

FACTSHEET

Making Complaints to Human Rights Bodies

Prisoners Abroad, 89 – 93 Fonthill Road
London, N4 3JH, United Kingdom
Tel 020 7561 6820 Fax 020 7561 6821
info@prisonersabroad.org.uk www.prisonersabroad.org.uk
Charity Number 1093710



There are a number of human rights bodies that review and consider individual complaints. This factsheet highlights the main human rights bodies, and provides an overview of their remit. Whilst some bodies suggest that individuals can lodge complaints directly, it is recommended that anyone considering this should seek legal advice. This factsheet is not intended to replace independent legal advice, and only provides an overview of some of the key issues.

Contents

1	International Bodies	1
2	The United Nations System.....	2
2.1	The Human Rights Committee.....	3
2.2	Committee Against Torture	3
2.3	Committee on the Elimination of All Forms of Racial Discrimination.....	4
2.4	Committee on the Elimination of All Forms of Discrimination Against Women	4
3	The African System.....	5
3.1	African Commission on Human and Peoples' Rights.....	5
4	The European System.....	5
4.1	The European Court of Human Rights.....	5
5	The Inter-American System.....	6
5.1	Inter-American Commission on Human Rights	6
5.2	Inter-American Court of Human Rights	7
6	Special Rapporteurs.....	7
6.1	UN Special Rapporteur for Torture	7
6.2	OAS Special Rapporteur for Freedom of Expression	8
6.3	AU Special Rapporteur on Prisons and Conditions of Detention in Africa	8
7	National Human Rights Institutions	8
8	Useful Addresses	9
9	Bibliography	9

1 International Bodies

There are a number of international bodies that review and consider complaints from individuals who allege their human rights have been breached. Such bodies are normally attached to a human rights treaty. Broadly speaking, there are four main organisations that deal with such complaints at an international level: the United Nations; the African Union (AU); the Council of Europe (COE); and the Organisation of American States (OAS).

2 The United Nations System

There are four key UN human rights treaties that allow in certain circumstances for individual complaints: the International Covenant on Civil and Political Rights (ICCPR); the Convention Against Torture, and Other Cruel, Inhuman and Degrading Treatment (CAT); the International Convention on the Elimination of All Forms of Racial Discrimination (CERD); and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

Each of the above treaties possesses a 'treaty body' which considers and reviews complaints from individuals who allege their human rights have been breached. The treaty bodies are each made up of a 'Committee of Experts'. Individuals must approach the treaty body attached to the relevant treaty which covers the right they feel has been breached. Whilst each body has its own procedural rules, the following general principles need to be followed when filing a complaint with any of the above UN treaty bodies:

- *Ratification:* The State who the complaint is against must have ratified the treaty in question. So, if an individual alleges their right to a fair trial has been breached under the ICCPR, they will not be able to approach the Human Rights Committee (HRC: the treaty body to the ICCPR) unless the State in question has ratified the ICCPR.
- *Recognition:* The State in question must also recognise the treaty body's competence over individual complaints. The procedure for State recognition varies from treaty to treaty: for example, under the ICCPR the State party must ratify a further treaty (the First Optional Protocol) in order to recognise the HRC's competence. In contrast, States party to CAT recognise the competence of the Committee Against Torture (the treaty body to CAT) by making a declaration provided for in the treaty.
- *Information:* All complaints (often referred to as 'communications') need to contain certain information, such as basic personal details (name, date of birth, nationality etc); the name of the relevant country; the nature of the complaint; the relevant facts (in chronological order); the reasons why you think there has been a breach; the steps you have taken to exhaust national remedies; the details (if any) of other international investigation or settlement bodies that have considered the complaint; all relevant documentation, etc.

Once the above procedures have been followed, and the complaint has been sent, the applicant (often referred to as the 'author') will be contacted by the relevant treaty body, and informed as to whether they have provided enough information. If they have, the communication will be registered, and the accused State will then have the opportunity to respond to the allegations.

There are then three further stages that the communication will go through – the admissibility, merits, and decision stages.

