

V. Access to international human rights mechanisms

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Box 1. Focus on the Convention of the Rights of the Child

I. Introduction

This part V. of the training materials gives an overview of how migrant children can access international mechanisms in order to claim their rights. It should serve as a practical handbook for migrant children and their lawyers in EU Member States to allow them choose a most suitable strategy for their particular case.

Anyone, including migrant children, has the right to have their rights enforced through international mechanisms, when the national state has not been able to protect the right or provide for a sufficient just satisfaction or reparation in cases of human rights violations.

II. Overview of mechanisms and their procedure

Chapter 1 introduces the types of international mechanisms, while Chapter 2 describes the procedures in front of the mechanisms (the International human rights treaty bodies, the European Court for Human Rights, the European Committee on Social Rights). Chapter 3 briefly explains what are the possible procedures under EU law.

1. Types of international mechanisms

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

- **Judicial mechanisms:** International courts receive individual petitions or applications, and have competence to interpret and apply human rights instruments, declare whether the treaty has been violated, and prescribe appropriate remedies in the individual case considered. Their decisions are binding, and must be executed by the concerned State. International human rights judicial mechanisms in Europe include the European Court of Human Rights.
- **Quasi-judicial mechanisms:** These bodies have all the characteristics of the judicial mechanisms, except that their decisions are not binding. They include: the Committee on the Rights of the Child (CRC), the Human Rights Committee, the Committee on the Elimination of Discrimination Against Women (CEDAW), the Committee on Elimination of Racial Discrimination (CERD), the Committee against Torture (CAT), the European Committee on Social Rights (ECSR), the Committee on Migrant Workers (CMW), the Committee on the Rights of Persons with Disabilities (CRPD), the Committee on Enforced Disappearances (CED) and the Committee on Economic, Social and Cultural Rights (CESCR).
- **Non-judicial mechanisms:** Non-judicial mechanisms are bodies or organs that have no specific mandate to supervise a particular treaty and whose decisions or views are not binding. Their legitimacy generally derives from the treaty establishing the international or regional organisations from which they emanate, rather than from a particular human rights treaty. This is the case with the Special Procedures established by the UN Human Rights Council.

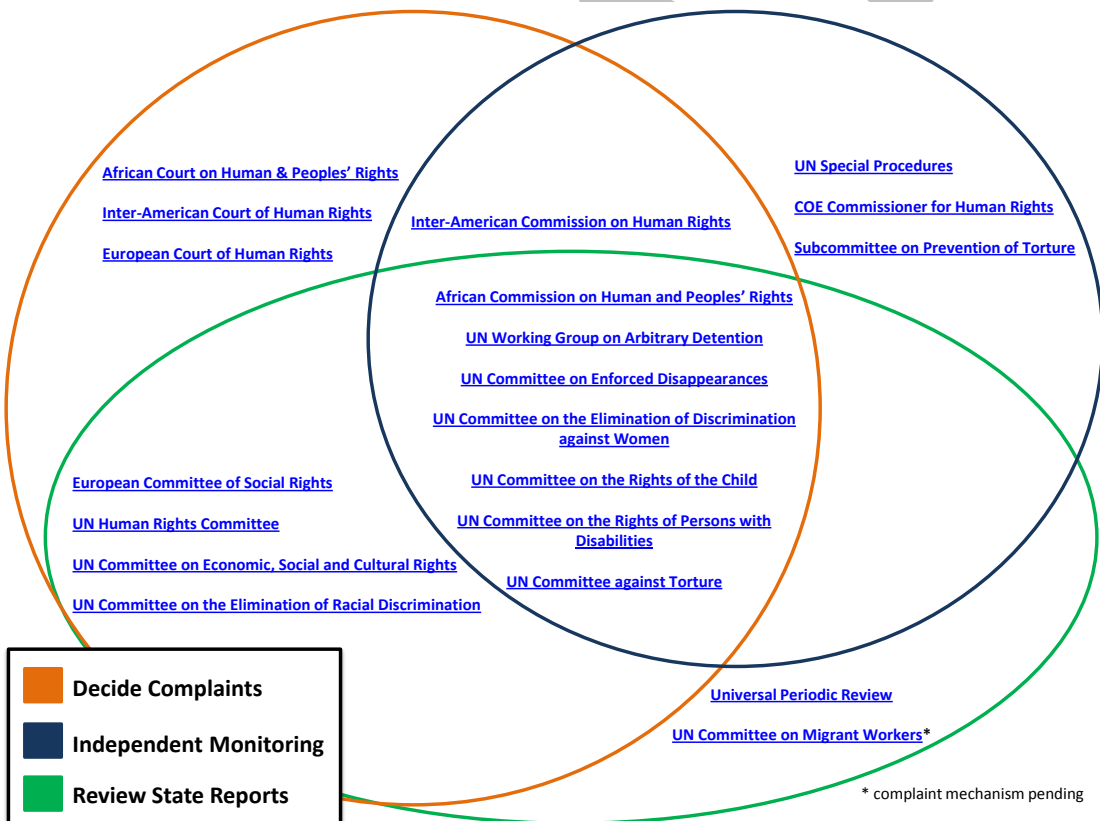
Table 1. Overview of international human rights mechanisms

	Judicial mechanisms	Quasi-judicial mechanisms	Non-judicial mechanisms
UN		• Committee on the Rights of the Child (CRC): communication procedure and inquiry procedure	Special Procedures established by the UN

		<ul style="list-style-type: none"> • Human Rights Committee • 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). 	Human Rights Council
CoE	European Court of Human Rights	European Committee on Social Rights (ECSR): COLLECTIVE COMPLAINTS	
EU	Court of Justice of the EU		Complaint to the European Commission

Please refer to Table 2 for an overview of international bodies to see which can decide complaints, proceed with independent monitoring of human rights situation and which can of them review state reports.

Table 2. International bodies



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This chapter first discusses the preliminary requirements that allow the child who deems her or his rights were violated and their lawyer to determine whether the specific mechanism they want to use for the complaint can be used. Such preliminary considerations (*Section 1. Preliminary requirements*) include the temporal, material and territorial jurisdiction and standing: who is entitled to enter an application or submit a complaint for a human rights violation before an international mechanism (individual complaints, collective complaints, inquiry mechanisms).

In *Section 2.* the Admissibility requirements that must be fulfilled before a complaint is examined on the merits will be explained (exhaustion of domestic remedies, time limitations, duplication of procedures, having suffered a significant disadvantage and other grounds such as anonymity of the complaint).

Then, we briefly explain the importance and relevance of interim measures (*Section 3.*) and third party interventions (*Section 4.*).

1.1. Preliminary requirements

1.1.1 Jurisdiction (Temporal, material and territorial)

This concept is not to be confused with the “competence” of a court or tribunal to hear a particular case. It includes three categories: temporal jurisdiction, material jurisdiction and territorial jurisdiction.

1.1.1.1 Temporal jurisdiction (“ratione temporis”)

The basic principle of international law is that an international mechanism has jurisdiction to adjudicate on alleged violations of international law that occurred after the obligation to respect the international norm entered into force for the State concerned. This principle applies equally to international human rights mechanisms, so that they have jurisdiction only over facts or acts that arose only after the entry into force of the relevant treaty for the State Party.

