" criteria under Article 35 of the ECHR will be further amended. In deciding on the admissibility of a case in which it considers that the applicant has suffered no significant disadvantage, the Court will no longer be prohibited from finding the case inadmissible on the grounds that it has not been duly considered by a domestic tribunal. It will however still be precluded from finding a case inadmissible on these grounds if respect for human rights requires examination of the petition.

Complaints to the CESCR

The CESCR "may, if necessary, decline to consider a communication where it does not reveal that the author has suffered a **clear disadvantage**, unless the Committee considers that the communication raises a serious issue of general importance" (article 4 OP-ICESCR). However, this provision does not constitute an admissibility criterion. The wording 'if necessary' means that the "clear disadvantage" test is discretionary and likely to be used by the Committee on Economic, Social and Cultural Rights only in exceptional circumstances.

2.2.5 Other inadmissibility grounds

UN treaty bodies and the ECtHR will reject anonymous petitions as inadmissible.³⁵

³³ See, *Eon v. France*, ECtHR, Application No. 26118/10, Judgment of 14 March 2013, para. 34.

³⁴ See, *Korolev v. Russia*, ECtHR, Application No. 25551/05, Admissibility decision of 1 July 2010.

³⁵ See, article 35.2(a) of the ECHR and, among others, rule 96 of the HRC's Rules of Procedure; rule 91 of the CERD's Rules of Procedure; rule 56 of the CEDAW's Rules of Procedure; or rule 98.2(b) of the CAT's Rules of Procedure.

In addition, as described below, the ECtHR and the UN treaty bodies will dismiss a complaint on the grounds that it constitutes an abuse of right of submission or is incompatible with the provisions of the human rights treaty of their concern.³⁶ The CAT, CEDAW, CESCRC and the European Court of Human Rights, explicitly exclude the admissibility of complaints which are manifestly unfounded or insufficiently substantiated,³⁷ although this requirement will be considered also by the other treaty bodies.

Complaints must contain sufficient information and substantiation of a human rights violation over which the treaty body is competent. The OP-ICESCR excludes, moreover, complaints which are exclusively based on reports disseminated by mass media.³⁸

In accordance with rule 47 of the Rules of the European Court of Human Rights, the Court has the power to refuse to examine an application that does not satisfy all the formal requirements of this rule. As noted above, the six-month time limit of article 35 ECHR will stop running from the moment of receipt of an application fully compliant with these formal requirements.³⁹

Abuse of the right to submit a communication

As cited above, the ECtHR and the UN Human Rights mechanisms may reject admitting a communication on the grounds that it is abusive in terms of the right to application.⁴⁰

According to article 7.3 Optional Protocol 3 to the CRC, 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. Similarly, the Human Rights Committee may dismiss a case on grounds that it is an abuse of the right to petition. As noted above, in section X on time limits, although neither the Optional Protocol to the ICCPR establishing the complaints procedure nor the Rules of Procedure of the HRC prescribe a time frame within which a complaint must be filed, rule 96(c) of its Rules of Procedure specify 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.

2.3 Interim measures

In cases in which there is a real risk that irreparable harm may occur to the alleged victim or applicant prior to the adjudication on the merits of a complaint by an international human rights redress mechanism, the complainant may ask the adjudicatory body to request that a State take particular action to avert such harm, pending the body's determination of the merits of the complaint.⁴¹ Such action is variously called a request for **interim, precautionary or provisional measures**. For example in cases which an expulsion has been ordered and there is a real risk that the individual subject to such an order would face torture if expelled, an international human rights redress body to which a complaint has been submitted, upon request of the complainant, may request the State concerned not take action to expel the individual (stay

³⁶ Article 3 OP-ICCPR; Rule 96(a), (c) and (d), *CCPR Rules of Procedure*; Article 3.2(d) to (g) OP-ICESCR; Article 22.2 CAT; Rule 113(b) and (c), *CAT Rules of Procedure*; Rule 91, *CERD Rules of Procedure*; Article 4.2 OP-CEDAW; Article 77.2 ICRMW; Article 7(a), (b), (c) OP-CRC-CP; Article 2(a) and (b) OP-CRPD; Article 31.2(a) and (b) CED; Articles 35.2(a) and 35.3(a) ECHR.

³⁷ Article 4.2(c) OP-CEDAW; Article 22.2 CAT; Rule 113(b) and (c), *CAT Rules of Procedure*; Article 3.2(d) to (g) OP-ICESCR; Article 7(f) OP-CRC-CP; Article 2(e) OP-CRPD; Articles 35.2(a) and 35.3(a) and (b) ECHR.

³⁸ Article 3.2(d) to (g) OP-ICESCR.

³⁹ See, rule 47, *ECtHR Rules of Procedure*.

See, article 35.3(a) of the ECHR.

⁴¹ See, Article 6 OP-CRC-CP; Article 5.1 OP-ICESCR; Rule 114, *CAT Rules of Procedure*; Rule 94.3, *CERD Rules of Procedure*; Article 5.1 OP-CEDAW; Rule 63, *CEDAW Rules of Procedure*; Article 4 OP-CRPD; Article 31.4 CED; Rule 39, *ECtHR Rules of Procedure* (the obligation to comply with interim measures arises under Article 34 ECHR and also related to obligations under Articles 1 and 46 ECHR).

the expulsion) until the body has reached a final decision on the merits of the complaint. Interim measures may also be requested by an applicant, for example in a situation of alleged forced eviction, with a view to ensuring that the eviction is “stayed” pending the adjudication by an international human rights redress body of the merits of a complaint of the alleged human rights violations.

It should be noted that the issuance of such interim, provisional or precautionary measures by an international human rights redress mechanism is an extraordinary rather than a routine measure.

The request by an international mechanism of interim measures does not constitute or imply a determination on admissibility or the merits of a complaint, though in the words of the UN guidance on individual complaint mechanisms by UN treaty bodies, such interim measures are usually only requested if there is “a reasonable likelihood of success on the merits.”

➤ **The European Court on Human Rights**

The European Court of Human Rights has clarified that its notification of Interim Measures on a State, pursuant to Rule 39 of the Rules of Court, are binding on the State. A State’s failure to comply with Interim Measures constitutes a violation of Article 34 of the ECHR.⁴²

Savridin Dzhurayev v. Russia, ECtHR, Application No. 71386/10, Judgment of 25 April 2013 para. 213.

213. “The crucial significance of interim measures is further highlighted by the fact that the Court issues them, as a matter of principle, in truly exceptional cases on the basis of a rigorous examination of all the relevant circumstances. In most of these, the applicants face a genuine threat to life and limb, with the ensuing real risk of grave, irreversible harm in breach of the core provisions of the Convention. This vital role played by interim measures in the Convention system not only underpins their binding legal effect on the States concerned, as upheld by the established case-law, but also commands the utmost importance to be attached to the question of the States Parties’ compliance with the Court’s indications in that respect [...]. Any laxity on this question would unacceptably weaken the protection of the Convention core rights and would not be compatible with its values and spirit [...]; it would also be inconsistent with the fundamental importance of the right of individual application and, more generally, undermine the authority and effectiveness of the Convention as a constitutional instrument of European public order [...]”.

