

A guide for taking individual complaints to UN Human Rights Treaty Bodies

Introduction

FLAC aims to achieve equal access to justice for all. As part of this, we encourage the use of various legal instruments and mechanisms developed by regional and international human rights bodies for increasing access to justice.

This document is intended to be a practical guide for individuals taking complaints to UN Treaty Bodies and civil society actors taking cases on their behalf.

When Ireland ratifies an international human rights treaty, it assumes certain obligations under international law. These include obligations to respect, protect and fulfil the rights contained in the relevant treaty. Committees of independent experts, known as UN Treaty Bodies, are charged with monitoring state compliance with these treaties.

Where it appears that a state is not complying with its obligations, individuals can, in certain circumstances, submit a complaint (or “petition”) concerning an alleged violation to a Treaty Body. In order to enable individuals to make complaints, the state must have agreed to allow the relevant Treaty Body to receive complaints. This is done either through ratification of an Optional Protocol to a particular treaty or by making a declaration under a specific article of the treaty recognising the competence of the Committee to receive such complaints.

At present, eight Treaty Bodies are empowered to receive and consider individual complaints. More information on each of these Treaty Bodies is provided below.

Treaty Bodies



Human Rights Committee

The Human Rights Committee monitors the implementation of the International Covenant on Civil and Political Rights (ICCPR) and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. The ICCPR protects civil and political rights such as the right to life, the right to liberty, the right to freedom of religion or belief, the right to freedom of expression and the right to freedom of peaceful assembly. The Committee comprises 18 independent experts. Ireland ratified the ICCPR in 1989 and the Second Optional Protocol in 1993.

To bring individual complaints to the Human Rights Committee, States Parties must ratify or accede to the First Optional Protocol to the International Covenant on Civil and Political Rights. Ireland acceded to the Optional Protocol in 1989.



Committee on Economic, Social and Cultural Rights

The Committee on Economic, Social and Cultural Rights consists of 18 independent experts who monitor the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR). This treaty protects basic human rights such as health, education, social security, culture, work and housing. Ireland ratified the Convention in 1989.

To enable individuals to bring complaints to the Committee, States Parties must ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. Ireland signed the Optional Protocol in 2012 but has yet to ratify it. Thus, individuals in Ireland cannot yet bring individual complaints alleging violations of the ICESCR.



Committee on the Rights of the Child

The Committee on the Rights of the Child is charged with monitoring States Parties' compliance with the Convention on the Rights of Child (CRC), the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OP-CRC-SC) and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OP-CRC-AC). The Committee comprises 18 independent experts.

Ireland ratified the Convention on the Rights of Child in 1992 and the OP-CRC-AC in 2002. Ireland signed the OP-CRC-SC in 2000, but has yet to ratify it. Ireland is the only European Union Member State yet to ratify this instrument. The CRC states that in all actions concerning children, the best interests of the child shall be a primary consideration. States Parties must also protect children from violence, and recognise the right of the child to education, freedom of expression and to freedom of thought, conscience and religion.

The Committee may consider individual complaints once a State Party has ratified the Third Optional Protocol to the Convention on the Rights of the Child on a communications procedure. Ireland ratified the Third Optional Protocol in 2014.



Committee against Torture

The Committee against Torture monitors implementation of the Convention against Torture (CAT). Ireland ratified the Convention in 2002. It requires States Parties to take certain measures to prevent torture. It also protects the right to bodily integrity and the right to *non-refoulement*. The Committee comprises 10 independent experts.

In order to bring complaints to the Committee, States Parties must make a declaration under Article 22 of the Convention recognising the competence of the Committee to receive individual complaints. Ireland accepted the competence of the Committee to receive individual complaints in 2002.



Committee on the Elimination of Racial Discrimination

The Committee on the Elimination of Racial Discrimination, which comprises of 18 experts, oversees States Parties' compliance with the International Convention on the Elimination of Racial Discrimination (CERD). This Convention calls on States Parties to prohibit racial discrimination, to take measures to combat prejudices which lead to racial discrimination and to guarantee the right of everyone to equality before the law. Ireland ratified the Convention in 2000.

