



Human Rights
Institute

MODULE 3

TOOLKIT FOR LAWYERS AT RISK

The response chain to violations
against lawyers

In partnership with



Partners: Bar Human Rights Committee of England and Wales, Human Rights House Foundation, Lawyers for Lawyers and Lawyers' Rights Watch Canada

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About the International Bar Association's Human Rights Institute (IBAHRI)

The International Bar Association, established in 1947, is the world's leading organisation of international legal practitioners, bar associations and law societies. It has a membership of over 80,000 individual lawyers, and 190 bar associations and law societies, spanning over 160 countries. The IBAHRI, an autonomous and financially independent entity, works with the global legal community to promote and protect human rights and the independence of the legal profession worldwide.

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About the Bar Human Rights Committee of England and Wales

The Bar Human Rights Committee (BHRC) is the international human rights arm of the Bar of England and Wales. It is an independent body, distinct from the Bar Council of England and Wales, dedicated to promoting principles of justice and respect for fundamental human rights through the rule of law. It has a membership comprised of barristers practising at the Bar of England and Wales, legal academics and law students. BHRC's Executive Committee members and general members offer their services pro bono, alongside their independent legal practices, teaching commitments and/or legal studies. BHRC also employs a full-time project coordinator.

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About Human Rights House Foundation

Human Rights House Foundation (HRHF) protects, empowers and supports human rights defenders and their organisations, and unites them in an international network of Human Rights Houses.

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About Lawyers for Lawyers

Lawyers for Lawyers (L4L) is an independent, non-political and not-for-profit lawyers' organisation established in 1986. L4L's mission is to promote the independent functioning of lawyers and the legal profession across the world in accordance with internationally recognised norms and standards, including the Basic Principles on the Role of Lawyers. Our work to support lawyers who are at risk as a result of discharging their professional duties, seeks to protect them from threats, risks and reprisals, strengthens their international recognition and protection in laws, policies and practices, and empowers them to fulfil their role as essential agents of the administration of justice. L4L was granted special consultative status with the UN Economic and Social Council in July 2013.

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About Lawyers' Rights Watch Canada

Lawyers' Rights Watch Canada (LRWC) is a committee of lawyers and other human rights defenders working to promote international human rights law, advocacy rights, the integrity of legal systems and the rule of law through advocacy, legal research and education. LRWC is a volunteer-run non-government organisation in Special Consultative Status with the Economic and Social Council of the United Nations.

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LIST OF ACRONYMS

AfCHPR	African Charter on Human and Peoples' Rights
AfCmHPR	African Commission on Human and Peoples' Rights
ACHR	American Convention on Human Rights
ACtHPR	African Court on Human and Peoples' Rights
ASEAN	Association of Southeast Asian Nations
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CATCommittee	Committee against Torture
CCPR	Covenant on civil and political rights
CED	Committee on Enforced Disappearances
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEDAW Committee	Committee on the Elimination of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CMW	Committee on the Protection of the Rights of All Migrant Workers and Members of their Families
CoE	Council of Europe
CRC	Convention on the Rights of the Child
CRC Committee	Committee on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CRPD Committee	Committee on the Rights of Persons with Disabilities
DDPA	Durban Declaration and Programme of Action
ECHR	European Convention on Human Rights
ECOSOC	Economic and Social Council
ECtHR	European Court of Human Rights
HRC	Human Rights Council
HRCttee	Human Rights Committee
IACmHR	Inter-American Commission on Human Rights
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
LOI	List of Issues
LOIPR	List of issues prior to reporting
NGO	non-governmental organisation
NHRI	national human rights institution
OAS	Organization of American States
ODS	Official Document System
OHCHR	Office of the United Nations High Commissioner for Human Rights
OPCAT	Optional Protocol to the Convention against Torture
SP	Special Procedure
SPT	Subcommittee on Prevention of Torture
SRIJL	Special Rapporteur on the independence of judges and lawyers
TB	treaty body
UN	United Nations
UNGA	United Nations General Assembly
UPR	Universal Periodic Review
VDPA	Vienna Declaration and Programme of Action

INTRODUCTION

BACKGROUND

With lawyers at the forefront of protecting human rights, they are also more susceptible to being coerced in their work. Lawyers are thus subject to harmful legal reforms and financial measures, arbitrary disbarment or criminal proceedings, judicial harassment, verbal threats or harassment, shaming media campaigns, assault or physical violence, arbitrary detention, torture or other forms of ill-treatment, enforced disappearance, murder or extrajudicial killing, restriction on travel, movement or participation in events, and pressure and/or attacks on family members.