➤ **UN Treaty Bodies**

Similarly, UN Treaty Bodies, including the Human Rights Committee and CAT, have clarified that a State’s acceptance of the jurisdiction of a treaty body to consider individual applications, implicitly includes the duty to enable and permit the treaty body to examine the complaint and issue its conclusions, and not take any action that would prevent or frustrate this, including not respecting a request for interim measures.⁴³ States, however, continue to question the legal status of interim measures, and regrettably have sometimes ignored such requests.

The Human Rights Committee considers States to be bound, as Parties to the Optional Protocol to the ICCPR, to implement Interim Measures requested by the Committee.

Khalilov v. Tajikistan, CCPR, Communication No. 973/2001, Views of 20 March 2005, UN Doc. CCPR/C/83.D.973/2001, para. 4.1

4.1 The Committee notes that the State party had executed the author’s son despite the fact that a communication had been registered before the Human Rights Committee under the Optional Protocol and

⁴² Mamatkulov and Askarov v. Turkey, ECtHR, Application Nos. 46827/99 and 46951/99, Judgment of 4 February 2005, paras. 125-129.

⁴³ See, Human Rights Committee General Comment 33 on the individual complaints procedure (para 19)

a request for interim measures of protection had been addressed to the State party in this respect. The Committee recalls that by adhering to the Optional Protocol, a State party to the Covenant recognizes the competence of the Committee to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant (Preamble and article 1). Implicit in a State's adherence to the Protocol is an undertaking to cooperate with the Committee in good faith so as to permit and enable it to consider such communications, and after examination to forward its views to the State party and to the individual (article 5 (1), (4)). It is incompatible with these obligations for a State party to take any action that would prevent or frustrate the Committee in its consideration and examination of the communication, and in the expression of its Views.

Similar to the Human Rights Committee, the Committee against Torture considers interim measures should be observed by states otherwise they fail to comply with the spirit of the Convention.

***Cecilia Rosana Núñez Chipana v. Venezuel*, CAT, Communication No. 110/1998, Views of 10 November 1998, UN Doc. CAT/C/21/D/110/1998, para. 8**

8. Furthermore, the Committee is deeply concerned by the fact that the State party did not accede to the request made by the Committee under rule 108, paragraph 3, of its rules of procedure that it should refrain from expelling or extraditing the author while her communication was being considered by the Committee and thereby failed to comply with the spirit of the Convention. The Committee considers that the State party, in ratifying the Convention and voluntarily accepting the Committee's competence under article 22, undertook to cooperate with it in good faith in applying the procedure. Compliance with the provisional measures called for by the Committee in cases it considers reasonable is essential in order to protect the person in question from irreparable harm, which could, moreover, nullify the end result of the proceedings before the Committee.

Immediate measures under the ESC collective complaints mechanism

Following the adoption of the decision on the admissibility of a collective complaint or at any subsequent time during the proceedings before or after the adoption of the decision on the merits, the Committee may, at the request of a party, or on its own initiative, indicate to the parties any immediate measure the adoption of which seems necessary with a view to avoiding the risk of serious damage and to ensure effective respect for the rights recognized in the Charter.

In the case of a request for immediate measures made by a complainant organization, the request must specify why it is being made, the possible consequences if it is not granted and the measures requested. A copy of the request is transmitted forthwith to the respondent State. The President of the European Committee of Social Rights sets a date for the respondent State to make written submissions on the request for immediate measures.

The Committee's decision on immediate measures gives reasons and is signed by the President, the Rapporteur and the Executive Secretary. It is notified to the parties. The European Committee of Social Rights may request information from the parties on the implementation of the indicated measures.

2.4 Third party interventions

Some international human rights redress bodies and mechanisms will accept written submissions about law and issues raised by a case from organizations or individuals who are not party to the complaint, but have relevant information or expertise on the issues under consideration. These submissions are sometimes referred to as third party interventions or *amicus curiae*.

Those wishing to intervene as a third party in a case pending before the **European Court of Human Rights** must write a request to do so to the Court. The Court may grant such a request if it considers it to

be in the interest of the proper administration of justice. Rule 44 (3) of the Rules of the Court clarifies that such requests should be “duly reasoned” and submitted in French or English, within 12 weeks of the time that the Court has sent the case to the State alleged to have violated the ECHR.⁴⁴

Additionally, since the entry into force of Protocol No. 14, the Commissioner for Human Rights is entitled to take part in the proceedings of the European Court of Human Rights on his own initiative either through the submission of written contributions or by participating in hearings.⁴⁵ However, the Commissioner’s observations shall be related to his country and thematic activities and shall therefore exclude any comments on the facts or merits of the case.

The requirements for making submissions as a third party in regard to collective complaints before the **European Committee on Social Rights** are more restrictive. According to the rules of procedure, States Parties to the collective complaint mechanisms are automatically invited to submit their views on the complaint. International organizations of employers and trade unions are also invited, provided that their submissions on complaints were lodged by national organizations of employers and trade unions or by NGOs. However, the recently adopted rule 32(a) gives to the Chair of the ECSR the possibility to “invite any organization, institution or person to submit observations”.

The **Committee on the Rights of the Child, Committee against Torture and Committee on Economic, Social and Cultural Rights** may, at any time before their determination on the merits of a complaint, receive or request relevant documents from a range of bodies, including NGOs. However, the Rules indicate that its consideration of information from a third party does not imply that the third party has become a party to the proceedings relating to the complaint.⁴⁶

Although the rules of procedure of other **universal Treaty Bodies** – including the HRC, CERD and CEDAW – do not provide expressly for the consideration of information from NGOs or individual third parties in relation to their consideration of individual cases,⁴⁷ applicants have submitted information from NGOs and others with their applications, or supplemental materials to Treaty Bodies on an *ad hoc* basis.

When examining a communication, the **CESCR** may consult, as appropriate, any relevant documentation emanating from other United Nations bodies, specialized agencies, funds, programs and mechanisms, as well as that from other international organizations, including from regional human rights systems, and any observations or comments by the State Party concerned.⁴⁸

3. Procedures of international mechanisms

3.1. International Human Rights Treaty Bodies⁴⁹

The individual complaints procedures of UN Treaty Bodies, while similar, have not been fully harmonized.⁵⁰ Therefore, the procedures used by each treaty body when considering a complaint, which are set out variously in relevant treaty provisions and Rules of Procedure of each treaty body should be consulted.

⁴⁴ Article 36.1 ECHR and rule 44.3(b) of the Rules of Court of the European Court of Human Rights.

⁴⁵ Article 36.3 of the ECHR.

⁴⁶ Rule 23 of the Rules of Procedure under the Optional Protocol to the Convention on the Rights of the Child on a communications procedure; rule 63 of the CAT’s Rules of Procedure; and rule 27 of the CESCR’s Rules of Procedure.

⁴⁷ The Rules of Procedure of the Human Rights Committee or the OP-ICCPR do not mention third party interventions. See also, article 8.1 OP-ICESCR; rule 118.2 of the CAT’s Rules of Procedure; rule 95.2, of the CERD’s Rules of Procedure; or rule 72.2 of the CEDAW’s Rules of Procedure.