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. In this case, it suffices to check whether the act occurred before or after the entry into force of the relevant treaty;
- **Continuous fact/act:** when the breach of the obligation has a continuing character, then the wrongful fact or act continues until the situation of violation is ended. Examples include enforced disappearances or arbitrary detentions, when the person continues to be disappeared (his whereabouts continue to be unknown) or detained even after the entry into force of the treaty, regardless of whether the situation originated from an act/fact that occurred before that date (*X v. Switzerland*, ECommHR, Application No. 7601/75, Admissibility Decision, 12 July 1976). This case must be distinguished from breaches of international obligations, which occurred and ended before the entry into force of the treaty but still have effects after the entry into force of the treaty. In such cases, the mechanism will however be able to adjudicate collateral violations: for example the lack of investigation into responsibility for violations of human rights law, if the State did not remedy it before the entry into force of the treaty.

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

1.1.1.2 Material jurisdiction (“*ratione materiae*”)

This kind of jurisdiction relates to the treaty or the international obligation of which the international mechanism is the “guardian”. It means that it is not possible to raise before an international mechanism human rights violations that are not covered by the relevant treaty. For an overview, please refer to *Table 3* below. 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.

International mechanisms become binding for a state upon its signature and ratification or accession to a relevant treaty. For the countries covered in this project, please refer to *Table 4* listing the relevant ratifications.

Table 3. Material jurisdiction

International body:	Competent <i>ratione materiae</i> for breaches of
UN Committee on the Rights of the Child	<ul style="list-style-type: none"> • <i>Convention on the Rights of the Child (CRC)</i>, • <i>Optional Protocol on a communication procedure (OP3-CRC-CP)</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 conflicts (OP-CRC-AC)</i>
UN Human Rights Committee	<i>International Covenant on Civil and Political Rights (ICCPR)</i>
UN Committee against Torture	<i>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)</i>
UN Committee on the Elimination of Racial Discrimination	<i>International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)</i>
UN Committee on the Elimination of Discrimination against Women	<i>Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)</i>
UN Committee on Migrant Workers	<i>International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW)</i>
UN Committee on the Rights of Persons with Disabilities	<i>Convention on the Rights of Persons with Disabilities (CRPD)</i>
UN Committee on Enforced Disappearances	<i>International Convention on the Protection of All Persons from Enforced Disappearance</i>
UN Committee on Economic, Social and Cultural Rights	<i>International Covenant on Economic, Social and Cultural Rights (ICESCR)</i>
European Court of Human Rights (Council of Europe)	<i>European Convention for the Protection of Human Rights and Fundamental Freedoms</i>
European Committee on Social Rights	Collective complaints against the States Parties to

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(Council of Europe)

the *Additional Protocol to the European Social Charter Providing for a System of Collective Complaints* ("Additional Protocol of 1995") and those who accepted the collective complaint mechanism through a declaration under Article D of the *European Social Charter (revised)* (only against those rights of the European Social Charter by which the State Party has undertaken to be bound (Article 11, *Additional Protocol to the European Social Charter Providing for a System of Collective Complaints* (AP-ESC); and Article A (Part III), ESC(r))

Table 4. Status of ratifications: International legal instruments

		<i>Date</i>	<i>Monitoring Body</i>	<i>I</i>	<i>D</i>	<i>E</i>	<i>B</i>	<i>E</i>	<i>M</i>	<i>IR</i>
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination	21 Dec 1965	CERD	✓	✓	✓	✓	✓	✓	✓
ICCPR	International Covenant on Civil and Political Rights	16 Dec 1966	CCPR	✓	✓	✓	✓	✓	✓	✓
ICESCR	International Covenant on Economic, Social and Cultural Rights	16 Dec 1966	CESC R	✓	✓	✓	✓	✓	✓	✓
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women	18 Dec 1979	CEDA W	✓	✓	✓	✓	✓	✓	✓
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	10 Dec 1984	CAT	✓	✓	✓	✓	✓	✓	✓
CRC	Convention on the Rights of the Child	20 Nov 1989	CRC	✓	✓	✓	✓	✓	✓	✓
ICMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	18 Dec 1990	CMW							
CPED	International Convention for the Protection of All Persons from Enforced Disappearance	20 Dec 2006	CED	✓	✓	✓	✓	✓	✓	
CRPD	Convention on the Rights of Persons with Disabilities	13 Dec 2006	CRPD	✓	✓	✓	✓	✓	✓	
ICESCR - OP	Optional Protocol to the Covenant on Economic, Social and Cultural Rights	10 Dec 2008	CESC R	✓		✓				
ICCPR-OP1	Optional Protocol to the International Covenant on Civil and Political Rights	16 Dec 1966	CCPR	✓	✓	✓	✓	✓	✓	✓

ICCPR-OP2	Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty	15 Dec 1989	CCPR	✓	✓	✓	✓	✓	✓	✓	✓
OP-CEDAW	Optional Protocol to the Convention on the Elimination of Discrimination against Women	10 Dec 1999	CEDAW	✓	✓	✓	✓	✓			✓
OP-CRC-AC	Optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	25 May 2000	CRC	✓	✓	✓	✓	✓	✓	✓	✓
OP-CRC-SC	Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	25 May 2000	CRC	✓	✓	✓	✓	✓	✓		
OP-CRC-IC	Optional Protocol to the Convention on the Rights of the Child on a communications procedure	14 Apr 2014	CRC	✓	✓	✓					✓
OP-CAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	18 Dec 2002	SPT	✓	✓	✓			✓	✓	
OP-CRPD	Optional Protocol to the Convention on the Rights of Persons with Disabilities	12 Dec 2006	CRPD	✓	✓	✓			✓	✓	
ECHR	European Convention on Human Rights			✓	✓	✓	✓	✓	✓	✓	✓
ECMW	European Convention on the Legal Status of Migrant Workers			✓		✓					
rESC	revised European Social charter			✓			✓	✓	✓	✓	✓
ECChR	European Convention on the exercise of children's rights			✓	✓	✓		✓	✓		

Only in 2014 an optional protocol on a communication procedure in front of the Committee on the rights of the child came into force. It allows for individual complaints as well as inquiry procedures, see more detail in Box 1.

Box 1. Focus on the Convention of the Rights of the Child

Using the CRC in court

The ultimate test of the Convention's place in a national legal system and of its usefulness to children who experience rights violations is whether it can be relied upon in court and, if so, to what effect. The Convention can be directly enforced in its entirety in 48 per cent of all countries. Most Council of Europe Member States allow for the CRC to be directly enforced in court.

The ways that courts can use the Convention vary. At the strongest end of the spectrum, courts in Bulgaria and Colombia have been willing to clearly enforce the Convention over conflicting national law. In 2010, the Supreme Administrative **Court of Bulgaria** struck down a national legal provision barring families with children from adopting, in part because the Convention prevails over contradictory legislation.

The Constitutional Court of Colombia, meanwhile, has recognised the obligation under the Convention to provide free compulsory primary education as binding on the government. In a large number of countries, the Convention has been used less directly as an interpretive tool to develop national law.

