



Complaint Mechanisms under the UN Human Rights Treaties

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 [for treaty body updates see my blog at www.ProjectEleanor.blogspot.com]



SUMMARY:

The UN human rights treaty bodies engage in three primary functions: 1) reviewing state reports, 2) issuing decisions on individual complaints, and 3) providing interpretive guidance through the adoption of general comments. At present, most of a treaty body's time is spent on the first of these functions, the review of state reports. This outline addresses the second area, individual complaint mechanisms. Many of these mechanisms have rarely been used or have only recently come into effect.

A complaint mechanism for these purposes is viewed broadly as any procedure that will address individual factual circumstances of human rights violations. Viewed this way, there are at least 20 different types of complaint mechanisms available in the treaty body system. These mechanisms include individual petitions, actions against reprisals, inquiry procedures, urgent actions, and country visits. There are 17 of these mechanisms now in effect; three others require additional ratifications before they enter into force (two of those three will probably come into effect later this year). This article provides a brief summary of each mechanism in outline form, organized by topic area.

GENERAL

1. Reprisals

We start with the mechanism that applies to the highest number of countries — actions taken against reprisals

- this mechanism applies to all treaty bodies and all states that have ratified any human rights treaty; 198 countries
- each of the treaty bodies have recognised that there is a general right to be free from reprisals when giving evidence to a treaty body about a country situation
- no person is to be threatened, coerced or intimidated due to an appearance before a treaty body or arising out of information or testimony he or she submits to a treaty body

- If this happens to you or to someone you know, contact the relevant treaty body immediately to inform them of the circumstances

CIVIL & POLITICAL RIGHTS

2. Individual complaint under the CCPR (civil & political rights)

The First Optional Protocol to the International Covenant on Civil and Political Rights has an individual complaint mechanism managed by the Human Rights Committee. This mechanism has enjoyed the most use and the most success so far in the treaty body system.

- the mechanism is currently in effect and applies to 115 states
- it applies to all states that have ratified the First Optional Protocol to the CCPR
- this procedure has been available for the longest period of time (since 1976); the majority of complaints filed and decisions issued so far under the treaty body system have come under this mechanism
- a complaint can be submitted for any violation under the Covenant (for example, unfair trial, arbitrary arrest or detention, freedom of expression, etc); the complaint must be timely, filed against a country which has accepted the competence of the Human Rights Committee under the First Optional Protocol, and only submitted after local remedies have been exhausted and no other parallel proceedings are taking place on the same matter

WOMEN'S RIGHTS

3. Individual complaint under CEDAW (women)

The Convention on the Elimination of all Forms of Discrimination Against Women also has an Optional Protocol which created an individual complaint mechanism in December 2000. It has enjoyed widespread ratifications by governments, but there have been very few successful complaints brought under this mechanism so far.

- this mechanism is currently in effect and applies to 104 states
- it applies to all states that have ratified the Optional Protocol to CEDAW
- an example of a successful complaint brought under this mechanism is *Kell vs. Canada* (CEDAW/C/51/D/19/2008, April 27, 2012). The complaint was filed by a Canadian aboriginal woman in the Northwest Territories of Canada. She was in an abusive domestic relationship, a victim of domestic violence, and had been defrauded out of her property (her abuser had removed her name from the lease where they were living even though she was eligible for the indigenous housing, he was not). He was a director of the local housing authority. She was unable to get legal assistance and information to protect her rights. He then became ill with cancer and died, leaving her with no property or housing. She made several attempts to get her property back but was not successful. The Committee concluded that she had been discriminated against on the basis of these facts and that this discrimination had impaired the exercise of her property rights. The Committee ordered that housing be provided commensurate in quality, location and size to the property she lost, and that she be adequately compensated for the wrongs committed against her. The government was also ordered to recruit and train more aboriginal women to provide legal aid to women in their communities, including on domestic violence and property rights, and that it review its legal aid system to ensure that aboriginal women who are victims of domestic violence have effective access to justice

4. Inquiry procedure under CEDAW (women)

The CEDAW treaty also has an inquiry procedure that permits the Committee to study a problem in depth, send one or more members to visit the country, assess the situation, make recommendations, and potentially obtain pledges from the government to rectify the problems identified. These investigations usually take several years and lead to a very comprehensive report and findings. When it has been used, it has been very effective. It can be used when there is a widespread problem or trend that is causing a discrimination against several women.

- this mechanism is currently in effect and applies to 100 states
- the procedure is in article 8 of the Optional Protocol; when invoked, it includes a country visit, investigation & report
- for example, a 2005 report under this procedure investigated the high number of unsolved abductions, rapes & murders of women in Chihuahua, Mexico; after the report was completed promises were made by the government to improve investigations of these types of cases in the future, to address the root causes identified in the report, and to pursue wrongdoers more aggressively
- this mechanism applies to all states that have ratified the Optional Protocol to CEDAW, unless they have expressly “opted out” at the time of ratification by making a declaration under article 10 (4 states have opted out -- Bangladesh, Belize, Colombia & Cuba)

RACISM

5. Individual complaint under CERD (racism)

The International Convention on the Elimination of All Forms of Racial Discrimination (CERD) also has an individual complaint mechanism in its article 14 The first complaint under this procedure was received in 1984.