⁴⁸ Article 8.3 OP-CESCR and article 14 of the CESCR’s Rules of Procedure.

⁴⁹ Further practical information on how to submit a petition to the UN Treaty Bodies may be found at <http://www2.ohchr.org/english/bodies/petitions/index.htm>

⁵⁰ A process of harmonization of the procedures of UN Treaty Bodies under the initiative of the United Nations is undergoing. For more information see, <http://www2.ohchr.org/english/bodies/treaty/reform.htm> .

The Petitions Unit at the Office of the High Commissioner for Human Rights does an initial screening of every individual complaint to the UN Treaty Bodies.

OP-ICESR and OP3-CRC provide both for individual complaints highly relevant for migrant children, the procedure is set out below in detail in a comparative **Table 5**.

Table 5. Individual procedures OP-ICESR and OP3-CRC

	OP-ICESR (2008)	OP3-CRC (2011)
May victims file communications as individuals and/or in groups of individuals?	Individuals or groups of individuals (2)	Individuals or groups of individuals (5.1)
Who can submit individual communications?	By or on behalf of victim; where on behalf of victim, with the victim's consent unless the author can justify acting without (2)	By or on behalf of victim; where on behalf of victim, with the victim's consent unless the author can justify acting without (5.2)
Is there a time limit to file an individual communication after domestic remedies have been exhausted?	1 year unless demonstrably not possible (3.2(a))	1 year unless demonstrably not possible (7(h))
Are individual communications admissible when being or previously examined under another international investigation/settlement procedure?	Inadmissible (3.2(c))	Inadmissible (7(d))
Are individual communications considered inadmissible for lack of support or where submitted in bad faith?	Inadmissible where an abuse of the right to submit a communication, manifestly ill-founded, not sufficiently substantiated or exclusively based on reports disseminated by mass media (3.2(e),(f))	Inadmissible where an abuse of the right to submit a communication, manifestly ill-founded or not sufficiently substantiated (7(c),(f))
When else might the Committee decline to hear an individual communication?	Committee may decline to consider communications where the author has not suffered a clear disadvantage, unless the communication raises a serious issue of general importance (4)	Committee may decline to examine communications it considers to not be in a child's best interests or that are the result of improper pressure or inducement (3.2; Rule 13).
May individual communications be submitted anonymously?	No, may not be submitted anonymously (3.2)(g))	No, may not be submitted anonymously (7(a))
Must individual communications be in writing?	Yes, must be in writing (3.2 (g))	Yes, must be in writing (7(b))
Are there provisions for confidentiality in submitting/considering individual communications?	Yes, complaints are communicated to states confidentially, and the Committee may decide or request that authors and victims names not be disclosed (6, Rule 19)	Yes, complaints are communicated to States confidentially and the names of individuals concerned are not revealed publicly without their express consent (8.1, 4.2)
What is the time limit for States to respond to individual communications?	6 months (6.2)	6 months, as soon as possible (8.2)
When do domestic remedies not need to be exhausted for individual communications to be accepted for review?	Where application of remedies is unreasonably prolonged (3.1)	Where application of remedies is unreasonably prolonged or unlikely to bring effective relief (7(e))

Is friendly settlement explicitly permitted for individual communications?	Yes, friendly settlement is permitted, but closes consideration of the communication (7.2)	Yes, friendly settlement is permitted, but closes consideration of the communication (9.2)
May the Committee consider the reasonableness of steps taken by States to implement the rights in question when reviewing individual communications?	Yes, the committee may consider the reasonableness of steps taken to implement rights, bearing in mind that States can adopt a range of possible policy measures (8.4)	Yes, for economic, social and cultural rights, the Committee may consider the reasonableness of steps taken to implement rights, bearing in mind that States can adopt a range of possible policy measures (10.4)
When must a State submit a follow-up response detailing measures taken after receiving the Committee's recommendations on an individual communication?	States must submit follow-up responses within 6 months (9.2)	States must submit follow-up responses within 6 months (11.1)
Is there an inquiry procedure? If so, when may it be used?	Yes, inquiry procedure for grave or systematic violations. States must respond within 6 months and Committee may request follow-up after an additional 6 months (11, 12)	Yes, inquiry procedure for grave or systematic violations. States must respond as soon as possible within 6 months and Committee may request follow-up after an additional 6 months (13, 14)
Is the inquiry procedure mandatory for all States parties?	No, States parties must opt in (11.1)	No, States parties may opt out (13.7)
Are there provisions for reviewing inter-state communications?	Yes, inter-state communications may be filed where a State is not fulfilling its obligations. States must respond within 3 months and friendly settlement is possible (10)	Yes, inter-state communications may be filed where a State is not fulfilling its obligations. Friendly settlement is possible (12)
Is it mandatory that all State parties accept the inter-state communications?	No, States parties must opt in to accept/file communications (10)	No, States parties must opt in to accept/file communications (12.1)
Are reservations to the Optional Protocol permitted?	Yes	Yes
Additional considerations		Committee to be guided by the best interests of the child and have regard of rights and views of the child, giving the child's views due weight in accordance with age and maturity (2). Committee's rules of procedure must guarantee child-sensitive procedures (3.1).

Source: CRIN 2016, https://www.crin.org/en/docs/FileManager/OP3CRC_Toolkit_Annex_II.pdf

3.1.1. Preliminary stage

The rules related to the preliminary phase of the procedure are similar for all the UN human rights Treaty Bodies that may adjudicate individual complaints and have established rules of procedure.

The UN Secretariat receives the communication on behalf of the Committee to whom it is addressed and verifies that the complaint meets all formal requirements.

The Secretariat may ask for clarification of the information submitted, with a view to ensuring that the complaint sets out the basic information that the Treaty Body will require for considering its admissibility.

Once these preliminary steps are satisfied, the Secretariat will register the communication and transmit it to the relevant Treaty Body.⁵¹

⁵¹ See, rules 84-87 of the HRC's Rules of Procedure; rules 103-105 of the CAT's Rules of Procedure; rules 83-84 of the CERD's Rules of Procedure; and rules 56-58 of the CEDAW's Rules of Procedure.

3.1.2. Admissibility stage

Who decides? While it is generally the Treaty Body as a whole that determines whether the communication satisfies the formal requirements for admissibility, some of the Treaty Bodies establish an internal Working Group (WG) to make decisions on admissibility.⁵² Working Groups of CERD and CEDAW, however may only make recommendations on admissibility, the final decision is to be made by the Committee.⁵³

How? Decisions on admissibility are generally made by simple majority vote (e.g. rule 20 of the CRC OP3's *Rules of Procedure*). When a Working Group is established, the procedure may vary. In the **Human Rights Committee**, the WG may take a decision on admissibility only by unanimous vote and an inadmissibility decision must be ratified by the Committee as a whole. With respect to individual complaints registered at the **Committee against Torture**, the Working Group can declare a communication admissible by majority vote and may declare a complaint inadmissible if all in the working group agree.⁵⁴

Communications and replies: Before making a decision on admissibility, the Treaty Body may request additional information to the complainant and seek observations from the State Party, both sensitive to strict time limits.⁵⁵ Each of the parties is to be given an opportunity to comment on the information/observations made by the other.⁵⁶

The HRC requests the concerned State to provide a written reply to the communication within six months on the admissibility and merits, unless the Committee specifies that only observations on admissibility are needed. Then, the Committee may request the applicant or the State to submit further observations.