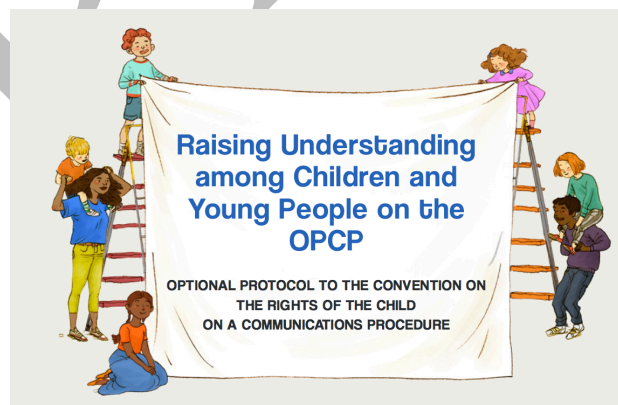
This approach is popular among Commonwealth States that have not incorporated the CRC. The Supreme Court of Nauru used the Convention to develop its interpretation of adoption legislation and ruling on the right to legal assistance, the Supreme Court of Samoa has held that “there is a clear mandate to the courts of this country to have regard to the provisions of the Convention in appropriate cases”. Other States have combined these two approaches, adopting either method depending on the specific right they are considering. It is common for States from the French legal tradition, such as Belgium, to directly apply the Convention where the court considers that a specific provision is clear enough not to require further implementing legislation. France’s Court of Cassation has declared that it is willing to directly apply 11 of the Convention’s articles. The power of courts to use the CRC is a useful tool to improve national practice, but to make proper use of this power the courts must regularly rely on the Convention.

Source: https://www.crin.org/sites/default/files/crin_a2j_global_report_final_1.pdf, p. 14

On 19 December 2011, the UN General Assembly approved a third Optional Protocol on [a communications procedure](#), which will allow individual children to submit complaints regarding specific violations of their rights under the Convention and its first two optional protocols. The Protocol entered into force in April 2014 and it is now possible to bring individual complaints in front of the [Committee on the Rights of the Child \(CRC\)](#).

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

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



1.1.1.3 Territorial jurisdiction (“*ratione loci*”)

The jurisdiction *ratione loci* establishes the geographical reach of the State’s human rights obligations. Most of the time, an alien will have clearly entered the State’s jurisdiction when he or

she accesses its territory. This also occurs when the alien is present in an “international zone” or “zone d’attente” of an airport (*Amuur v. France*, ECtHR, paras. 52-53).

Extraterritorial jurisdiction applies:

- to all persons who fall under the authority or the effective control of the State’s authorities or of other people acting on its behalf,
- to all extraterritorial zones, whether of a foreign State or not, where the State exercises effective control.
- where persons or groups acting under State authority act outside their State’s territory, so as to bring victims of violations under their authority, bring the person or the property concerned by the acts within the State’s jurisdiction, regardless of the territory in which the acts took place or where the person or the property were present (See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, International Court of Justice (ICJ), para. 109)

For example, the European Court of Human Rights has found that jurisdiction had extraterritorial reach in various situations, even outside the territory of States Parties to the European Convention of Human Rights - including in northern Iraq (*Issa and Others v. Turkey*, ECtHR), Kenya (*Öcalan v. Turkey*, ECtHR), Sudan (*Ramirez v. France*, ECommHR), Iran (*Pad and Others v. Turkey*, ECtHR), in a UN neutral buffer zone (*Isaak and Others v. Turkey*, ECtHR), and in international waters (*Xhavara and Others v. Italy and Albania*, ECtHR). Human rights obligations apply in unmodified form to a State exercising extra-territorial jurisdiction – for example, an occupying power, a military base abroad or a state operating an extra-territorial detention centre - as has been authoritatively affirmed regarding comparable obligations under CAT, the ICCPR, the ECHR, and the Refugee Convention.

***Hirsi Jamaa and Others v. Italy*, ECtHR, Application no. 27765/09, 23 February 2012**

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.

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

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.

1.1.2 Standing

The standing addresses who is entitled to enter an application or submit a complaint for a human rights violation before an international mechanism.

- **Individual Complaints:** some mechanisms allow only for the victims of a violation, or for those petitioning on his or her behalf to lodge a complaint. Certain mechanisms allow for general human rights NGOs to lodge a complaint on behalf of victims, even without their direct authorisation, although it must be demonstrated that it would have been impossible

or very difficult to obtain authorisation for reasons independent from the victims themselves.

Victims may be:

- Direct victims generally a person directly affected by the violation of the human rights concerned.¹ Exceptions:
 - The existence of a law that potentially impedes the individual in asserting his or her rights, although the person has not yet breached the law, if the risk of the law being applied when the action contrary to it is taken is more than a theoretical possibility.
 - Laws might violate the individual's right even when the individual cannot be aware of it, because the law makes such awareness impossible, for example in the case of some types of surveillance
- Indirect or potential victims:
 - The relatives of a victim of torture or disappearance might find their right not to be subject to ill-treatment violated by the mere fact of having been exposed to this situation (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).
 - In cases of non-executed expulsion, an individual can be a victim despite the fact that potential and not actual violations are at issue.
- **Collective Complaints:** This mechanism allows organisations to challenge a general legal or factual situation which gives rise to or has the potential to give rise to human rights violations, without naming individual complaints.

It can be especially useful in cases of systemic violations of the rights of children, so that an individual child or her or his family does not need to be re-victimized in long Court proceedings.

1.1.2.1 Mechanisms for individual complaints

Individual complaints to International human rights treaty bodies

- Complaints may be submitted by individuals who claim to be victims.
- If the violation concerns a group of people, they can submit as a group.
- **The complaint may be submitted by the individual personally or by a third party acting on behalf of the individual or groups alleging to be victims, with their authorisation.**

Treaty bodies generally allow for a complaint without the victim's authorisation on condition that the person or entity applying must justify the absence of authorization. For example, because the victim is in a particular situation of risk or vulnerability which prevents him or her from availing of the communication procedure, or because the violation is so massive that it is impossible to obtain the authorisation of all the people affected.

E.B. and ors. v. New Zealand (Human Rights Committee)

E.B. separated from his wife, who denied him access to his three children and later made

¹ Companies might be victims too, but due to the scope of these training materials we will deal only with individuals.

complaints to the police that he had sexually abused the children. E.B. was never convicted of any offence in relation to his children, but the Family Court considered that he posed "an unacceptable risk" to the safety of the children. The complaint largely turned on the rights of E.B. to see his children and the delay involved in resolving the custody case, but the Committee also made rulings with respect to the rights of the children themselves. The Committee considered that E.B. **could not make a complaint on behalf of the children as he had not sought their authorisation to do so**, they had expressed no desire for him to do so, and had in fact expressed their desire not to have contact with him.

