

# The Complaint Mechanisms under International Human Rights Law

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## Complaint Procedure under the CRPD

Who can lodge a complaint

Jurisdiction *Rationae Temporis*

(In)admissibility

Case File

Inquiry procedure

Follow up

## **Optional Protocol to the Convention on the Rights of Persons with Disabilities**

- ◆ 63 ratifications (16 EU Member States)
- ◆ 90 signatories
- ◆ EU and OP-CRPD

## **Who can lodge a complaint**

- ◆ Individual
- ◆ Group of individuals
- ◆ Legal representative of an individual or a group of individuals
- ◆ Who have been victims of violations of the provisions of the CRPD

## Legal Capacity

Committee recognizes the legal capacity of the author or alleged victim, *regardless of whether this capacity is recognized in the State party against which the communication is directed.*

-Rule 68 Rules of Procedure of the Committee on the Rights of Persons with Disabilities

## Jurisdiction Rationae Temporis

Facts occurred after the entry into force of the OP for the State Party concerned

- OR -

Facts occurred prior, but continued after that date

## (In)admissibility

### Article 2 OP

- ◆ Anonymous
- ◆ Abuse of the right of submission (frivolous, vexatious, multiple submissions on the same issue which has been declared inadmissible)
- ◆ Same matter is already being examined by the Committee or has been or being examined under another procedure of international investigation or settlement (ECtHR; TBs)

## (In)Admissibility (2)

- ◆ Non-exhaustion of domestic remedies (unless unreasonably prolonged or unlikely to bring effective relief – eg. national law is clear)
- ◆ Manifestly ill-founded or not sufficiently substantiated
- ◆ Decided by simple majority

## Exhaustion of domestic remedies

- ◆ Unreasonably prolonged or unlikely to bring effective relief
- ◆ “Effective relief” – offers a reasonable perspective of redress

## Case File \*Consent of individual/group

### (1) Registration of communications - *prima facie* case.

- Member State party to the OP (EU – direct effect unlikely...)
- Exhaustion of domestic remedies (clear)



### (2) Request of written reply from State Party (no admission on admissibility)

- 2 months to contest admissibility – can request the “split”
- 6 months to submit written explanations or statements (admissibility and merits; and remedies at domestic level) - possibility of reasonable extension



### (3) Written reply -> author

- 2 months to reply

## State party challenge to admissibility « The Split »

- ◆ The Special Rapporteur determines whether or not to grant “the split” -- Both parties informed
- ◆ If split is granted : admissibility will be examined first.
- ◆ If admissible, both parties will make comments on merits
- ◆ Committee will determine merits

## State party challenge to admissibility « The Split »

- ◆ If split is not granted State party invited to make comments on merits
- ◆ Petitioner can answer those observations (within 2 months)  
Any petitioner’s comments sent to SP for information
- ◆ Committee takes a decision on admissibility and merits together

## Follow-up

- ◆ Within six months of Committee's transmittal of its views, State party shall submit a written response, including any information on any action taken in the light of the views and recommendations of the Committee
- ◆ Committee can request further information
- ◆ Follow-up: in State party report to Committee; Special Rapporteur can be designated; visits to State party; regular reporting back to Committee on follow-up activities

## Confidentiality of communications

- ◆ Communications examined in closed session
- ◆ All working documents shall remain confidential, unless the Committee decides otherwise
- ◆ Pending communications remain confidential
- ◆ Author or alleged victim or State party can make submissions/information public, unless Committee requests otherwise
- ◆ Separate decisions on admissibility shall not be made public until decision on merits.
- ◆ Activities on follow-up will not remain confidential unless Committee decides otherwise

## Interim Measures

- ◆ Article 4 of OP-CRPD
- ◆ Before determination on the merits
- ◆ Aim: to avoid “irreparable damage” to the petitioner
- ◆ Does not imply determination on admissibility or on merits

## Inquiry Procedure - Confidential article 6

- ◆ Committee receives reliable information of grave or systematic violations
- ◆ Committee invites SP to cooperate: submit observations
- ◆ One or members of Committee conduct inquiry and report urgently (may include visit, with consent of SP; compile other information available to it, including UN sources)
- ◆ Findings with recommendations
- ◆ Observations of SP within 6 months



## Figures

- ◆ 300-350 communications received by the Committee
- ◆ 6 cases registered since 2010 as the others do not satisfy one or more preliminary criteria
  - ◆ State against which the communication was submitted did not ratify the OP-CRPD
  - ◆ Non-exhaustion of domestic remedies
  - ◆ State against which the communication was submitted did not ratify the OP CRPD + non-exhaustion of domestic remedies
  - ◆ Other (request for info, lack of legal standing to represent a victim, simultaneous examination under another procedure of international investigation or settlement, the object of communication falls outside the scope of the CRPD)

## Jurisprudence

- ◆ April 2012 – Committee will start examination of first communication
- ◆ Other treaty bodies

## Human Rights Committee

- ◆ Treatment and conditions of confinement of a disabled prisoner on death row. He was paralysed in both legs and experienced extreme difficulty in moving around in his cell and climbing onto his bed.
- ◆ Alleged violations of articles 7 and 10 of the Covenant - argued the absence of “reasonable accommodation” for his condition violated the ICCPR.
- ◆ The HRC agreed and stated that: ...the conditions described...are such as to violate the author's right to be treated with humanity and with respect for the inherent dignity of the human person, therefore contrary to article 10(1)
- ◆ 10. In accordance with article 2(3)(a), of the Covenant, the State party is under an obligation to provide Mr. Hamilton with an effective remedy, entailing compensation and placement in conditions that take full account of his disability. The State party is under an obligation to ensure that similar violations do not occur in the future.

◆ *Communication 616/1995, Hamilton v. Jamaica*

## Submission of complaints – practical hints

- ◆ Be complete in the submissions – eg. Exhaustion of domestic remedies rule does not apply and why.
- ◆ Court decisions with translations
- ◆ Affidavits/testimonies: facts - No originals
- ◆ Provide power of attorney (free form)
- ◆ Submit in the working languages
- ◆ Ask for interim measures?

## Advantages of UN complaints procedure

- ◆ No time limit for lodging complaints (only time bound rule is *rationae temporis*)
- ◆ Less complex e.g. no requirement of legal representation
- ◆ Faster interim measures
- ◆ Domestic remedies rule less strict
- ◆ Jurisprudence can be more advantageous on similar issues
- ◆ While not legally enforceable, constitute authoritative interpretations of the CRPD

## The Role of NGOs/Civil Society

- ◆ In the Committees' view, crucial role
- ◆ Assist individuals in bringing complaints
- ◆ Represent individuals before the Committees
- ◆ Can and should monitor compliance by SP with recommendations
- ◆ Disseminate jurisprudence

# European Court of Human Rights

- ◆ European Convention on Human Rights (vs) UN Convention on the Rights of Persons with Disabilities
- ◆ « Forum Shopping »
- ◆ « Another procedure of international investigation or settlement »