Revision of inadmissibility decisions: A decision of inadmissibility may be reviewed by the Committee at a later date, at the request of a Committee member or on behalf of the individual concerned, where it is established that the reasons for inadmissibility no longer apply.⁵⁷

Decisions on admissibility and merits: In practice, the Committees may make decisions about the admissibility and the merits of the communication together (rather than in two separate phases) when the information given to them is already sufficient for reaching a final decision.

3.1.3. Merits

Closed meetings: The Committees will examine the communication, both at the admissibility and merit stage, in closed meetings.⁵⁸

Hearings: The CRC, the CERD and the CAT may invite the parties to participate in a closed oral hearing in order to answer to questions and provide additional information.⁵⁹

Communications: The general rule is that a Committee will transmit the communication to the State

⁵² E.g. see, rule 6 of the CRC OP3's Rules of Procedure; rules 111-112 of the CAT's Rules of Procedure; and rules 93-98 of the HRC's Rules of Procedure.

⁵³ See, rule 87 of the CERD's Rules of Procedure; rules 62 and 64 of the CEDAW's Rules of Procedure.

⁵⁴ See, rules 93-98 of the HRC's Rules of Procedure; rules 111-112 of the CAT's Rules of Procedure.

⁵⁵ Most of the time within 6 months. E.g. Rule 15 of the CRC OP3's Rules of Procedure; rule 115 of the CAT's Rules of Procedure; or rule 92 of the CERD's Rules of Procedure.

⁵⁶ See, rules 93-98, CCPR Rules of Procedure.

⁵⁷ See, rule 21.2 of the CRC OP3's Rules of Procedure; rule 116 of the CAT's Rules of Procedure; rule 93.2 of the CERD's Rules of Procedure; and rule 70 of the CEDAW's Rules of Procedure.

⁵⁸ See, rule 29 of the CRC OP3's Rules of Procedure; rules 88 and 102 of the HRC's Rules of Procedure; article 8 OP-ICESCR; article 22.4-6 CAT; rule 88 of the CERD's Rules of Procedure; article 7 OP-CEDAW; rule 72 of the CEDAW's Rules of Procedure; and article 77.6-7 ICRMW.

⁵⁹ See, rule 19 of the CRC OP3's Rules of Procedure; rule 94.5 of the CERD's Rules of Procedure; and rule 117 of the CAT's Rules of Procedure.

Party and inform the complainant.⁶⁰ A Committee may also request additional information on the merits.⁶¹ Any explanations or statements submitted by the State Party will be communicated to the author of the communication, who may submit any additional written information or observations within fixed time limits.⁶² For individual complaints submitted to CERD, the State has three months from the day of receipt to submit its observations. These will be transmitted to the complainant who may oppose further observations.⁶³

Material: When considering complaints, Treaty Bodies will take into consideration all the information made available to it by the parties.⁶⁴ The CESCR further provides that it will also ponder all relevant documentation from other UN bodies, specialized agencies, funds, programs and mechanisms, and other international organizations, including regional human rights systems.⁶⁵

Decision: Treaty Bodies adopt their decision (views) on a case and forward them to the parties.⁶⁶ The Human Rights Committee's, the CRC and the CESCR's Rules of Procedure explicitly state that their views shall be made public.⁶⁷

3.1.4. Friendly settlement

The CESCR and CRC expressly provide for the possibility of reaching a friendly settlement (rule 25 of the CRC OP3's Rules of Procedure). The settlement must be on the basis of the respect for the obligations set forth in the Covenant and closes the communication procedure (article 7 OP-ICESCR). While other UN human rights treaties and corresponding rules of procedure do not expressly provide for a procedure of friendly settlement, in practice the Committees may provide their good offices for reaching this kind of agreement if the parties so desire.

3.1.5. Interim measures

As noted above, a Treaty Body may at the request of the complainant require a State to take interim measures to avert irreparable damage to the victim of the alleged violation pending the body's reaching of a final decision on the complaint.⁶⁸

3.2. European Court of Human Rights

The procedure and requirements for submitting a complaint to the European Court of Human Rights are set out in the European Convention on Human Rights, the Rules of the Court and Practice Directions issued by the President of the Court.

⁶⁰ See, rule 117 of the CAT's Rules of Procedure; article 8 OP-ICESCR; rules 99-100 of the HRC's Rules of Procedure; rule 94.1 of the CERD's Rules of Procedure; article 7 OP-CEDAW; and rule 72 of the CEDAW's Rules of Procedure.

⁶¹ *Ibid.*

⁶² See, rules 99-100 of the HRC's Rules of Procedure.

⁶³ See, rule 94.2-4 of the CERD's Rules of Procedure.

⁶⁴ See, rule 23 of the CRC's Rules of Procedure for OPIC, rules 99-100 of the HRC's Rules of Procedure; article 8 OP-ICESCR; article 22.4-6 CAT; rule 118.1 of the CAT's Rules of Procedure; article 14.7(a) ICERD; article 7 OP-CEDAW; rule 72 of the CEDAW's Rules of Procedure; and article 77.5 ICRMW.

⁶⁵ See, article 8 OP-ICESCR and rule 14 of the CESCR's Rules of Procedure.

⁶⁶ See, rules 99 and 100 of the HRC's Rules of Procedure; article 22.7 CAT; article 14.7(b) ICERD; article 7 OP-CEDAW; rule 72 of the CEDAW's Rules of Procedure; article 77.6-7 ICRMW.

⁶⁷ See, rule 102(5) of the HRC's Rules of Procedure; rule 19.7 of the CESCR's Rules of Procedure; and rule 29.7 of the CRC-OP3's Rules of Procedure

⁶⁸ See, rule 92 of the HRC's Rules of Procedure; article 5.1 OP-ICESCR; rule 114 of the CAT's Rules of Procedure; rule 94.3 of the CERD's Rules of Procedure; article 5.1 OP-CEDAW; and rule 63 of the CEDAW's Rules of Procedure.

Rules of Court

14 November 2016

Rule 47

(As amended by the Court on 17 June and 8 July 2002, 11 December 2007, 22 September 2008, 6 May 2013, and 1 June and 5 October 2015.)

Contents of an individual application

1. An application under Article 34 of the Convention shall be made on the application form provided by the Registry, unless the Court decides otherwise. It shall contain all of the information requested in the relevant parts of the application form and set out

(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; 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 § 1 of the Convention.

2. (a) All of the information referred to in paragraph 1 (e) to (g) above that is set out in the relevant part of the application form should be sufficient to enable the Court to determine the nature and scope of the application without recourse to any other document. (b) The applicant may however supplement the information by appending to the application form further details on the facts, alleged violations of the Convention and the relevant arguments. Such information shall not exceed 20 pages.

3.1. The application form shall be signed by the applicant or the applicant's representative and shall be accompanied by

(a) copies of documents relating to the decisions or measures complained of, judicial or otherwise;

(b) copies of documents and decisions showing that the applicant has complied with the exhaustion of domestic remedies requirement and the time-limit contained in Article 35 § 1 of the Convention;

(c) where appropriate, copies of documents relating to any other procedure of international investigation or settlement;

(d) where the applicant is a legal person as referred to in Rule 47 § 1 (a), a document or documents showing that the individual who lodged the application has the standing or authority to represent the applicant.