To make individual complaints to the Committee, States Parties must make a declaration under Article 14 of the Convention recognising the competence of the Committee to receive individual complaints. Ireland accepted the competence of the Committee to receive individual complaints in 2000.



Committee on the Elimination of all forms of Discrimination against Women

The Committee on the Elimination of all forms of Discrimination Against Women monitors States Parties' compliance with the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) and consists of 23 individual experts. Ireland ratified the Convention in 1985. The Convention obliges States Parties to combat discrimination against women in a number of areas such as education, employment, health care and in matters related to marriage.

The Committee may consider individual complaints once a State Party has ratified the Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women. Ireland ratified the Optional Protocol in 2000.



Committee on the Rights of Persons with Disabilities

The Committee on the Rights of Persons with Disabilities monitors the implementation of the Convention on the Rights of Persons with Disabilities (CRPD) and comprises of 18 independent experts. The treaty obliges States Parties to recognise the equal right of all persons with disabilities to live in the community and to protect people with disabilities from all forms of exploitation, abuse and violence. States Parties must also maintain, strengthen, designate or establish a framework within the country, including one or more independent mechanisms to promote, protect and monitor the implementation of the Convention.

Ireland signed the Convention in 2007 but has yet to ratify it. The Government published a "Roadmap to Ratification of the United Nations Convention on the Rights of Persons with Disabilities" in October 2015. The Roadmap sets out the legislative measures needed to meet requirements under the Convention, along with declarations and reservations to be entered by Ireland on ratification.

In order to bring complaints to the Committee, States Parties must ratify the Optional Protocol to the Convention on the Rights of Persons with Disabilities. Ireland has yet to ratify the Optional Protocol, though the "Roadmap to Ratification of the United Nations Convention on the Rights of Persons with Disabilities" commits it to doing so at the same time as it ratifies the Convention.



Committee on Enforced Disappearances

The Committee on Enforced Disappearances monitors implementation of the International Convention for the Protection of All Persons from Enforced Disappearance (CED) and consists of 10 independent experts. The Convention requires States Parties to refrain from enforced disappearances, to investigate any alleged cases of enforced disappearance and to ensure that enforced disappearances constitute an offence under the criminal code. Ireland signed the CED in 2007 but has yet to ratify it.

To enable individuals to bring complaints to the Committee, States Parties must make the necessary declaration under Article 31 of the Convention to recognise the competence of the Committee to receive such complaints. Ireland has not yet made this declaration.



Committee on the Protection of the Rights of All Migrant Workers and Members of their Families

The Committee on the Protection of the Rights of Migrant Workers is responsible for monitoring States Parties compliance with the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (CRMW) and consists of 14 independent experts. The Convention grants rights to documented and undocumented migrants including in the areas of employment and healthcare.

Ireland has neither signed nor ratified the CRMW and has no plans to do so. Successive governments have taken the position that ratification would require significant changes to a wide range of existing legislation and would have implications for Ireland's European Union commitments.

In order to bring complaints to the Committee, States Parties must make a declaration under Article 77 of the Convention recognising the competence of the Committee to receive individual complaints. Ireland has not yet made the necessary declaration.

The complaints mechanism under this Convention has not yet entered force. The mechanism will become operative once 6 more States Parties make the necessary declaration. Only 4 states have done so to date.

Rules governing complaints mechanisms

There are a number of basic rules and admissibility criteria governing complaints to UN Treaty Bodies which must be satisfied in order for a complaint to be considered on its merits. These include that:

- * The respondent state must have ratified the relevant human rights treaty;
- * The state in question must have accepted the individual complaints procedure either through making a declaration under the relevant treaty or by ratifying the relevant optional protocol;
- * The complainant's case must fall within the scope of application of the treaty in question;
- * The complainant must have exhausted all available and effective remedies before submitting a complaint to a treaty body (this requirement does not apply if domestic remedies are ineffective or unduly prolonged);

- * The complaint must relate to one or more specific individuals. Individual complaint mechanisms are not generally designed for considering allegations of gross or systemic human rights violations;
- * The complaint must not be under consideration by another adjudicative international or regional body e.g. the European Court of Human Rights. However, the submission of an individual complaint to a UN Special Procedures mandate holder does not preclude a UN Treaty Body from examining it too;
- * Complaints should be submitted as soon as possible after the alleged violation has occurred and / or domestic remedies have been exhausted. Some Treaty Bodies have set time limits for filing complaints. For example, complaints to the UN Committee on the Elimination of Racial Discrimination must be submitted within six months of the final decision by a national authority in the case.