- *Admissibility:* The treaty body then considers whether the communication is admissible. Communications will need to show a number of features to be deemed admissible; the author will need to show they have been personally affected by the State's action / inaction causing the alleged breach; the alleged breach must be covered under the relevant treaty and have taken place at a

time when the treaty body applied to the State (although there may be exceptions to this); the communication must be sufficiently substantiated; all domestic remedies need to have been exhausted (in practice or in effect); the complaint must not be subject to consideration from other international bodies; the communication must not be frivolous; the State must not have made a reservation excluding the treaty body's competence in the area the communication is based on; the communication must be signed and in writing.

- *Merits*: If the treaty body accepts the communication as admissible, they will go on to consider whether the merits of the case confirm the individual's human rights have been breached. They will prepare a 'decision' on the case, and send it to the author and the State.
- *Decision*: The treaty body's decision is final – there is no right to appeal. If the treaty body decides the author has been subject to a human rights breach by the State, they invite the State to confirm within three months what steps they have taken to remedy the situation. Decisions however are not legally binding.

2.1 The Human Rights Committee

The Human Rights Committee (HRC) is the treaty monitoring body to the International Covenant on Civil and Political Rights (ICCPR). As the name suggests the ICCPR protects a number of civil and political rights, including the right to life (Article 6), the right to a fair trial (Article 14), the right of those deprived of their liberty to be treated with humanity and respect for their inherent dignity (Article 10), and the right not to be subjected to torture or inhuman and degrading treatment (Article 7).

As outlined above, there are a number of procedures that need to be followed in order to bring a communication to the HRC. In terms of ratification, the relevant State must have ratified the ICCPR in order for an individual to approach the HRC. In terms of recognition, the State must also have ratified or acceded to the First Optional Protocol to the ICCPR, an additional treaty that provides the HRC with competence to consider individual complaints.

Should the communication fulfil the necessary preliminary requirements, the HRC will then go on to consider both the admissibility and the merits. The State party subject to proceedings is given six months to respond to the allegations, after which the author has a further two months to respond to the State's points (if any are forthcoming). After considering all the evidence, the HRC then comes to a decision, and provides a copy to the State and the author accordingly. The whole process is time consuming, and can often take several years from start to finish.

2.2 Committee Against Torture

The Committee Against Torture is the treaty body to the Convention Against Torture. Again, as its title suggests, the Convention prohibits torture, as well as cruel, inhuman and degrading treatment and punishment.

Article 22 of the Convention provides for individual complaints to be made to the Committee. However, in order for this right to be triggered, States who have ratified the Convention must make a declaration acknowledging the competence of the Committee. Once a complaint is registered, the State has six months to consider both the merits and the admissibility of the complaint. If the State responds solely on the issue of admissibility within two months, the author is given a further four weeks

to comment. A decision on the admissibility is then reached by the Committee. If the complaint is deemed admissible, the State has a further four months to respond to the merits of the case, after which the author has a further six weeks to rebut the State's arguments. Failing this, the State can raise both admissibility and merit within the overall six month period, after which the author has a further six weeks to comment. The Committee will then go on to consider both the merits and the admissibility of the complaint.

2.3 Committee on the Elimination of All Forms of Racial Discrimination

The Committee on the Elimination of all Forms of Racial Discrimination (CERD) is the treaty body to the International Convention on the Elimination of All Forms of Racial Discrimination. Amongst other things, the Convention condemns racial discrimination, and requires States party to the treaty to develop a policy on eliminating racial discrimination, and promote understanding among all races (Article 2(1)). States are also required not to undertake any act or practice of racial discrimination.

Individuals and groups of individuals can petition the Committee, providing the State has made a declaration confirming they recognise the Committee's authority to consider such petitions (as provided for under Article 14). Any complaints however must be lodged within six months of a final decision at national level. Once the complaint has been registered, the State has three months to respond to the issue of admissibility. The author then has a further six weeks to provide counter arguments, after which the Committee decides whether the complaint is admissible; if they answer positively the State has another three months to respond to the merits of the case. However, if the State makes no representations on admissibility, once they have commented on the merits, the author has a further six weeks to rebut the comments, prior to the Committee making a final decision.

The Committee receives far less complaints than both the Human Rights Committee, and the Committee Against Torture; complaints therefore can often be resolved within one year.