3.2. Documents submitted in support of the application shall be listed in order by date, numbered consecutively and be identified clearly.

4. Applicants who do not wish their identity to be disclosed to the public shall so indicate and shall submit a statement of the reasons justifying such a departure from the normal rule of public access to information in proceedings before the Court. The Court may authorise anonymity or grant it of its own motion.

5.1. Failure to comply with the requirements set out in paragraphs 1 to 3 of this Rule will result in the application not being examined by the Court, unless

(a) the applicant has provided an adequate explanation for the failure to comply;

(b) the application concerns a request for an interim measure;

(c) the Court otherwise directs of its own motion or at the request of an applicant.

5.2. The Court may in any case request an applicant to provide information or documents in any form or manner which may be appropriate within a fixed time-limit.

6. (a) The date of introduction of the application for the purposes of Article 35 § 1 of the Convention shall be the date on which an application form satisfying the requirements of this Rule is sent to the Court.

The date of dispatch shall be the date of the postmark.

(b) Where it finds it justified, the Court may nevertheless decide that a different date shall be considered to be the date of introduction.

7. Applicants shall keep the Court informed of any change of address and of all circumstances relevant to the application.

Application: An application to the European Court of Human Rights should normally be made by completing and sending the **application form** that is available on the Court's website, in one of the official languages of the Court (English or French).⁶⁹ The application must be sent by post together with copies of relevant documents including: the judicial or other decisions or measures complained of and those showing the exhaustion of available domestic remedies relating to the object of application. A list of the documents sent must be included with the Application. As noted above in section 2.2.2, the application must be postmarked within 6 months of the final decision of the highest national body competent to consider the complaint. This period will change to 4 months following the coming into force of Protocol 15.⁷⁰

The Application form may be found at:

<http://www.echr.coe.int/Pages/home.aspx?p=applicants/forms&c=>

Upon receipt of the first communication setting out the subject matter of the case, the Registry will open a file, whose number must be mentioned in all subsequent correspondence. Applicants will be informed of such identification number by letter. At this stage, applicants may also be requested to provide further information or documents.⁷¹

Legal Representation and legal aid

Applications may be submitted to the European Court directly by the victim or through a representative.⁷² However, the European Court, as a general rule, requires the applicant to be represented once the application is notified to the Contracting State.⁷³ The applicant may, however, request to present his or her own case; the President of the Chamber may "exceptionally" allow such a request.

The representative of an applicant must be an advocate authorized to practice law in any of the states parties to the ECHR and be a resident in of one of them, or any other person approved by the President of the Chamber.⁷⁴ He or she must have an adequate understanding of one of the Court's languages (French or English), unless the President of the Chamber permits him or her to use a different language.

The President of the Chamber can also remove an advocate if he or she considers that the conduct displayed impedes to further represent the interests of her/his client.

Legal Aid: The European Court of Human Rights operates a legal aid system. The decision to grant legal aid is made by the President of the Chamber of the Court only when deemed necessary for the proper conduct of the case and provided the applicant has insufficient means to meet all or part of the costs

⁶⁹ The Court's **official languages** are English and French but alternatively, if it is easier for the applicant it is possible to write to the Registry in an official language of one of the States that have ratified the Convention. During the initial stage of the proceedings the applicant may also receive correspondence from the Court in that language. However at a later stage of the proceedings, namely if the Court decides to ask the Government to submit written comments on your complaints, all correspondence from the Court will be sent in English or French and the applicant or her/his representative will also be required to use English or French in subsequent submissions.

⁷⁰ See Protocol 15 here: https://www.echr.coe.int/Documents/Protocol_15_ENG.pdf

⁷¹ *Ibid.*, at para. 7.

⁷² Rules on representation are enshrined in rule 36 of the ECtHR's Rules of Court.

⁷³ A constant failure, through a long period of time, of the applicant to contact his representative might lead the Court to rule that s/he has lost interest in the proceedings and to strike the case off the list. See, *Ramzy v. the Netherlands*, ECtHR, Application No. 25424/05, Admissibility Decision, 20 July 2010.

⁷⁴ See, rule 36.4(a) of the ECtHR's Rules of Court.

entailed. The decision to grant legal aid is made either following the applicant's request or *proprio motu*. This decision is taken either once the Respondent State has submitted its observations in writing on the admissibility of the case or when the time limit to do so expires.

Legal aid, once granted, will cover all stages of the proceedings before the Court, unless the President of the Chamber finds that the conditions for it are no longer present.

Applicants who request legal aid must complete a form of declaration, certified by national authorities, stating their income, capital assets, and any financial commitments in respect of dependents, or any other financial obligations.⁷⁵

To consider cases brought before it, the ECtHR sits in a single-judge formation, in committees of three judges, in Chambers of seven judges and in a Grand Chamber of seventeen judges (art 26 ECHR).

Admissibility stage:

The President of the Court will assign the case to a designated Section of the Court. The President of the Section shall constitute Chambers, which are composed by seven judges.⁷⁶

When the application is on its own sufficient to determine its inadmissibility or to be struck out of the list it will be considered by a single judge, whose decision is final.

Otherwise, the single judge will forward the case to a Chamber or a Committee of 3 judges. The President of the Chamber of the Court will appoint a Judge Rapporteur to the case. The Judge Rapporteur may request additional information from the parties, decide whether the case may be considered by a single judge, a Committee or a Chamber, and may submit reports, drafts or documents to the Chamber or Committee or the President.⁷⁷

At this stage, the case will be passed to a Committee of the Chamber, composed of three judges. The Committee will give notice of the application to the Respondent State and may request additional information from both the parties. The Committee may, by unanimous vote, declare the case inadmissible, strike it out of the list or declare it admissible and immediately reach a decision on the merits when the underlying question in the case is already the subject of well-established case-law of the Court. Otherwise, the Committee will forward the case to the Chamber.⁷⁸ A decision of the Committee is final.

The Chamber may also request further information to the parties, decide to declare the application inadmissible or strike it out of the list at once. Before taking a decision on admissibility, it may hold a hearing at the request of a party or of its own motion, and, if considered appropriate, decide on the admissibility and merits of the application simultaneously.⁷⁹

A practical Guide on Admissibility Criteria of the European Court of Human Rights which includes relevant case law, prepared by the Court's jurisconsult is available:
http://www.echr.coe.int/Documents/Admissibility_guide_ENG.pdf

Friendly settlement: Throughout the proceedings the Court may be at the disposal of the parties with a view of securing a friendly settlement of the case. Discussions about a friendly settlement are confidential and are guided by the Court's Registry under instruction of the Chamber to which a case has been assigned or its President. If a settlement is reached, the case will be struck out of the list and the decision of the

⁷⁵ See, rules 100-105 of the ECtHR's Rules of the Court concerning legal aid.

⁷⁶ See, rule 52.1 of the ECtHR's Rules of Court.

⁷⁷ See, article 27 ECHR and rules 49 and 52A of the ECtHR's Rules of Court.