Form of the individual complaint

Most of the Treaty Bodies provide model complaint forms or guidelines for the submission of complaints. While the design and operation of the complaints mechanisms are similar, requirements vary for each. More information is available at: <http://bit.ly/HRTBcm>.

While submissions styled on model complaint forms and guidelines are preferred, UN Treaty Bodies do consider complaints, irrespective of the format they are submitted in, once they contain all of the necessary information. Required information includes:

- * The alleged victim's name; nationality; date of birth; mailing address; email;
- * The State Party against which the complaint is directed;
- * The facts of the case in chronological order;
- * An explanation as to why the facts described constitute a violation of the relevant treaty;
- * The particular rights which are alleged to have been violated (Note: in considering how a particular UN Treaty Body interprets a certain right, you should consult their General Comments, Concluding Observations etc which are accessible on the websites of each of the Treaty Bodies);
- * The kind of remedies which the complainant is seeking from the state;
- * The steps which have been taken to exhaust domestic remedies;
- * Whether the case has been sent to another means of international investigation;
- * Copies of relevant documentation.

Complaints to UN Treaty Bodies should not exceed 50 pages (excluding annexes). Where submissions exceed 20 pages, complainants should include a short summary of no more than five pages highlighting the main elements of their complaint. It is not necessary to have a lawyer prepare the complaint, though legal advice may improve the quality of the submissions.

Petitions / communications can be sent by either email or post as below:

| | |
|---|--|
| <p><u>Email:</u> petitions@ohchr.org</p> | <p><u>Postal address:</u> Petitions and Inquiries Section Office of the High Commissioner for Human Rights United Nations Office at Geneva 1211 Geneva 10, Switzerland</p> |
|---|--|

Complaints procedure

If a complaint contains the necessary information, the case is formally listed for consideration with the relevant UN Treaty Body. It is relevant to note that when a complaint is submitted to a human rights treaty body, the identity of the individual will be disclosed to the relevant state.

Once formally listed, the petition will be transmitted to the relevant State Party for its comments. Typically, the State Party will be given six months to respond. However, the state may also wish to contest the admissibility of the complaint and is typically afforded a shorter length of time to do so. Upon receipt of a reply, the complainant is given the opportunity to comment on the state's response.

There are two stages to the decision-making process – the “admissibility stage” and “merits stage”. UN Treaty Bodies tend to consider both the admissibility and the merits of a case jointly. The case will be heard in a closed meeting and a decision will usually be based only on the written information provided by the complainant and the state.

At the admissibility stage, the Treaty Body will consider whether the complaint is admissible having regard to the requirements of the complaints procedure. If the complaint is deemed admissible, it will then be considered on the merits. At the merits stage, the substance of the complaint is examined. On the basis of the information it has received, the Committee decides whether or not the alleged victim's rights under a treaty have been violated.

Decisions issued by UN Treaty Bodies cannot be appealed and are not legally binding. Once a decision has been made, it will be communicated to both the state and the complainant. If a violation is found, the Treaty Body will identify the remedy needed. The case remains open until satisfactory measures have been taken.

If urgent action is required, UN Treaty Bodies can call on a state to take interim measures. Such requests will be issued in order to prevent any irreparable harm to the author or alleged victim in the particular case.

Decisions adopted by Treaty Bodies are made publicly available. Individuals can request the Treaty Body not to publicly disclose their name. However, discretion is left with the Treaty Body.

How can civil society contribute?

Bringing a complaint / assisting an individual to bring a complaint

Civil society organisations are entitled to bring a complaint on behalf of an individual, once that person has provided written consent. Evidence of such consent must be provided to the relevant UN Treaty Body. Civil society actors also often assist individuals in preparing, submitting or lodging a complaint with a UN Treaty Body.