- this mechanism is currently in effect and applies to 55 states
- it applies to all states that have accepted the competence of the Committee under article 14 of CERD
- even though this complaint option has been available for 30 years, it is not frequently used; one or two cases a year are usually heard; since the Committee has only a few cases to review, it can usually issue a decision much more quickly than under the other mechanisms
- the complaint must allege a violation of one of the articles of the treaty; it must come from an individual or group of individuals who are subject to the jurisdiction of the subject country; it must not be submitted anonymously; the complaint should be submitted within six months after the exhaustion of domestic remedies

6. Early warning procedure under CERD (racism)

The Committee has also adopted an early warning/urgent action mechanism under its rules of procedure, aimed at preventing potential genocide or mass discrimination events. The mechanism applies to all countries that have ratified the treaty.

- this mechanism is currently in effect and applies to 176 states
- the procedure was adopted by Committee decision, deriving from article 9(1) (state reporting)
- under the procedure the Committee will act to address serious violations brought to its

attention, including potential genocide, mass discrimination events, significant flows of refugee and displaced persons, forced removal of indigenous groups, etc.

- a clever use of this mechanism was recently made by the NGO known as “Down to Earth”; it combined the filing of a complaint with a press release, bringing attention to the plight of an indigenous group in Papua, Indonesia. The urgent action request seeks redress for starvation and poverty allegedly due to the exploitation of the lands of the Zanegi people by a mega agro-industrial project approved by the Indonesian government, including large scale deforestation activities of the Zanegi people’s lands. Even though the Committee’s review of the complaint will be conducted privately, and only made public once a decision is issued, the party submitting the complaint is free to publicise the filing in this manner.

TORTURE

7. Individual complaint under CAT (torture)

The individual complaint mechanism under the Convention Against Torture (CAT) is the second most used mechanism in the treaty body system. Typically 25 to 30 decisions are filed a year under this procedure.

- this mechanism is currently in effect and applies to 64 states
- it applies to all states that have accepted the competence of the Committee under article 22 of CAT
- a complaint may be submitted by any private individual who claims to be the victim of a violation of the Convention by a State Party that has accepted the competence of the Committee under article 22; if the alleged victim is not in a position to submit the complaint himself or herself, relatives or representatives may act on his or her behalf

8. Special inquiry under CAT (torture)

The Committee Against Torture also has an inquiry procedure that may be used to investigate a pattern of violations brought to its attention.

- this mechanism is currently in effect and applies to 146 states
- the procedure is described in article 20 of CAT
- it applies to all states that have ratified CAT, unless the state has expressly “opted out” at the time of ratification by making a declaration under article 28 (8 states have opted out by making the declaration)
- the Committee may designate one or more of its members to make a confidential inquiry, including a visit to the country in question; the government is contacted and asked to respond and cooperate; the visit to the country may include the conducting of hearings of witnesses.
- the procedure was used in 2012 to investigate conditions in Syria and Nepal

9. Country visit under OPCAT (torture)

The Convention Against Torture also has an Optional Protocol (OPCAT) which is aimed at establishing preventive mechanisms in countries to avoid incommunicado detention and other conditions which may lead to torture of detained persons. The Subcommittee for the Prevention of Torture (SPT) is responsible for monitoring state compliance with OPCAT. The procedures are confidential, but involve publicly announced visits to several countries each year. While not technically an individual complaint mechanism, it is possible for victims or NGOs to provide individualised testimony to the Subcommittee.

- this mechanism is currently in effect and applies to 70 states
- the purpose of OPCAT is to assist states in implementing effective preventive mechanisms in their countries, in order to prevent torture and inhuman treatment in jails, prisons and other facilities of detention
- the Optional Protocol to the Convention Against Torture (OPCAT) does not have an individual complaint mechanism per se, but when the Committee schedules a visit to a particular country it welcomes the opportunity to speak to NGOs and representatives of civil society about the human rights conditions in detention facilities in the country.
- There are now 67 countries that have ratified this protocol. The committee schedules 5 to 10 country visits a year, but plans to increase this to 8 to 10 visits per year in the next couple of years. Seven countries will be visited in 2014: Azerbaijan, Ecuador, Malta, the Netherlands, Nicaragua, Nigeria and Togo.

DISABILITY

10. Individual complaint under CRPD (disability)

The Convention on the Rights of Persons with Disabilities (CRPD) has an Optional Protocol which establishes an individual complaint mechanism. Even though the treaty and mechanism are relatively new, several important decisions have already been issued under this mechanism.