2.4 Committee on the Elimination of All Forms of Discrimination Against Women

Like other international human rights treaties, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) has its own treaty monitoring body, the Committee. The Convention contains a number of provisions and measures that States who are party to the Convention must adhere to in order to bring about an end to discrimination against women. Such measures include establishing under domestic legislation the principle of equality between men and women (Article 2(a)), and legislation to suppress all forms of traffic in women and exploitation of prostitution of women (Article 6).

Individuals who feel their rights under CEDAW have been breached by a State party to the Convention can approach the Committee (on the Elimination of Discrimination Against Women), providing the State has acceded to the Optional Protocol to the Convention (an additional treaty), and all domestic remedies have been exhausted. Unlike some of the other treaty bodies, there is no deadline for the submission of complaints. Much of the procedure reflects that seen in the other U.N treaty monitoring bodies; upon receipt of the communication, the Committee passes the complaint on to the State for consideration, who is then invited to respond (dealing with the admissibility and substance of the complaint) within six months. The

Committee provides the author and the State with each other's submissions, and, providing the complaint is admissible, considers the merits. The Committee's views are then transmitted by the UN Secretary General to the author and State, along with any recommendations.

3 The African System

3.1 African Commission on Human and Peoples' Rights

The African Commission on Human and Peoples' Rights considers complaints from individuals, States, or organisations (on behalf of individuals) who allege that a State party to the African (Banjul) Charter on Human and Peoples' Rights, or the Organisation of African Unity (now the African Union) Charter, is in breach of their obligations under the Charters. Amongst other rights, the Banjul Charter protects the right to liberty and security (Article 6); freedom of conscience and religion (Article 8), and freedom from torture and inhuman / degrading treatment (Article 5).

The first step is to send a communication to the Commission. The communication must contain details and facts of the complaint; aspects of the Charters that may have been violated; and the personal details of the individual (name, contact address etc). The individual must also send the communication within a reasonable time, and show that all domestic remedies have been exhausted – as the Commission explains, the case must have gone “*to the highest court of the land*”. There is an exception to this, namely if such remedies have been unduly prolonged (i.e. if the local remedy has taken too long to be effective). The Commission then takes a preliminary decision as to whether, on the information they have, it is valid. If they decide it is, both the individual and State are informed, and have three months to respond. A decision on the admissibility of the communication is then made at the Committee's next session. Should the application be deemed admissible, both parties will be informed, and then asked to comment on the merits of the claim. The Commission then considers the substantive issues during a session; representatives for the individual and the State may make oral and written representations at the relevant session. The Commission subsequently drafts a decision (called a ‘recommendation’), outlining their interpretation of the case, and whether or not there has been a breach. If there has been a breach, the Commission normally outlines action required by the State to remedy the violation (recommendations are not legally binding).

Along with the Commission, there is also an African Court on Human and Peoples' Rights (the African Court); however, at the time of writing, the Court was not in operation.

4 The European System

4.1 The European Court of Human Rights

The European Convention on Human Rights (ECHR) is an international treaty, established by the Council of Europe. The Council of Europe is made up of 47 member states, and is completely separate from the European Union. The European Convention protects and promotes a number of human rights, perhaps most notably the right to life (Article 2), the right not to be tortured or subjected to inhuman and degrading treatment / punishment (Article 3), the right to private and family life

(Article 8), and the right to freedom of thought, conscience and religion (Article 9). Individuals who feel their human rights under the European Convention have been breached, and are within the jurisdiction of a State party to the Convention, can take their complaints to the European Court of Human Rights.

As with the above-mentioned Committees, there are a number of procedures that individuals need to follow when making an application to the European Court. Initially, a letter – outlining the author's personal details (name, address, nationality etc), the facts of the complaint, the name of the country the complaint is against, and the ECHR Articles they feel have been breached – needs to be sent to the Court's Registrar. This needs to be done within six months of any final national court decision (the author must exhaust domestic remedies first). The Court will then send an application form to be completed within a specified deadline, or a few weeks. Once this has been returned, the Court acknowledges safe receipt, and goes on to consider the merits of the case. Should the application not meet the requirements at this stage, it will be deemed inadmissible; if not, the basis of the application will be passed on to the State for comments, after which the author will have an opportunity to respond. The Court generally does not hold oral hearings, but instead determines cases via written arguments. Again, should it transpire that the application does not meet the requirements at this stage, including there being no case to answer (i.e. the application being 'manifestly un-founded') it will be deemed inadmissible. If the Court then goes on to consider the merits of the case, the applicant will have two months to submit a request for compensation (or 'just satisfaction'). The Court will then publish its findings on admissibility and, where applicable, the merits of the case. Judgements handed down by the Court are legally binding on the State(s) concerned, and its enforcement is dealt with by the Committee of Ministers of the Council of Europe.