What response can national and international human rights mechanisms provide?

This Toolkit was developed with the objective of fostering lawyers' capacity to resort to international norms and recommendations, and engage with UN and regional human rights mechanisms so that lawyers can be the first actors in their own protection.

OVERVIEW OF THE TOOLKIT

GENERAL OBJECTIVE

To strengthen the protection of lawyers and those exercising lawyers' functions who face risks as a result of carrying out their professional functions.

SPECIFIC OBJECTIVES

- to provide guidance on the international human rights framework that protects those exercising lawyers' functions;
- to provide guidance about prevention, including risk assessment and risk management, in the discharge of legal practice;
- to provide guidance on how to access response and protection mechanisms at the regional and UN levels based on the experience of the main international lawyers' organisations; and
- to support joint actions among organisations that support lawyers.

SCOPE

The Toolkit applies to those who perform the functions of a lawyer, in a professional manner, notwithstanding their title or registration to a specific association. As per the Basic Principles on the Role of Lawyers, the functions of a lawyer mostly consist in:¹

- advising clients as to their legal rights and obligations;
- taking legal action to protect their interests; and
- assisting clients before courts, tribunals or administrative authorities.

TOOLKIT COMPONENTS

The Toolkit is composed of:

- (1) training modules addressed to lawyers and organisations supporting lawyers' work; and
- (2) practical tools aimed at assisting lawyers at risk.

1 Basic Principles on the Role of Lawyers, Principle 13.

OVERVIEW OF MODULE 3

LEARNING OBJECTIVE

To enhance lawyers' capacity to engage with UN and regional human rights mechanisms to ensure their professional independence, and personal and professional safety.



CONTENT

Module 3 provides information for lawyers and those exercising lawyer's functions on how to engage with each of the relevant human rights mechanisms, looking at the following:

Lawyers' Protection and the International Human Rights System: Key Background Information

Chapter I provides a summary of the key background information developed in Module 1 on 'International legal protection of lawyers and those exercising lawyers' functions'.

Chapter I: Rapid Response Mechanisms

Chapter I sets out the mechanisms to engage when a situation emerges that requires urgent intervention. This will concern cases where, for instance, the life of a person or group is in danger; a person is about to be judged, or expelled to a place to be judged, for a crime punishable by the death penalty; a law is about to be adopted that will impair human rights in the country; and any situation that may create irreversible harm.

The mechanisms addressed can provide a response within a few days, weeks or months, depending on the mechanism, and the time and specifics of the case.

Chapter II: Early-Warning and Monitoring Mechanisms (Country Situations)

Chapter II provides an overview of the mechanisms monitoring human rights country situations and addressing concerns as well as recommendations to states. The chapter covers both mechanisms set up formally for 'early-warning', as well as 'monitoring' purposes. All these mechanisms are required to work in a coordinated manner; however, they operate with different timeframes and scopes. These differences and complementarity are to be taken into account when developing a country-specific strategy to engage with them.

Chapter III: Accountability Mechanisms (Individual or Gross Violations)

Chapter III provides an overview of the judicial, quasi-judicial and expert mechanisms currently set up at regional and United Nations levels with the mandate to either establish or document the violations of international human rights and humanitarian law.

BEFORE STARTING

WHAT RESPONSE TO EXPECT? WHY A 'RESPONSE CHAIN'?

This Module outlines the responses theoretically available at regional and UN levels in the case of a human rights violation. In a given case of a violation, as time passes, further actions may be required at a higher level or of a different nature. We therefore speak of a 'response chain' involving different mechanisms, which may:

- prevent irreversible harm (rapid response mechanism);
- prevent a situation from deteriorating or stop current violations (early-warning and monitoring mechanisms); and
- obtain recognition of a violation committed by a state/non-state actor, remedies and guarantees of non-recurrence (accountability mechanisms).