L.P. v. The Czech Republic (Human Rights Committee)

Mr. L.P. separated from his wife, who was awarded custody of their child. A national court ruled on provisional access rights prior to the finalisation of the divorce and Mr. L.P. was allowed access to his son at specified times. Ms. R.P. refused him this access, and a series of bitter legal disputes arose during which Ms. R.P. was fined several times for her refusal to allow Mr. L.P. to see his son. Proceedings in the Czech Republic continued for nine years before this complaint was made to the Committee. Mr. L.P. initially made his complaint based on his rights and the rights of his son. The Committee would not consider a complaint relating to violations of the child's rights, however, unless Mr. L.P. was acting on behalf of his son, and he did not claim to do so.

The **European Court of Human Rights** receives applications from various entities – individual persons, NGOs, or group of individuals – who claim to be a victim (either direct or indirect) of the alleged violation (Article 34 ECHR). Applications cannot be anonymous, but the Court may grant leave to anonymity of the claim in its communication to other parties or the public, when the applicant has adduced sufficient reasons to justify this departure from the rule (Rule 47.4, *Rules of the Court*, ECtHR, 1 January 2014, Strasbourg (ECtHR Rules of Procedure). See for details of applications, the entire Rule 47).

1.1.2.2 Mechanisms for collective complaints: ECSR

The collective complaints system of the **European Committee on Social Rights** does not provide for a right of individual application. It does confer the standing to make a complaint on certain organisations, namely:

- International organisations of employers and trade unions;
- Other international non-governmental organisations which have consultative status with the Council of Europe and have been placed on a list established for this purpose by the Governmental Committee;
- Representative national organisations of employers and trade unions within the jurisdiction of the Contracting Party against which they have lodged a complaint;
- National non-governmental organisations with competence in the matters governed by the Charter, which have been allowed by the Contracting State of origin to lodge complaints against it (Articles 1 and 2, AP-ESC).

For instance, there has been a case before the ECSR on the health rights of migrant children: *Defence for Children International v. Belgium*, Complaint No. 69/2011, 23 October 2012

1.1.2.3 Inquiry mechanisms: OP-CRC-3²

In place of collective complaints, the OP-CRC-3 now allows for **inquiry procedure for grave or systematic violations of the CRC in its Article 13**. There is no need for a name of a victim to be provided, which is a strong added value of such a mechanism, especially in cases of children to avoid re-victimization of the child but still potentially achieve a systemic change.

Article 13

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. 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.

1.2. Admissibility requirements

Admissibility requirements must be fulfilled before a complaint is examined on the merits.

² By 26 July 2016 the inquiry procedure for CRC-OP-IC, Art.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.

1.2.1. Exhaustion of domestic remedies

- It is a general standard of international human rights law that, before bringing a case before an international legal mechanism, an applicant must have first exhausted the domestic remedies available. The rationale of the principle lies in the fact that, as it is the international responsibility of the State as a whole that is challenged, the State must have had the possibility to redress that human rights violation domestically, before an international forum should be made available. However, only those remedies that are effective need to be exhausted. If several effective and adequate remedies are available, it is sufficient to exhaust only one of them.
- A domestic remedy is “**adequate**” only when it is able to address that particular human rights violation according to international human rights law standards.
- The domestic remedy must also be “**effective**”, i.e. able to ascertain and redress the potential violation once this is 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.
- The remedy must also have certain characteristics of **due process of law**. It must be independent, which means that it must not be subject to interference by the authorities against which the complaint is brought. It must afford due process of law for the protection of the right or rights alleged to be violated, must be accessible by everyone, and must not constitute a denial of justice. 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.

A remedy need not be pursued:

- if it can be incontrovertibly proven that it was **bound to fail**. This might occur when the remedy is subject to a consistent practice or jurisprudence, or the legal system has a normative framework, which makes it virtually impossible for the individual case to succeed.
- If the **legal system as such 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. The European Court has held that remedies where the granting of relief is purely discretionary need not be exhausted.
- If the process to obtain or access to the remedy is **unreasonably prolonged**.
- 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. This doctrine has been developed i.a. by the European Court of Human Rights.

1.2.2. Time limitations

The **OP-ICESCR** and the **OP-CRC-CP** require a time limit of **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).

The **European Court of Human Rights** may only deal with the matter if it is submitted to the Court within a period of six months³ after exhaustion of domestic remedies.⁴ The date of submission

³ Under Article 4 of the new Protocol No. 15 to the ECHR, the time limit for applications to the Court is reduced to four months. The Protocol, approved on 24 June 2013, is not yet into force and requires the ratification of all Contracting Parties to the ECHR.

⁴ Article 35.1 ECHR. Where there are no available domestic remedies, the case should be submitted within six months of the facts complained of. For an extensive explanation of the six month requirement, see *Lutete Kemevuako v. the Netherlands*, ECtHR, Application No. 65938/09, Admissibility decision of 1 June 2010.

is “the date on which an application form satisfying the [formal] requirements of [Rule 47] 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 introduction” (Rule 47.6, *ECTHR Rules of Procedure*).

CERD provides that the communication 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”.

The **Committee against Torture** does not apply a specific time limit, but has stated that it will not admit communication received after an “unreasonably prolonged” period. Neither the **OP-CEDAW**, the **Committee on Enforced Disappearance** nor the **OP-CRPD** impose a time limit, but it is likely that it will follow the Human Rights Committee’s jurisprudence.

The **Human Rights Committee** provides no time limits for the communication of the complaint. However, in case of a prolonged delay from the exhaustion of domestic remedies, the Committee will require a reasonable justification for it.

Rule 96(c), CCPR Rules of Procedure where it is established that “a communication may constitute an abuse of the right of submission, when it is submitted after 5 years from the exhaustion of domestic remedies (...), 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”.

1.2.3. Duplication of procedures or similar requirements

Generally, a complaint will be inadmissible if the same matter has already been examined by the human rights body or has been or is being examined under another procedure of international investigation or settlement.

There is an exception for the Human Rights Committee, which applies this rule only to complaints **pending** before another international procedure. If the other procedure has ended, it is still possible for the Human Rights Committee to hear the same case (*Correia de Matos v. Portugal*, CCPR, Communication No. 1123/2002, Views of 18 April 2006, para. 6.2.). Article 31.2(c) also refers only to pending complaints, which suggests that the Committee on Enforced Disappearances may align its approach to that of the Human Rights Committee (Article 31.2(c), CPED).

1.2.4. Significant disadvantage

Protocol 14 to the ECHR introduced a new admissibility requirement for the European Court of Human Rights: that of “significant disadvantage”. Protocol 14 to the ECHR now allows the Court to declare inadmissible an application when “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” (Article 35.3(b) ECHR).

The Court held that it must take into consideration “both the applicant's subjective perceptions and what is objectively at stake in a particular case”, and it recognised that “a violation of the Convention may concern important questions of principle and thus cause a significant disadvantage without affecting pecuniary interest”. Furthermore, the Court will also have to ascertain whether the examination is, nonetheless, required by the respect for human rights as defined in the Convention

and the Protocols. The Court has found this not to be the case when “the relevant law has changed and similar issues have been resolved in other cases before it”.