⁷⁸ See, article 28 ECHR and rule 53 of the ECtHR's Rules of Court.

⁷⁹ See, article 29 ECHR and rule 54 of the ECtHR's Rules of Court.

Court will be limited to a brief statement of the facts and solution reached, which will be transmitted to the Committee of Ministers, who will monitor the progress of the implementation of the terms of the settlement.⁸⁰ The solution reached must not contravene any of the provisions enshrined under the European Convention.

Striking Out of the List: At any stage of the proceedings, the Court may decide to strike the application out of its list of cases. This may take place provided that it is deemed that the applicant does not intend to pursue his or her application; the matter has been resolved; or when, for any other reason established by the Court, it is no longer justified to continue the examination of the application. However, "the Court shall continue the examination of the application if respect for human rights as defined in the Convention and the Protocols thereto so requires",⁸¹ and it can also decide to restore to its list an application that has been previously struck out.⁸² As noted above, the Court will strike out an application when a friendly settlement between the parties has been reached.⁸³ It may also strike out a case when a Respondent State makes a unilateral declaration, even if the applicant wishes the case to continue.⁸⁴ The Court's decision in this regard will depend, however, on whether it considers that respect for human rights as defined in the Convention and the Protocols requires so. The Court held that it will consider "the nature of the complaints made, whether the issues raised are comparable to issues already determined by the Court in previous cases, the nature and scope of any measures taken by the respondent Government in the context of the execution of judgments delivered by the Court in any such previous cases, and the impact of these measures on the case at issue".⁸⁵

Examination of merits: Once an application has been declared admissible the Chamber may invite the parties to submit further evidence and observations and may decide to hold a hearing.

As noted below, if an individual is seeking **just satisfaction** in the event that the Court finds the State has violated his or her rights, both **the claim and supporting documentation should be provided at this stage**.

The Court in the form of a Chamber will examine the case.⁸⁶

The hearings are generally public and so are the documents deposited with the Registrar of the Court, although access may be restricted where the Court finds particular reasons in the interest of morals, public order or national security in a democratic society, or where the interests of the juveniles or the protection of private life of the parties so require, or in special circumstances where publicity would prejudice the interests of justice.⁸⁷

Judgments of the Chamber are final when: the parties declare that they will not request referral to the Grand Chamber; or when three months have passed from the date of the judgment, without a request for such a referral; or if the Grand Chamber rejects a request for referral.⁸⁸

Just satisfaction: If the Court finds a violation, it will consider any claims made by the applicant for just

⁸⁰ See, article 39 ECHR and rule 62 of the ECtHR's Rules of Court.

⁸¹ See article 37.1 ECHR.

⁸² See, article 37 ECHR and rule 43 of the ECtHR's Rules of Court.

⁸³ See, rule 43.3 of the ECtHR's Rules of Court.

⁸⁴ See, *Akman v. Turkey*, ECtHR, Application No. 37453/97, Admissibility Decision, 26 June 2001, paras. 28-32; and, *Tahsin Acar v. Turkey*, ECtHR, Application No. 26307/95, Judgment of 8 April 2004, paras. 75-76.

⁸⁵ *Tahsin Acar v. Turkey*, ECtHR, para. 76. The list is not exhaustive. This practice is now reflected in rule 62(a) of the ECtHR's Rules of Court.

⁸⁶ See, article 38 ECHR.

⁸⁷ See, article 40 ECHR and rules 33 and 63 of the ECtHR's Rules of Procedure.

⁸⁸ See, article 44 ECHR.

satisfaction to the injured party.⁸⁹ An applicant's claim for just satisfaction should include itemised particulars of the claim together with any relevant supporting documents, and should, as a general rule, be submitted within the time limits set by the President of the Chamber for submission of the applicant's observations on the merits of his or her application.⁹⁰

In addition to awarding compensation to be paid as just satisfaction, "[i]n certain particular situations, [...] the Court may find it useful to indicate to the respondent State the type of measures that might be taken in order to put an end to the – often systemic – situation that gave rise to the finding of a violation [...]. Sometimes the nature of the violation found may be such as to leave no real choice as to the measures required [...]".⁹¹

In the case of *Hirsi Jamaa and Others v. Italy*, since "the transfer of the applicants exposed them to the risk of being subjected to ill-treatment in Libya and of being arbitrarily repatriated to Somalia and Eritrea",⁹² the European Court ordered the Italian Government to "take all possible steps to obtain assurances from the Libyan authorities that the applicants will not be subjected to treatment incompatible with Article 3 of the Convention or arbitrarily repatriated".⁹³

Referral or relinquishment to the Grand Chamber: The Grand Chamber is composed of 17 judges and at least 3 substitute judges, including the President and the Vice-presidents of the Court and the Presidents of the Sections (rule 24 of the ECtHR's Rules of Procedure). A Chamber may relinquish its jurisdiction to the Grand Chamber, when the case before it "raises a serious question affecting the interpretation of the Convention or the Protocols thereto, or where a resolution of a question before the Chamber might have a result inconsistent with a judgment previously delivered by the Court",⁹⁴ unless one of the parties to the case objects within one month from the relinquishment decision.⁹⁵ Furthermore, any party may request the case to be referred to the Grand Chamber within three months of the issuance of a judgment by a Chamber. The request for a referral will be examined by a five-judge Panel appointed by the Grand Chamber, which will accept the case only if it considers that it raises a serious question affecting the interpretation of the Convention or the Protocols, or a serious issue of general importance.⁹⁶ The Rules of Court applicable to proceedings before the Chambers apply also to Grand Chamber proceedings, including the designation of a Judge Rapporteur.⁹⁷

3.3. European Committee on Social Rights

Preparatory phase: Collective complaints to the European Committee on Social Rights (ECSR or the Committee) must be addressed to the Executive Secretary of the European Committee on Social Rights,⁹⁸ who will acknowledge receipt, notify the State Party concerned and transmit the complaint to the European Committee of Social Rights (ECSR).⁹⁹ Complaints must be submitted in either English or French.

Admissibility phase: For each case, the President (Chair) of the ECSR will appoint one of its members

⁸⁹ See, article 41 ECHR.

⁹⁰ See, rule 60 of the ECtHR's Rules of Procedure.

⁹¹ *Hirsi Jamaa and Others v. Italy*, ECtHR, Application 27765/09, Judgment of 23 February 2012, para. 209. The measures are ordered under Article 46 ECHR.

⁹² *Ibid.*, at para. 211.

⁹³ *Ibid.*, at para. 211.

⁹⁴ See, articles 30-31 ECHR.

⁹⁵ See rule 72 of the ECtHR's Rules of Procedure.

⁹⁶ See, article 43 ECHR and rule 73 of the ECtHR's Rules of Procedure.

⁹⁷ See, rules 50 and 71 of the ECtHR's Rules of Procedure.