5 The Inter-American System

The Inter-American human rights system is made up of the Inter-American Commission on Human Rights, and the Inter-American Court on Human Rights. Both of these organisations report directly to the Organisation of American States (OAS). The two instruments that apply under the system are the American Convention on Human Rights (ACHR), and the American Declaration on the Rights and Duties of Man (ADHR). Amongst other things, the ACHR and the ADHR protect the right to life, the right to humane treatment, personal liberty, and a fair trial.

5.1 *Inter-American Commission on Human Rights*

Amongst other things, the Commission reviews complaints from individuals against Member States of the OAS. The complaints are considered under the American Convention on Human Rights (if the State concerned is a party to the Convention), or the American Declaration of Human Rights, and must raise at least one of the rights therein. Before an application can be made, domestic remedies need to be exhausted (or evidence that such remedies are unavailable, inadequate, or have taken too long to conclude).

Applications need to be submitted within six months of the conclusion of domestic remedies, or a reasonable time after the alleged breach if domestic remedies are unavailable. The application will then either be considered on admissibility alone (and if admissible, later on the merits of the case), or at the same time as merit. During the decision making process, the Commission will invite both parties to respond to the

other's comments. It may also carry out its own investigations and hold an oral hearing (during which both parties will be invited to address the Commission). The Commission then drafts a report, which includes recommendations to the State, should a breach of the Convention or Declaration be found. The State will then have a certain amount of time to correct the breach – failure to do so will result in the contents of the report being made public. Should the State fail to remedy the breach within a certain time, the Commission may either draft a further report (highlighting recommendations), or refer the case to the Inter-American Court on Human Rights for consideration.

5.2 *Inter-American Court of Human Rights*

The Inter-American Court of Human Rights considers cases that are brought either by States party to the American Convention on Human Rights or the Inter-American Commission on Human Rights itself. Individuals therefore cannot directly apply to the Court. In order for the Court to consider a case, the State concerned must agree, or have already agreed to the jurisdiction of the Court (in other words, the State must have accepted the Court has authority to consider and determine issues relating to the American Convention on Human Rights). Once the application has been lodged, the Court sends copies to the interested parties (i.e. the Inter-American Commission, the State, and the original claimant). All parties to the proceedings then have 30 days to file any preliminary objections to the application. The State concerned also has three months in which to respond to the substance of the application, in writing. There is then an opportunity to file further supporting documents, after which a date for oral proceedings will be set aside. During oral proceedings, the victim, witnesses, experts and other relevant individuals may be called to give evidence, should the Court feel this is appropriate. After hearing the case, the Court will draft a judgment, and set another date aside whereby it will declare its findings to the parties.

Should the Court find in favour of the applicant, it will instruct the State to provide the individual with an appropriate remedy (which may include compensation.)

6 Special Rapporteurs

'Special rapporteur' is the title given to individuals selected to research, document, and monitor either a specific situation in a certain country, or a specific human rights theme. A number of regional and international organisations appoint special rapporteurs, including the United Nations (through the UN Human Rights Council), the African Commission on Human and Peoples' Rights, and the Organisation of American States (through the Inter-American Commission on Human Rights). Special rapporteurs within these systems cover a number of themes and issues, including torture, freedom of religion and belief, extra judicial execution, and human rights defenders. Some special rapporteurs investigate and consider individual complaints, such as the UN special rapporteur on torture. The following are examples of special rapporteurs.

6.1 *UN Special Rapporteur for Torture*

The UN special rapporteur on torture, and other cruel, inhuman or degrading treatment or punishment was established in 1985, and covers all countries, irrespective of whether they have signed or ratified any international human rights treaties. The rapporteur retains three main functions: submitting 'urgent appeals' and communications to States where individuals may be at risk of torture (or have

previously been tortured); conducting fact-finding missions in countries of interest; and drafting annual reports. Domestic remedies do not need to be exhausted for the special rapporteur to become involved.