Ireland and the Individual Complaints Mechanisms

To date, five complaints to UN Treaty Bodies have been made against Ireland. All of these have been to the Human Rights Committee alleging violations of the International Covenant on Civil and Political Rights. Of these, two were found to be admissible and considered on the merits.

The other three complaints, including *Ó Cólchúin v Ireland*, which concerned voting restrictions imposed on Irish citizens living abroad, were deemed inadmissible.

Case Study – *Kavanagh v Ireland*

In *Kavanagh v Ireland*, the complainant was charged with seven offences relating to the kidnapping of a banking official and his family, and a subsequent bank robbery. One of these offences was a “scheduled” one for which the Special Criminal Court, a jury-less court which tries terrorism and organised crime cases, had jurisdiction to hear.

However, the Special Criminal Court also has jurisdiction over “non-scheduled” offences where the Director of Public Prosecutions (DPP) certifies that the ordinary courts are “inadequate to secure the effective administration of justice”. As a result, Mr. Kavanagh appeared before the Special Criminal Court charged with all seven offences. The complainant sought judicial review of the decision of the DPP to charge him before the Special Criminal Court but his application was dismissed by both the High Court and the Supreme Court. Thereafter, he filed a petition with the Human Rights Committee.

The complainant argued that he had been denied the right to a trial by jury and the right to examine a witness at a preliminary stage in breach of his right to a fair trial under Article 14 of the International Covenant on Civil and Political Rights (ICCPR). He also argued that the decision to charge him before the Special Criminal Court resulted in him facing an extraordinary trial procedure before an extraordinary court, in breach of Article 26, which enshrines the right to equality before the law.

In its decision, the Human Rights Committee found no violation of Article 14, holding that trial by jury and preliminary examination of witnesses are not standards in themselves guaranteed by the ICCPR, and the absence of either will not necessarily render a trial unfair.

The Committee did, however, find a violation of Article 26. It observed that the Director of Public Prosecutions had “unfettered discretion” in allowing offences other than those specified as coming within the Special Criminal Court’s jurisdiction. Furthermore, the DPP was not required to provide reasons for the decision that the ordinary courts are considered inadequate to ensure the effective administration of justice. The Committee concluded that Ireland had failed to demonstrate that the decision to try the complainant before the Special Criminal Court was based upon reasonable and objective grounds.

Case Study – O’Neill & Quinn v Ireland

The case of *O’Neill & Quinn v Ireland* concerned the early release of prisoners under the Good Friday Agreement. As part of this landmark agreement, the UK and Irish governments decided that certain people convicted of politically motivated offences connected with the conflict in Northern Ireland would be given early release from prison, including those who committed offences by or on behalf of paramilitary organisations.

Both Mr O’Neill and Mr Quinn had been convicted for their involvement in an armed robbery in which a member of An Garda Síochána was killed in 1996. In light of the timing of the incident, its brutality, and the need to secure public support for the Good Friday Agreement, the Minister for Justice took the view that the complainants were not eligible for early release under the scheme. Both the High Court and Supreme Court dismissed their applications for judicial review. Thereafter, the complainants petitioned the Human Rights Committee.

The complainants asserted that they were being arbitrarily detained in violation of Article 9 of the International Covenant on Civil and Political Rights. They also argued that the refusal to categorise them as “qualifying prisoners” under the early release scheme was an arbitrary and discriminatory decision on the part of the Minister for Justice in contravention of Article 26 of the ICCPR and the right to equality before the law.

In July 2006, the Human Rights Committee published its decision. The Committee found no violation of the Covenant, holding that the Minister’s decision to exclude the complainants from the early release scheme was not discriminatory and their continuing detention was not arbitrary. Ultimately, the Committee held that it was not in a position to substitute the State party’s assessment of facts with its own views.

Resources

- *Working with the United Nations Human Rights Programme: A Handbook for Civil Society*, Office of the UN High Commissioner for Human Rights, Geneva and New York, 2008.
- Website of the Office of the UN High Commissioner for Human Rights www.ohchr.org

Issued by FLAC in April 2016. This document is for information purposes only, it is not to be construed as legal advice. FLAC accept no responsibility for actions taken on foot of this document or for the content of external websites or information sources referred to within it.