The new Protocol 15 ECHR (adopted in May 2013, will enter into force upon approval by all 47 states, currently approved by 31) is introducing a change in the “significant disadvantage” concept. Article 35, paragraph 3.b of the Convention, containing the admissibility criterion concerning “significant disadvantage”, has been amended to delete “and provided that no case may be rejected on this ground which has not been duly considered by a domestic tribunal”. The requirement remains of examination of an application on the merits where required by respect for human rights. This amendment is intended to give greater effect to the maxim *de minimis non curat praetor* (in other words, a court is not concerned by trivial matters).

According to the OP-ICESCR, 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 criterium. 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.

1.2.5. Other grounds

All UN Treaty Bodies and the ECtHR will reject as inadmissible petitions which are anonymous, which constitute an abuse of right of submission, or that are incompatible with the provisions of the human rights treaty of their concern.⁵ CAT, CEDAW, CESCR and the European Court, explicitly exclude from admissibility complaints which are manifestly unfounded or insufficiently substantiated,⁶ although this requirement will be considered also by the other treaty bodies.

The OP-ICESCR excludes, moreover, complaints which are exclusively based on reports disseminated by mass media.⁷

The ECSR provides two specific grounds of inadmissibility, due to the collective complaint system:

- **Subject-matter:** non-governmental organisations may lodge a complaint only in respect of those matters regarding which they have been recognised as having particular competence.⁸
- **Other Grounds:** complaints must be lodged in writing, relate to a provision of the Charter accepted by the State Party and indicate in what respect the State Party has not ensured the satisfactory application of the provision (Article 4 AP-ESC).

Although it is not properly an admissibility ground, the European Court of Human Rights has modified its Rule 47, with effect from 1 January 2014, according to which, from now on, the Court will have the power to refuse to examine an application that does not satisfy all the formal requirements of this Rule. As noted above, the six months time limit of Article 35 ECHR will stop running from the moment of receipt of an application fully compliant with these formal requirements.⁹

⁵ 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.

⁶ 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.

⁷ Article 3.2(d) to (g) OP-ICESCR.

⁸ Article 3 AP-ESC.

⁹ See, Rule 47, *ECtHR Rules of Procedure*.

C.P and ors. v. Denmark (Committee on the Elimination of Racial Discrimination)

A 15 year-old boy was attacked and racially abused by a group of young men. The four assailants were later tried and three of them were convicted of offences relating to the attack. Two of them were fined, and the third was sentenced to a 60 day suspended prison term. The public prosecutor appealed the suspended sentence and it was increased to a 40 day unconditional prison term. C argued, on his son's behalf, that the trial was carried out with bias against his son on the grounds of his race and because the mother of one of the accused was a clerk at the District Court. The Committee found the complaint inadmissible on the grounds that there was insufficient evidence of a violation of M's rights. The police investigated and prosecuted the attack, and when the Public Prosecutor considered the sentence too lenient, he appealed and secured a less lenient sentence. A replacement judge was also brought in from another venue to take account of the accused's mother's position within the court. Upon a review of the documentation, the Committee found no evidence that the police or judicial proceedings were tainted by racially discriminatory considerations.

1.3. Interim measures

Interim, precautionary or provisional measures are orders issued by the international mechanism in the preliminary phase of the international dispute in order to assure that a situation of potential violation does not lead to irreparable harm from before the case can be adjudicated on the merits. Interim or provisional measures are often indicated in situations of expulsions, where the international body requests the State to stay the expulsion measure until a final decision is reached. Interim measures might also be prescribed for a situation of forced eviction, where a stay of the eviction is ordered before the final ruling.

The binding nature of interim measures has been recognised by

- **the International Court of Justice**
- **the European Court of Human Rights**

Savridin Dzhurayev v. Russia, ECtHR, Application No. 71386/10, 25 April 2013

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 [...]"

- **the Human Rights Committee**

Khalilov v. Tajikistan, CCPR, Communication No. 973/2001, Views of 13 April 2005

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 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.

➤ **the Committee against Torture**

Given the uniformity of the jurisprudence on this issue, other bodies such as the **CESCR, CERD and CEDAW**, which have the power to issue interim measures, are also likely to uphold their binding nature.

1.4. Third party interventions

As for the **European Court of Human Rights**, according to Article 36 ECHR, in all cases before Chambers or the Grand Chamber, the "President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not a party to the proceedings or any person concerned who is not the applicant to submit written comments or take part in hearings."¹⁰ NGOs may also make submissions.

The requirements are more restrictive for the **European Committee on Social Rights**, due to the collective nature of the complaint mechanism. According to the rules of procedure, States Parties to the collective complaint mechanisms are automatically invited to submit their views on the complaint, as are the international organisations of employers and trade unions, but the international organisations may only make submissions on complaints lodged by national organisations of employers and trade unions or by NGOs. However, the recently adopted Rule 32A gives to the President the possibility to "invite any organisation, institution or person to submit observations".

The **universal treaty bodies** – HRC, CESCR, CAT, CERD and CEDAW – do not provide expressly for the presentation of formal third party interventions in individual cases.¹¹ It may however be possible to intervene in the case by asking the applicant to include the third party interventions in his or her application, or to petition the treaty body on an *ad hoc* basis.

Table 5. Practical tools

Practical tools:

- For third party interventions see a useful [article in the Strasbourg Observer](#)
- The Office of the High Commissioner for Human Rights provides general guidance on submitting communications to UN treaty bodies, and also offers a [model complaint form](#).
- CRIN's [Legal Assistance Toolkit for Children and Children's Rights Organisations](#) gives an overview of how children and those acting on their behalf can secure the advice or representation of a lawyer
- For a comparison of existing complaint mechanisms see:

¹⁰ Article 36.1 ECHR.

¹¹ 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, *CAT Rules of Procedure*; Rule 95.2, *CERD Rules of Procedure*; Rule 72.2, *CEDAW Rules of Procedures*.

- https://www.crin.org/en/docs/FileManager/OP3CRC_Toolkit_Annex_II.pdf
- A process of harmonisation 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>

2. Procedures of international mechanisms

2.1. International Human Rights Treaty Bodies¹²

The procedures of the UN treaty bodies, while rather similar, have not been harmonised.¹³ Differences arise in the most recently established bodies. Procedures are set out both in their constituting treaties and in their rules of procedures. The communications must be presented in one of the official languages of the United Nations, which are Arabic, Chinese, English, French, Russian and Spanish. The Petitions Unit at the Office of the High Commissioner for Human Rights does an initial screening of every complaint received to make sure that it gives the Committee all the information it will need to assess the situation.

Table 6. Comparison Chart: OP-ICESCR and OP3-CRC

	OP-ICESCR (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))

¹² 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>

¹³ A process of harmonisation 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>.

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	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	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)

reviewing individual communications?	(8.4)	
When must a State submit a follow-up response detailing measures taken after receiving the Committees 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). Committees 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

2.1.1. Preparatory Stage

The rules related to the preparatory phase of the procedure are similar for all the four human rights treaty bodies that receive individual communications and have established rules of procedure. The UN Secretariat receives the communication and verifies that all formal requirements have been

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satisfied. The Secretariat may ask for clarifications on these requirements and on the intention of the complainant effectively to seize the Committee of the communication. Once these preliminary steps are satisfied, the communication is registered with and transmitted to the Committee (See, Rules 1-10 *CESCR Rules of Procedure*; Rules 84-87, *CCPR Rules of Procedure*; Rules 103-105, *CAT Rules of Procedure*; Rules 83-84, *CERD Rules of Procedure*; Rules 56-58, *CEDAW Rules of Procedure*; Rules 12-19 *OP3 CRC Rules of Procedure*; Rules 65-73 *CED Rules of Procedure*; Rules 55-58 *CRPD Rules of Procedure*).