⁹⁸ Executive Secretary of the European Social Charter, Directorate General Human Rights and Rule of Law, Council of Europe, Strasbourg Cedex, F-67075, France

⁹⁹ See, article 5 AP-ESC and rule 23 of the ECSR's Rules of Procedure.

as Rapporteur. The Rapporteur will prepare a draft decision on admissibility and, when appropriate, a draft decision on the merits.¹⁰⁰

The ESCR may request additional information from the complainant relevant to the admissibility of the complaint. It may make a decision on admissibility without inviting the Respondent State to submit observations on the issue of admissibility if it considers the complaint to be either manifestly ill-founded or it considers that the admissibility requirements have been fulfilled.¹⁰¹ However, before deciding on admissibility, the ESCR may request observations on admissibility from the Respondent State to be submitted within a particular time limit. If the State responds to such request, the ESCR will also ask the complainant to respond to the observations made by the State on the issue of admissibility.¹⁰²

The decision on admissibility of the complaint is transmitted to the parties as well as the to the States¹⁰³ and is published on the Council of Europe's website.

Examination of the merits: The Committee may request additional information from the parties and may organize a hearing at the request of one of the parties to the complaint or on its own initiative.¹⁰⁴ Other States that have accepted the Collective Complaints procedure may also make submissions on an admissible complaint against another State. In addition, at the proposal of the Rapporteur, the Chair of the ESCR may invite any institution, organization or person to submit observations (all observations are transmitted to both the Complainant and the State that is subject of the complaint and are also published on the Council of Europe website).

After considering the written submissions (and oral, if any) the Committee will draft a report with its reasoning and conclusions as to whether the State has violated one or more of its obligations under the European Social Charter, and will transmit it confidentially to the parties and to the Committee of Ministers of the Council of Europe, under prohibition of publication.¹⁰⁵ The Committee of Ministers may not change the legal assessment of the complaint made by the ESCR. If the ECSR found a violation of the European Social Charter, the State is asked to notify the Committee of Ministers about the measures it has or plans to take to address the violation, The members of the Committee of Ministers that represent States that are Parties to the European Social Charter adopt the report of the ESCR on the case with a resolution by a majority vote. These members of the Committee of Ministers may decide (by a vote of two thirds majority) to adopt a recommendation to the State concerned, in the even that the State has not informed the Ministers of the remedial action it plans to take.¹⁰⁶

The ESCR report (decision) on a complaint will be published when the Committee of Ministers adopts a resolution on the case or, in any case, no later than four months after its transmission to the Committee of Ministers.¹⁰⁷

3.4. Non-judicial mechanisms receiving individual complaints

As noted above in Chapter 1, Section X, many of the Special Procedures (Special Rapporteurs or Working Groups) mandated and appointed by the UN Human Rights Council to address particular thematic issues receive and address individual "communications", alleging violations of the rights, which the Special Rapporteur is mandated to address.

¹⁰⁰ See, rule 27 of the ECSR's Rules of Procedure.

¹⁰¹ See, rule 29.4 of the ECSR's Rules of Procedure.

¹⁰² For (international) NGOs the admissibility criteria is that the complaint concerns a matter for which they are recognized as having a particular competence.

¹⁰³ See, articles 6 and 7.1 AP-ESC and rules 29 and 30 of the ECSR's Rules of Procedure.

¹⁰⁴ See, article 7 AP-ESC and rules 31 and 33 of the ECSR's Rules of Procedure.

¹⁰⁵ See, article 8 AP-ESC.

¹⁰⁶ See, article 9 AP-ESC.

¹⁰⁷ See, article 8.2 AP-ESC.

Once a communication is received, the special procedure will consider it and will decide whether to contact the concerned State by requesting a response to the allegations. The Special Procedure can help bring the case to the attention of the authorities of the State, request information, raise concerns and request action.

Information about communications sent by a Special Procedure to a State will generally be published under the Special Procedure's Annual Report to the Human Rights Council.

The jurisdiction of the Special Procedures to consider individual communications is thematic and does not depend on whether the State concerned is a party to a particular human rights treaty. A complaint may be brought concerning any State and there are no requirements regarding the need to exhaust domestic remedies before raising a case with a Special Rapporteur or Working Group.

Furthermore, it is possible to present the same complaint to more than one Special Procedure or to a Special Procedure and a judicial or quasi-judicial international human rights body.

Box 3. Working Group on Arbitrary Detention (WGAD)

The **Working Group on Arbitrary Detention** (WGAD): **Individual complaints**

The Working Group considers individual complaints. It is the only non-treaty-based special mechanism whose mandate expressly provides for consideration of individual complaints. The fact that its mandate is thematic rather than treaty based means that individuals anywhere in the world may bring a complaint relevant to the mechanism's mandate against any State- whether or not it the State is a Party to a treaty setting out a relevant obligation.¹⁰⁸

The following are the procedures followed by the WGAD, when it receives a communication about a case alleging a violation of the rights over which it has competence.

I. Investigation of individual cases The Working Group acts on information submitted by communications sent to it by the individuals directly concerned, their families, their representatives or non-governmental organizations for the protection of human rights, from Governments and inter-governmental organizations regarding alleged cases of arbitrary detention. (...)

Urgent action procedure

Deprivation of liberty is arbitrary if a case falls into one of the following five categories: A) When it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his sentence or despite an amnesty law applicable to him)(Category I); B) When the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by articles 7, 13, 14, 18, 19, 10 and 21 of the Universal Declaration of Human Rights and, insofar as States parties are concerned, by articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (Category II); C) When the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out in the Universal Declaration of Human Rights and in the relevant international instruments accepted by the States concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (Category III). D) When asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (category IV); and E) When the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (category V).

¹⁰⁸ Further information is available at: <http://www.ohchr.org/EN/Issues/Detention/Pages/Complaints.aspx>

WGAD Methods of Work, UN. Doc A/HRC.36/38 (2017), para 17:

"In the light of the information collected under this adversary procedure, the Working Group adopts one of the following measures in private session:

(a) If the person has been released, for whatever reason, following the reference of the case to the Working Group the case may be filed; the Group, however, reserves the right to render an opinion, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned;

(b) If the Group considers that the case is not one of the arbitrary deprivation of liberty, it shall render an opinion to this effect;

(c) If the Group considers that further information is required from the Government or the source, it may keep the case pending until that information is received;

(d) If the Group considers that it is unable to obtain sufficient information on the case, it may file the case provisionally or definitively;

(e) If the Group decides that the arbitrary nature of the deprivation of liberty is established, it shall render an opinion to that effect and make recommendations to the Government.

The opinion is sent to the Government, together with the recommendations. Two weeks after this notification, the opinion is also conveyed to the source for information. The opinions are published in an addendum to the report presented annually by the Working Group to the Human Rights Council at the Group's scheduled reporting session."A Model form (called a QUESTIONNAIRE) to use when submitting a case to the WGAD is available here: Questionnaire: [E - F - S](#)

4. Procedures under EU law

Court of Justice of the EU (CJEU)

The Court of Justice of the European Union has jurisdiction to interpret and clarify EU law and its judgments aim to ensure that EU law is **applied in the same way** in all EU countries. It also adjudicates **legal disputes** between governments of EU member states and EU institutions. Preliminary rulings are established in article 267 Treaty on the Functioning of the EU (TFEU). There is no obligation to ask for preliminary reference placed on the national judge, it can be only suggested to the national judge in national proceedings.