The more likely you are to encounter challenges domestically regarding reaching an effective response, the more

diversified your response chain should be. While looking for a specific measure before a human rights mechanism, you should also be looking for large mobilisation at domestic and international levels, and heightened public consciousness within the country and/or internationally.

SUCCESS FACTORS OF A RESPONSE

Because there is no silver bullet, the experience of international organisations of what has worked domestically and regionally over years of advocacy remains the most tangible indicator of what may work on the ground in a specific case. Further collaboration remains to take place in that respect to appraise and comprehend context-specific responses.

Meanwhile, two factors remain key, regardless of the specifics of the case:

1. lawyers need to be trained in international human rights law, including international standards protecting lawyers and security; and
2. the legal profession needs to be united to act in a network, and be able to speak out and act in a coordinated manner and organise fact-finding missions, trial monitoring and observations in countries where fellow lawyers are at risk. In that respect, domestic bar associations have a key role at the country level to unify lawyers through professional standards and organise their protection.

Against this background, awareness-raising about the importance of lawyers' role in society is key to ensure support from and cooperation with civil society, including human rights organisations.

INFORMATION-VERIFICATION PRIOR TO RESPONDING: THE NEED TO SECURE A STRONG NETWORK OF STRATEGIC PARTNERS

When defining the generic type of responses intended to support lawyers at risk, organisations should also define a protocol guiding the verification of information they receive about human rights violations.

As general guidance, you should:

- only take action when direct contact has been established with the victim or the organisation/lawyer/relative directly assisting the victim. All response sought for should be tailored to the needs of the concerned individual(s), and the consent of the victim will often be required by the human rights mechanisms;
- verify information, in priority order, through a local partner and the domestic bar association, as much as possible; and
- verify information through other trusted partners/organisations and online reliable sources.

You should also keep in mind that the most common shortcomings in the information verification process are:

- lack of a local partner;
- lack of internal resources for a thorough data verification process; and
- lack of translation capacity.

As a result, it is recommended that any support organisation:

- improves its outreach capacity and strengthens relationship channels with strategic partners; and
- develops direct/indirect connections with local partners, possibly through a specific database of organisations and realm of action, local focal points, etc.

ENGAGING WITH UN MECHANISMS – PREREQUISITES: ECONOMIC AND SOCIAL COUNCIL (ECOSOC)/NON-ECOSOC STATUS

What is ECOSOC status?

Lawyers' associations and bar associations can request consultative status to the offices of the UN Economic and Social Council (ECOSOC). Accreditation has so far been granted to more than 3,000 non-governmental organisations (NGOs). For instance, the Law Society of England and Wales and the Law Council of Australia have ECOSOC status.

ECOSOC status is particularly important for activities at the Human Rights Council (HRC).

Only organisations with ECOSOC status can:

- 1. request an annual pass to the UN – Non-ECOSOC NGOs can only request temporary badges to attend specific sessions/events;**
- 2. organise events on UN premises; and**
- 3. submit written statements, make oral statements and thus participate in debates, interactive dialogues and panel discussions during HRC sessions.**

Conversely, all organisations, regardless of ECOSOC status, can engage:

- **with treaty bodies (TBs), through shadow reports and individual complaints;**
- **at the level of the Universal Periodic Review (UPR), through stakeholder submissions;**
- **at the level of the HRC, through joint stakeholder submissions submitted by an NGO with ECOSOC status;**
- **with UN Special Procedures (SPs), through consultation and individual complaints; and**
- **through national human rights institutions (NHRIs), which can submit documentation to the HRC and other UN bodies.**

How to apply for ECOSOC status?

You can apply online through the NGO Branch at <http://csonet.org>. The steps included in the process of your application, and subsequent review and approval by ECOSOC, are:

- create a profile for your organisation;
- submit an online application, which includes a questionnaire and supporting documentation;
- initial screening of your application by the NGO Branch to ensure that your application is complete;
- review of your application by the ECOSOC Committee on NGOs at its annual regular session in January or resumed session in May;
- recommendation by the ECOSOC Committee; and
- decision taken by ECOSOC on your application in July.