- this mechanism is currently in effect and applies to 79 states
- it applies to all states that have ratified the Optional Protocol to CRPD
- the first decision under this mechanism was issued May 2012 addressing building permit requirements for the construction of a private home hydrotherapy pool for a severely disabled woman who had fragile skin & bone conditions; the local zoning requirements did not permit the construction of the hydrotherapy pool but the Committee determined that an exception was required under the provisions of the CRPD

11. Inquiry procedure under CRPD (disabilities)

The CRPD also has an inquiry procedure under articles 6 and 7 of the Optional Protocol. No case has yet been decided under this procedure.

- this mechanism is currently in effect and applies to 78 states
- the procedure is described in articles 6 and 7 of the Optional Protocol. If the Committee receives reliable information indicating grave or systematic violations, it may investigate, invite the state to respond, send one or more members to a country visit, and issue a report on findings.
- it applies to all states that have ratified the Optional Protocol, unless expressly “opting out” by making a declaration under article 8 at the time of ratification (one state has opted out so far -- Syria).

DISAPPEARANCES

12. Individual complaint under CED (disappearances)

The newest treaty to come into force, the International Convention for the Protection of All persons from Enforced Disappearances (CED), has an individual complaint mechanism in article 31. No case has yet been decided under this procedure.

- the mechanism is currently in effect and applies to 16 states

- it applies to all states that have accepted the competence of the Committee under article 31 of CED

13. Urgent action under CED (disappearances)

The CED also has an urgent action procedure under article 30 which can be invoked when a person has disappeared. Several actions are currently pending before the Committee under this procedure, but no public information has yet been released on any of these cases.

- this mechanism is currently in effect and applies to 41 states
- it applies to all states that have ratified the CED
- the procedure is described in article 30 of the Convention -- a relative or legal representative may submit a request to seek and find a disappeared person on an urgent basis; the Committee will investigate, contact the state, keep the relatives informed, & continue its efforts as long as the fate of the person remains unknown

14. Inquiry procedure under the CED (disappearances)

The CED also has an inquiry procedure under article 33. No case has yet been decided under this mechanism.

- this mechanism is currently in effect and applies to 41 states
- it applies to all states that have ratified the CED
- the procedure is described in article 33 of the Convention -- if the Committee receives reliable information indicating serious violations it may, after consulting with the state concerned, send one or more of its members to undertake a visit and report back without delay

15. Systematic, widespread violations under CED (disappearances)

The CED also permits the Committee to report a case of systematic disappearances immediately to the attention of the UN General Assembly for extraordinary action. No case has yet been decided under this mechanism.

- this mechanism is currently in effect and applies to 41 states
- it applies to all states that have ratified the CED
- the procedure is described in article 34 of the Convention-- if the Committee receives well-founded information of widespread or systematic enforced disappearances it may bring the matter to the attention of the UN General Assembly, on an urgent basis

ECONOMIC, SOCIAL & CULTURAL RIGHTS

16. Individual complaint under CESC (economic, social, cultural rights)

The newest instrument to come into effect is the Optional Protocol to the International Convention on Economic, Social and Cultural Rights. This Optional Protocol has both an individual complaint mechanism and an inquiry procedure. No case has been decided yet.

- this mechanism is currently in effect and applies to 11 states
- it applies to all states that have ratified the Optional Protocol

17. Inquiry procedure under CESC

The Optional Protocol to CESC also includes an inquiry procedure. No case has been decided yet under this procedure.

- this mechanism is currently in effect
- it applies to one state so far (El Salvador)
- the procedure is described in articles 11 and 12 of the Optional Protocol
- it only applies to those states that “opt in” under article 11 (so far one state, El Salvador, has opted in)

MIGRANT WORKERS

18. Individual complaint under CMW (migrant workers & their families)

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (CMW) has an individual complaint mechanism in article 77 which has not yet come into effect.

- this mechanism has not yet entered into force
- it requires 10 states to accept the procedure under article 77 of the CMW; 2 states have accepted the procedure so far

CHILDREN

19. Individual complaint under CRC (children)

The Convention on the Rights of the Child has a new Optional Protocol establishing an individual complaint mechanism, but it has not yet come into effect.

- this mechanism has not yet entered into force
- it requires 10 ratifications of the Optional Protocol on individual communications (OPIC)
- there are 9 ratifications so far
- the mechanism will come into effect three months after the 10th ratification is received

20. Inquiry procedure under CRC (children)

The Optional Protocol (OPIC) -to the Convention on the Rights of the Child also has an inquiry procedure that will come into effect once the 10th ratification is received.

- this mechanism is not yet entered into force
- it requires 10 ratifications; so far 9 have been received
- the procedure is described in article 13 of the OPIC
- a state that has ratified the Protocol is automatically subject to this procedure, unless the state has expressly “opted out” by making a declaration under article 13 at the time of signing or ratification (so far, no state has opted out)
- the mechanism will come into effect three months after the 10th ratification is received