For procedures of the most recently established treaty bodies see their rules of procedure:

- [OP3 CRC Rules of Procedure](#)
- [CMW Rules of Procedure](#)
- [CRPD Rules of Procedure](#)

2.1.2. Admissibility stage

Who decides? While it is generally the Committee as a whole which determines whether the communication satisfies the formal requirements for admissibility, it is possible for it to establish an internal Working Group (WG) for decisions on admissibility.¹⁴ For CERD and CEDAW, the WG can only make recommendations on admissibility.¹⁵

How? The Committee always takes the decision on admissibility by a simple majority vote. When a Working Group is established, the systems vary. For the Human Rights Committee, the WG may take a decision on admissibility only by unanimous vote, although an inadmissibility decision will have to be ratified by the Committee as a whole; while for the Committee against Torture the Working Group can declare a communication admissible by majority vote or inadmissible by unanimity.¹⁶

Communications and Replies: The Committee requests information of both the complainant and the State Party, fixing the appropriate time-limits.¹⁷ 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. Each party must be afforded an opportunity to comment on the observations of the other.¹⁸

Revision of admissibility decision: A decision of inadmissibility may be reviewed by the Committee at a later date where it is established that the reasons for inadmissibility no longer apply.¹⁹

Decisions on admissibility and merits: In practice, the Committees may decide together the admissibility and the merits of the communication when the information given to them is already sufficient for reaching a final decision.

¹⁴ See, Rules 111-112, *CAT Rules of Procedure*; Rules 93-98, *CCPR Rules of Procedure*.

¹⁵ Rule 87, *CERD Rules of Procedure*; Rule 62, *CEDAW Rules of Procedure*.

¹⁶ Rules 93-98, *CCPR Rules of Procedure*; Rules 111-112, *CAT Rules of Procedure*.

¹⁷ See, Rule 115, *CAT Rules of Procedure*; Rule 92, *CERD Rules of Procedure*.

¹⁸ Rules 93-98, *CCPR Rules of Procedure*.

¹⁹ Rule 116, *CAT Rules of Procedure*; Rule 93.2, *CERD Rules of Procedure*; Rule 70, *CEDAW Rules of Procedure*.

2.1.3. Merits

Closed Meetings: The Committees will examine the communication, both at the admissibility and merit stage, in closed meetings.²⁰ CERD and CAT may invite the parties to participate in a closed oral hearing in order to answer to questions and provide additional information.²¹

Communications: The general rule is that a Committee will transmit the information to the State Party and inform the complainant,²² and may request additional information on the merits.²³ The Human Rights Committee provides that the State Party has six months to submit to the Committee written explanations or statements clarifying the matter under consideration and the remedy, if any, that may have been taken by the State. 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.²⁴ For CERD, the State has three months from then to submit its reasons. These will be transmitted to the complainant who may oppose further observations.²⁵

Material: The Committee will take into consideration all the information made available to it by the parties.²⁶ The CESCR also explicitly includes all relevant documentation from other UN bodies, specialised agencies, funds, programmes and mechanisms, and other international organisations, including from regional human rights systems.²⁷

Decision: The Committees will adopt their decision (Views) on the case and forward them to the parties.²⁸ The Human Rights Committee's rules of procedure explicitly say that this body's decisions are public.²⁹

2.1.4. Friendly Settlement

The CESCR is the only Committee which expressly provides for the possibility of reaching a friendly settlement. 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.

2.1.5. Interim Measures

Interim measures can be issued by the human rights body to which the case has been submitted, when they are desirable to avoid irreparable damage to the victim of the alleged violation from the

²⁰ Rules 88 and 102, *CCPR Rules of Procedure*; Article 8 OP-ICESCR; Article 22.4-6 CAT; Rule 88, *CERD Rules of Procedure*; Article 7 OP-CEDAW, and Rule 72, *CEDAW Rules of Procedure*; Article 77.6-7 ICRMW.

²¹ Rule 94.5, *CERD Rules of Procedure*; Rule 117, *CAT Rules of Procedure*.

²² Rule 117, *CAT Rules of Procedure*; Article 8 OP-ICESCR; Rules 99-100, *CCPR Rules of Procedure*; Rule 94.1, *CERD Rules of Procedure*; Article 7 OP-CEDAW; Rule 72, *CEDAW Rules of Procedure*.

²³ *Ibid.*

²⁴ Rules 99-100, *CCPR Rules of Procedure*.

²⁵ Rule 94.2-4, *CERD Rules of Procedure*.

²⁶ Rules 99-100, *CCPR Rules of Procedure*; Article 8 OP-ICESCR; Article 22.4-6 CAT; Rule 118.1, *CAT Rules of Procedure*; Article 14.7(a) ICERD; Article 7 OP-CEDAW; Rule 72, *CEDAW Rules of Procedure*; Article 77.5 ICRMW.

²⁷ Article 8 OP-ICESCR.

²⁸ Rules 99-100, *CCPR Rules of Procedure*; Article 22.7 CAT; Article 14.7(b) ICERD; Article 7 OP-CEDAW; Rule 72, *CEDAW Rules of Procedure*; Article 77.6-7 ICRMW.

²⁹ Rule 102(5), *CCPR Rules of Procedure*.

moment of the communication of the case until the reaching of a final decision.³⁰ The Human Rights Committee and the Committee against Torture have confirmed in their jurisprudence the binding nature of interim measures. Given the uniformity of the jurisprudence on this issue, other bodies such as the CESCR, CERD and CEDAW, which have the power to issue interim measures, are also likely to uphold their binding nature.

2.2. European Court of Human Rights

Rules of Court

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

³⁰ See, Rule 92, *CCPR Rules of Procedure*; 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*.

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 can be found on the Court's website, to be filled out in one of the official languages of the Court (English or French), together with copies of any relevant documents and in particular the decisions, whether judicial or not, relating to the object of the application.

The Application form may be found at

<http://www.echr.coe.int/ECHR/EN/Header/Applicants/Apply+to+the+Court/Application+pack/>

It is also possible to first introduce the complaint through a letter containing the subject matter of the application, including the Convention articles claimed to be breached.³¹ This letter will stop the running of the six months time limit. In this case, or in the case of an incomplete application form, the Court will request the provision of additional information within eight weeks from the date of the information's request.³² On 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 this by letter. They may also be asked for further information or documents.³³

Preparatory Stage: The President of the Court will assign the case to a designated Chamber of the Court, which is composed of seven judges.³⁴

Admissibility stage: 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.

³¹ *Institution of Proceedings*, Practice Direction, Issued by the President of the Court in accordance with Rule 32 of the Rules of Court on 1 November 2003 and amended on 22 September 2008 and on 24 June 2009, para. 3.

³² *Ibid.*, para. 4.