The role of the CJEU consists of:

- **Interpreting the law** (preliminary rulings) – national courts of EU countries are required to ensure EU law is properly applied, but courts in different countries might interpret it differently. If a national court is in doubt about the interpretation or validity of an EU law, it can ask the Court for clarification. The same mechanism can be used to determine whether a national law or practice is compatible with EU law. **(1)**
- **Annuling EU legal acts** (actions for annulment) – if an EU act is believed to violate EU treaties or fundamental rights, the Court can be asked to annul it. This procedure may be pursued by an EU government, the Council of the EU, the European Commission or (in some cases) the European Parliament. Individuals can also ask the Court to annul an EU act that directly concerns them. **(2)**
- **Enforcing the law** (infringement proceedings) – this type of case is taken against a national government for failing to comply with EU law. It can be started by the European Commission or another EU country. If the country is found to be at fault, it must put things right at once or risk a second case being brought, which may result in a fine. **(3)**
- **Ensuring the EU takes action** (actions for failure to act) – the Parliament, Council and Commission must make certain decisions under certain circumstances. If they don't, EU governments, other EU institutions or (under certain conditions) individuals or companies can complain to the Court.

- **Sanctioning EU institutions** (actions for damages) – any person or company who has had their interests harmed as a result of the action or inaction of the EU or its staff can take action against them through the Court.

The issue of the application of EU law **in an individual's case** can reach the CJEU if a **national court decides to refer the case to the CJEU** (1) or directly before the **Court** (2).

(1) Preliminary ruling

If a national court is in doubt about the interpretation or validity of an EU law, it can ask the CJEU for clarification (preliminary rulings). Preliminary rulings of the CJEU serve to determine and inform a national Court whether a national law or practice is compatible with EU law or how an EU law is to be interpreted. A migrant child can access the CJEU best through a national court where the national judge needs to be suggested to ask a preliminary ruling.

(2) Action for annulment

It is possible to turn directly to CJEU if a decision by an EU institution has affected a person directly and individually (Action for annulment). The **action for annulment (article 263 TFEU)** has a limited scope of application as it can be used against EU acts only (not against acts of a member state). The applicants can be either privileged or non-privileged – individuals that were addressed by the act of the EU or directly affected by it.

(3) Infringement procedures

Infringement procedures are set out in article 258 TFEU. The procedure basically consists of four stages. The European Commission calls on the State three times by official letters asking for explanations and after these three stages, the file is brought to the CJEU. How can an individual make use of this right? One can notify the Commission of wrong application or implementation of EU law that can lead to the Commission starting an infringement procedure against that a Member state ([official complaints procedure, form available in 23 languages](#)). *The Commission will act at its own discretion.*

The European Ombudsman

EU citizens, residents in EU Member States, NGOs, associations, businesses can lodge a complaint to the European Ombudsman with concerning an EU institution, office or agency.

One can complain to the Ombudsman about maladministration in the activities of these institutions and bodies (maladministration means poor or failed administration, for example: administrative irregularities, unfairness, discrimination, abuse of power, failure to reply, refusal of information, unnecessary delay). See the complaint about maladministration here:

<https://www.ombudsman.europa.eu/en/atyourservice/secured/complaintform.faces>

II. Strategies for effective multiple use of mechanisms

Annex I. The choice of an international mechanism: a checklist

Which international body or mechanism can be used?

a) Applicability of international treaty obligations

1. What human rights treaties is the State a party to?
2. Has the State made any reservations or interpretative declarations about provisions of the treaty that are relevant to the issues in the case?
3. Are any such reservations or declarations permissible and valid (i.e. does the treaty permit such a reservation?; is the reservation or declaration contrary to the object and purpose of the treaty?)

b) Material jurisdiction

1. Do the facts on which the complaint is based constitute violations of human rights treaty provisions?
2. Are there violations under this treaty specifically related to children?
3. Which mechanisms are competent to hear complaint on these human rights claims?

c) Temporal jurisdiction

1. Have the relevant treaties already entered into force?
2. Was the State bound by the provisions of the treaty containing relevant provisions at the time the acts (or omissions) complained of in the case took place? Or is there a continuing violation?
3. If separate ratification or agreement is necessary for the individual or collective complaints mechanism relevant to the treaty, has this taken place?

d) Territorial jurisdiction

1. Does the human rights body to which the complaint is to be sent have jurisdiction over the State concerned?
2. Did the acts complained of take place within the territory of the State concerned, or otherwise occur in territory or in relation to a person subject to its authority or effective control so as to fall within its jurisdiction?

e) Standing

1. Does the proposed applicant have standing to bring a case under the individual or collective complaints mechanism concerned?

f) Domestic remedies

1. Have the domestic remedies been exhausted?
2. If not, was their exhaustion necessary?
3. If not, why? Were the remedies effective or not? If not, how to support this statement?

g) Time-limits

1. Is the case lodged within permitted time limits for the particular international mechanism concerned? If not, are other international mechanisms still available?
2. If not, are there other international mechanisms (including either quasi judicial bodies or Special Procedures) that can still consider the complaint?

h) Formalities

1. Who should sign the application/request?
2. Is there a specific form to be filled-in?

Annex II. The choice of an international mechanism: strategy

A) One or more bodies?

1. Is it possible to submit the case to one or more mechanisms?
2. Do any of the mechanisms exclude complaints that have been or are being considered by other international bodies and mechanisms?
3. Can different elements of the same case be brought before different bodies? Can newly arisen circumstances be brought?
4. Is it possible to have the case referred to CJEU?

B) Which body is more strategic?

1. What is the aim – impact for the individual or general / systemic situation to be changed?
2. Under which mechanism has the case strongest chance of success?
3. Which treaty includes the strongest or most relevant guarantees?
4. Which body or mechanism has issued the strongest jurisprudence on the relevant point?
5. What is the best time to bring this case to international level (consider recent case-law)?
6. Which mechanism provides the strongest system of interim measures if the case requires it? Are the interim measures of one or another mechanism more respected by the State?
7. Which mechanism can provide the most relevant remedies to the applicant?
8. Which mechanism assures the strongest system of enforcement of final decisions?
9. Which mechanism is the most expedient? How long is the procedure likely to take?
10. What is the cost of the procedure? Is legal aid accessible?
11. Are Third party interventions (amicus curiae) allowed? Are they needed?
12. What are the risks of losing the case?

C) Effect in the domestic system

1. Are the decisions of the body or mechanism concerned considered to be binding by the State concerned?
2. What is the effect of the body or mechanism's decisions in the national system? Is there any possibility of re-opening national proceedings following the decision of the international body or mechanism?
3. What would be the effect of a confidential procedure (e.g. inquiry)?
4. Is there a system in place for payment of any compensation to the complainant recommended by the mechanism? Or possible to claim compensation at national level as a follow-up?
5. Is there a system in place for review of law/regulation in the light of the conclusions of the mechanism on the case?
6. What is the political impact of the mechanism's decision in the State concerned?
7. What could be the impact in other court proceedings and in other countries / at international level?

D) Follow-up

1. Will the procedure be re-opened at national level?
2. What follow-up advocacy work at national level will be needed?
3. Which support from which actors (national/international) will be needed?

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February 2018 (for an updated list, please visit www.icj.org/commission)

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