6.2 OAS Special Rapporteur for Freedom of Expression

The Inter-American Commission on Human Rights established a permanent Office of the special rapporteur on freedom of expression in 1997. The Office has a number of functions, including assisting the Commission in considering individual cases that concern freedom of expression; making recommendations to the Commission; and advising and recommending actions that promote the right to freedom of expression in member States. The Office also drafts thematic and annual reports. As the Office works in collaboration with the Commission, individual complaints need to be made via the Commission.

6.3 AU Special Rapporteur on Prisons and Conditions of Detention in Africa

The special rapporteur on prisons was established by the African Commission on Human and Peoples' Rights in 1996, and has a mandate to monitor the conditions of detainees within the States party to the African Charter on Human and Peoples' Rights. This is done in a number of ways, such as examining detention conditions and making recommendations; reviewing and considering national laws relating to detention; assisting the African Commission with individual complaints that raise prison and detention conditions; drafting annual reports. Any individual complaints need to be made through the African Commission.

7 National Human Rights Institutions

A number of States have established national human rights institutions. Such institutions often come in one of two forms, namely an Ombudsman or a Commission. Both national Commissions and Ombudsman are normally established with a view to promoting and protecting the human rights of individuals within that State. An Ombudsman is an individual (often with assistants or a team), and a commission is normally made up from a number of individuals.

The functions and authority of a given Ombudsman or Commission will vary from country to country. Some Commissions and Ombudsman have the authority to consider complaints by individuals of human rights abuse. A number of such institutions can only consider certain human rights issues; the Canadian Human Rights Commission has the power to investigate and consider individual complaints relating to discrimination in employment and the provision of services. Other bodies however, like the National Human Rights Commission of India, can consider individual complaints encompassing a whole range of human rights violations. Indeed, the Commission in India can consider individual complaints concerned with human rights protected under the Indian Constitution, as well as the rights protected under the International Covenant on Civil and Political Rights (ICCPR), and the International Covenant on Economic, Social and Cultural Rights (ICESCR).

8 Useful Addresses

African Commission on Human and Peoples' Rights

48 Kairaba Avenue,
P.O. Box 673 Banjul
The Gambia
Tel: (220) 4392, 4372070, or (220) 4392 4377721
Email: achpr@achpr.org

European Court of Human Rights

Council of Europe
67075 Strasbourg-Cedex
France
Tel: +33 (0) 3 88 41 20 18
Fax: +33 (0) 3 88 41 27 30

Inter-American Commission on Human Rights

1889 F Street, N.W.
Washington, D.C., 20006
U.S.A.

Office of the Special Rapporteur for Freedom of Expression

Inter-American Commission on Human Rights
1889 F Street, N.W. Washington, D.C., 20006 U.S.A.
Tel: 202-458-3796
Fax: 202-458-6215
Email: cidh-expresion@oas.org

UN Special Rapporteur on Torture

c/o Office of the High Commissioner for Human Rights
United Nations Office at Geneva
CH-1211 Geneva 10, Switzerland
E-mail: urgent-action@ohchr.org

UN High Commissioner on Human Rights

Office of the High Commissioner for Human Rights
Palais des Nations
CH-1211 Geneva 10, Switzerland
Telephone: +41 22 917 90 00
Email: InfoDesk@ohchr.org

9 Bibliography

The above information has been collated from a number of sources, including the following websites:

African Commission on Human and Peoples' Rights:
http://www.achpr.org/english/info/news_en.html

African Court on Human and Peoples' Rights:
http://www.aict-ctia.org/courts_conti/achpr/achpr_home.html

Inter-American Court and Commission on Human Rights:

<http://www.oas.org/oaspage/humanrights.htm>

European Court of Human Rights:

<http://www.echr.coe.int/ECHR>

National Human Rights Institutions Forum:

<http://www.nhri.net>

Northern Ireland Human Rights Commission:

<http://www.nihrc.org>

United Nations Office of the High Commissioner for Human Rights

<http://www.ohchr.org/EN/Pages/WelcomePage.aspx>

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Tel: 020 7561 6820

+44 20 7561 6820 from outside the UK

Email: info@PrisonersAbroad.org.uk

Mail: Prisoners Abroad, 89-93 Fonthill Road, London
N4 3JH, United Kingdom