³³ *Ibid.*, para. 7.

³⁴ Rule 52.1, *ECtHR Rules of Procedure*.

Otherwise, the single judge will forward the case to a Chamber or a Committee from among whose members the President of the Chamber of the Court will appoint a Judge Rapporteur to deal with 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.³⁵ At this stage, the case will pass to the Committee, which is composed of three judges of the Chamber and whose decision is final. The Committee will give notice of the application to the State concerned and request additional information from both the parties. The Committee may by unanimous vote declare the case inadmissible or 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.³⁶ The Chamber will also be able to notify the decision to the State and request information from the parties. It may also decide to declare the application inadmissible or strike it out of the list at once. Before taking a decision, it may consider holding a hearing at the request of a party or of its own motion, and, if considered appropriate, to decide the admissibility and merits of the application at the same time.³⁷

See the admissibility guide of the Court:

http://www.echr.coe.int/Documents/Admissibility_guide_ENG.pdf

Friendly Settlement: At any stage of the proceedings, the Court may be at the disposal of the parties with a view of securing a friendly settlement of the dispute. In this case, proceedings are confidential and are conducted by the Registry under instruction of the Chamber or its President. If the settlement is reached, the case will be struck off the list and the decision of the Court will be limited to a brief statement of the facts and solution reached, which will be transmitted to the Committee of Ministers for supervision of its execution.³⁸

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 when the applicant does not intend to pursue his 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",³⁹ and it can also decide to restore an application previously struck out.⁴⁰ The case will also be struck out when a friendly settlement between the parties has been reached⁴¹ or when a unilateral declaration by the respondent State is accepted by the Court. In this last case, the Court may strike the case out of the list even if the applicant wishes the case to continue.⁴² It will depend, however, on whether respect for human rights as defined in the Convention and the Protocols requires otherwise. The Court held that in order to establish this 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".⁴³

³⁵ Articles 27 ECHR; Rules 49 and 52A, *ECtHR Rules of Procedure*.

³⁶ Article 28 ECHR; Rule 53, *ECtHR Rules of Procedure*.

³⁷ Article 29 ECHR; Rules 54 and 54A, *ECtHR Rules of Procedure*.

³⁸ Article 39 ECHR; Rule 62, *ECtHR Rules of Procedure*.

³⁹ Article 37.1 ECHR.

⁴⁰ See, Article 37 ECHR; Rule 43, *ECtHR Rules of Procedure*.

⁴¹ See, Rule 43.3, *ECtHR Rules of Procedure*.

⁴² 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.

⁴³ *Tahsin Acar v. Turkey*, ECtHR, para. 76. The list is not exhaustive. This practice is now reflected in Rule 62A, *ECtHR Rules of Procedure*.

Examination of merits: Once an application has been declared admissible, the Chamber may invite the parties to submit further evidence and observations and hold a hearing. The Court in the form of a Chamber will examine the case.⁴⁴ Hearings are public, as 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.⁴⁵ 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 this referral being asked, or the Grand Chamber rejected the request of referral.⁴⁶

Just satisfaction: If the Court finds a violation, it will afford just satisfaction to the injured party.⁴⁷ To make the award, the Court will need to receive from the applicant a specific claim of just satisfaction, and the submission of items particular to the claim, together with any relevant supporting document, within the time-limits set by the President for submission of the applicant's observations on the merits.⁴⁸ Additionally, "[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 [...]".⁴⁹ 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",⁵⁰ 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."⁵¹

Referral or relinquishment to the Grand Chamber: A Chamber may relinquish its jurisdiction to the Grand Chamber, composed of seventeen judges, 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",⁵² unless one of the parties to the case objects within one month from the relinquishment decision.⁵³ Furthermore, any party may request the case to be referred to the Grand Chamber within three months from the Chamber's judgment. The request will be examined by a five judge Panel appointed by the Grand Chamber, which will accept the case only if it raises a serious question affecting the interpretation of the Convention or the Protocols, or a serious issue of general importance.⁵⁴ The rules of procedure before the Chambers apply also to the Grand Chamber proceedings, including the designation of a Judge Rapporteur.⁵⁵

i) Legal Representation and legal aid

⁴⁴ Article 38 ECHR.

⁴⁵ Article 40 ECHR. See, Rules 33 and 63, *ECTHR Rules of Procedure*.

⁴⁶ Article 44 ECHR.

⁴⁷ Article 41 ECHR.

⁴⁸ Rule 60, *ECTHR Rules of Procedure*.

⁴⁹ *Hirsi Jamaa and Others v. Italy*, ECTHR, GC, para. 209. The measures are ordered under Article 46 ECHR.

⁵⁰ *Ibid.*, para. 211.

⁵¹ *Ibid.*, para. 211.

⁵² Articles 30-31 ECHR.

⁵³ See also, Rule 72, *ECTHR Rules of Procedure*.

⁵⁴ Article 43 ECHR. See also, Rule 73, *ECTHR Rules of Procedure*.

⁵⁵ Rules 50 and 71, *ECTHR Rules of Procedure*.

Applications may be initially presented directly by the victim or through a representative.⁵⁶ However, the European Court system requires mandatory representation after the application has been notified to the Contracting State.⁵⁷ The applicant may require leave to present his or her own case, which can be granted by the President of the Chamber only “exceptionally”. The representative must be an advocate “authorised to practise in any of the Contracting Parties and resident in the territory of one of them, or any other person approved by the President of the Chamber”.⁵⁸ He or she must have an adequate understanding of one of the Court’s languages, unless leave to use a different language is given by the President of the Chamber, who can also remove an advocate if he or she considers that, because of the circumstances or the conduct, the advocate can no longer represent his or her client.

Conscious of its own jurisprudence and of the costs of legal representation, the European Court of Human Rights provides for a legal aid system. The decision to grant legal aid is made by the President of the Chamber only when it is deemed necessary for the proper conduct of the case and the applicant has insufficient means to meet all or part of the costs entailed. The decision to grant legal aid is made either following the applicant’s request or *proprio motu*, from the moment when the State concerned has submitted its observations in writing on the admissibility of the case, or when that deadline has passed. Legal aid, once granted, will cover all stages of the proceedings before the Court, unless the President 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 dependants, or any other financial obligations.⁵⁹

2.3. European Committee on Social Rights

Preparatory phase: The complaint must be addressed to the Executive Secretary acting on behalf of the Council of Europe Secretary General who will acknowledge receipt, notify it to the State Party concerned and transmit it to the European Committee of Social Rights (ECSR).⁶⁰ The complaints must be submitted in one of the Committee’s working language, English or French.

Admissibility phase: For each case, the President of the Committee will appoint one of its members as Rapporteur. The Rapporteur will prepare a draft decision on admissibility, followed by, where appropriate, a draft decision on the merits.⁶¹ The Committee may request additional information from the parties on the admissibility of the complaint. If it finds it admissible, the Committee notifies the Contracting Parties to the Charter through the Secretary General.⁶² The Committee may declare the complaint admissible or inadmissible without having invited the government concerned to submit observations when it considers that the admissibility conditions are either manifestly fulfilled or manifestly unfulfilled.⁶³

Examination of the merits: The Committee may request additional information from the parties and may organise a hearing, at the request of one of the parties or at the Committee’s initiative.⁶⁴ The Committee will draft a report containing its conclusions on the State’s violation of the Charter,

⁵⁶ Rules on representation are enshrined in Rule 36, *ECtHR Rules of Procedure*.

⁵⁷ 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.

⁵⁸ Rule 36.4(a), *ECtHR Rules of Procedure*.

⁵⁹ See, Rules 100 to 105, *ECtHR Rules of Procedure*.

⁶⁰ Article 5, AP-ESC. See, Rule 23, *ECSR Rules of Procedure*.

⁶¹ Rule 27, *ECSR Rules of Procedure*.

⁶² Articles 6 and 7.1, AP-ESC. See also, Rules 29 and 30, *ECSR Rules of Procedure*.

⁶³ Rule 29.4, *ECSR Rules of Procedure*.

⁶⁴ Article 7, AP-ESC. See also, Rules 31 and 33, *ECSR Rules of Procedure*.

if it existed, and will transmit it confidentially to the Committee of Ministers and the parties, under prohibition of publication.⁶⁵ Thereafter, the members of the Committee of Ministers which are States Parties to the Charter adopt the report with a resolution by a majority vote. If the ESCR found a violation of the Charter, the Committee, in the same composition, can adopt a recommendation to the State concerned with a two-thirds majority vote.⁶⁶ The ESCR report will be published immediately after the Committee of Minister's adoption of a resolution, or, in any case, not later than four months after its transmission to the Committee.⁶⁷

Reporting procedures

International reporting mechanisms do not bar the applicants from bringing cases to quasi-judicial or judicial mechanisms. Although they do not have the capacity to address an individual situation, their use might be important in light of a case brought under them. This may be because reports by these bodies might inform a judicial or quasi-judicial mechanism on the country situation, or because it will be possible to signal the case to these bodies both to exercise political pressure on the national authorities and contribute to their analysis of the country situation. This last outcome is particularly significant given that individual cases might take some years to be resolved in an international venue, and that reports on country situations or diplomatic interventions on the individual case might be quicker, therefore providing useful material for the contentious case.

United Nations Treaty Bodies

The UN Treaty Bodies are those mechanism established by international human rights treaties, most of which we have considered in the previous paragraphs, because they also have a quasi-judicial procedure to consider individual cases. Each of them also has a procedure under which States periodically report on their human rights situation and are examined by the relevant Committee. These are:

- The Human Rights Committee (ICCPR);
- The Committee for the Elimination of Racial Discrimination (ICERD);
- The Committee for the Elimination of Discrimination against Women (CEDAW);
- The Committee on Economic, Social and Cultural Rights (ICESCR);
- The Committee against Torture (CAT);
- The Committee on the Rights of the Child (CRC);
- The Committee on the Rights of Migrant Workers and Their Families (ICMW);
- The Committee on the Rights of Persons with Disabilities (CRPD);
- The Committee on Enforced Disappearance (CED).

All these Committees accept submissions from NGOs. These submissions might also include some cases as example of human rights violations occurring in the country. Contacting a national or international NGO in order to take into consideration the case in their report, might increase the chances that the relevant Committee will address the general human rights situation concerning it. An appropriate finding of the Committee might be of help in the individual case.

⁶⁵ Article 8, *ibid.*

⁶⁶ Article 9, *ibid.*

⁶⁷ Article 8.2, *ibid.*

2.4. Non-judicial mechanisms taking individual petitions

Many of the Special Procedures established by the UN Human Right Council to address particular issues (“thematic mandates”), to which independent experts are appointed as “mandate-holders”, will receive and address individual “communications”. Once a communication is received, they will take it into consideration, and then, at their discretion, they will decide whether to contact the concerned State requesting an answer to the allegations. The communications will generally be published in the Annual Report of the relevant Special Procedure. These communications do not depend on whether the State concerned is a party to a particular human rights treaty, and domestic remedies do not need to be exhausted. Furthermore, Special Procedures are not bound by the prohibition of duplication of complaints, so that it is possible to present the same communication to more Special Procedures or to Special Procedures and one judicial or quasi-judicial human rights body. In addition to these Special Procedures, there also exists the Human Rights Council Complaint Procedure established to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.⁶⁸

3. Procedures under EU law

JUDICIAL MECHANISM

EU: The Court of Justice interprets EU law to make sure it is **applied in the same way** in all EU countries, and settles legal disputes between national governments and EU institutions. If a national court is in doubt about the interpretation or validity of an EU law, it can ask the Court for clarification (preliminary rulings). The same mechanism can be used to determine whether a national law or practice is compatible with EU law. An individual can thus reach the CJEU either indirectly through **national courts** (*which may decide to refer the case to the Court of Justice*) or directly before the **General Court** – if a decision by an EU institution has affected you directly and individually.

QUASI-JUDICIAL MECHANISM

EU: Notify the Commission of wrong application or implementation of EU law that can lead to the Commission starting an infringement procedure against that Member state ([official complaints procedure](#)).

III. Strategy for effective multiple use of mechanisms

THE CHOICE OF AN INTERNATIONAL MECHANISM: A CHECKLIST

1. Which mechanism you can use

a) Applicability of international obligations

1. What human rights treaties is the relevant State party to?
2. Have any reservations or interpretative declarations been made by the State concerned?
3. Are all such reservations and declarations valid and permissible (i.e. is it permitted by the treaty; is it contrary to the object and purpose of the treaty?)

⁶⁸ See <http://www2.ohchr.org/english/bodies/chr/complaints.htm>.

b) Temporal jurisdiction

1. Have the relevant treaties already entered into force?
2. Had the treaty entered into force before the facts of the case took place?
3. If separate ratification or agreement is necessary for the individual or collective complaints mechanism relevant to the treaty, has this taken place?

c) Territorial jurisdiction

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

d) Material jurisdiction

1. Do the facts on which the complaint is based constitute violations of human rights treaty provisions?
2. Which mechanisms are competent to hear complaint on these human rights claims?

e) Standing

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

f) 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. Choice of 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 others?
3. Can different elements of the same case be brought before different bodies?

b) Which body is more convenient?

1. Under which mechanism has the case strongest chances of success?
2. Which treaty or mechanism includes the strongest or most relevant guarantees, or the strongest jurisprudence on the relevant point?
3. 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?
4. Which mechanism can provide the strongest remedies to the applicant?
5. Which mechanism assures the strongest system of enforcement of final decisions?

c) Effect in the domestic system

1. Are the decisions of the court or tribunal concerned binding or non-binding?
2. What is the effect of the mechanism's decisions on the national system? Is there any possibility of re-opening national proceedings following the decision of the international tribunal?
3. What is the political impact of the mechanism's decision in the State concerned?

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Fostering Access to Immigrant Children's Rights (FAIR Project)

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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>
CEDAW	<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>Convention for the Protection of Human Rights and Fundamental Freedoms</i>

International bodies

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
ECommHR	European Commission on Human Rights
ECtHR	European Court of Human Rights
UNHCR	UN High Commissioner for Refugees
ExCom	UNHCR Executive Committee