Please note that the process is not necessarily straightforward as there may be objections or questions relating to the work carried out by the organisation applying.

Useful resources

- UN, 'Working with ECOSOC, An NGOs Guide to Consultative Status', <http://csonet.org/index.php?menu=134>

GET STARTED

QUESTIONS

- Have you, in your professional practice, experienced unlawful interference, harassment or other attacks? Do you know any other lawyer who has been in that situation? Are there systematic practices or emerging trends in your country that restrict the nature or scope of lawyers' activities?
- What have you, your legal colleagues or lawyers' organisations done in reaction to these interferences or restrictions? What domestic norms protect lawyers? What methods of recourse are available at domestic level and how effective are they?
- Have you ever brought a case against your country before a domestic, regional or international mechanism addressing the independence of justice in your country?
- If so, what was the outcome?
- What was your experience of making such a complaint?

LAWYER'S PROTECTION AND THE INTERNATIONAL HUMAN RIGHTS SYSTEM: KEY BACKGROUND INFORMATION

UNITED NATIONS AND REGIONAL HUMAN RIGHTS SYSTEMS AT A GLANCE

For a more detailed presentation of the UN and regional human rights systems, see Module 1: 'International legal protection of lawyers and those exercising lawyers' functions'.

UN HUMAN RIGHTS SYSTEM

The UN system is composed of:

- the UN Charter-based system; and
- the Treaty Body (TB) system.

The Office of the High Commissioner for Human Rights (OHCHR) supports the work of the UN human rights mechanisms and has field offices in several countries.

Figure 1: an overview of United Nations Human Rights System



Independent - Complementary

Source: OHCHR

UN CHARTER-BASED SYSTEM

UN General Assembly (UNGA)

The UNGA is made up of state representatives and is in charge of decision-making within the UN. It can set and update human rights standards. The UNGA has various committees in charge of specific themes. Its Third Committee covers social, humanitarian affairs and human rights issues that affect people all over the world. It meets in New York once a year between September and December.

HRC

The HRC is an intergovernmental body within the UN system responsible for strengthening the promotion and protection of human rights around the globe, and addressing situations of human rights violations and making recommendations on them. The HRC holds three ordinary sessions a year – in March, June and September. At each session, the 47 Member States of the HRC discuss country situations and various thematic issues, and adopt resolutions. The HRC is responsible for the Universal Periodic Review (UPR) and Special Procedures (SPs).

SPs

SPs are independent experts, appointed by the HRC, to monitor the implementation of human rights on a specific area or in a specific country. They engage in country visits (about two per year), respond to individual cases of human rights violations and develop one or two thematic/country reports a year that they submit to the HRC and/or the UNGA.

The Special Rapporteur on the independence of judges and lawyers (SRIJL) and the Special Rapporteur on human rights defenders play a particular role in the protection of lawyers and those exercising lawyers' functions. Other SPs often engage together with them, for example, the Working Group on Arbitrary Detention, the Special Rapporteur on the Rights of Freedom of Peaceful Assembly and Association, and the Special Rapporteur on Freedom of Expression.

UPR

The UPR is a peer-review process through which states review each other based on multi-stakeholders' sources of information. Each country is reviewed every 4.5 years.

THE TB SYSTEM

TBs are composed of independent experts responsible for the interpretation and monitoring of a specific treaty. They should review the implementation of a treaty by a state, in theory, every four or five years, upon the submission of a national report. In practice, states are reviewed much less often due to their delay in reporting. A TB can also hear individual cases of violations when the state has accepted its jurisdiction. Finally, they develop general comments or recommendations, which interpret the provisions of the treaty. They have up to three sessions a year – each session lasting from one to three weeks.

REGIONAL HUMAN RIGHTS SYSTEMS

Regional human rights bodies monitor, promote and protect human rights in several geographic regions around the world. In Africa, the Americas and Europe, the regional human rights systems play a significant role in protecting human rights among their Member States, including by deciding states' responsibility for violations alleged in complaints submitted by individuals. In addition, these mechanisms' responsibilities may include engaging in independent monitoring through country visits and reporting, and reviewing states' reports on their own compliance with human rights standards. Additionally, newer bodies with fewer functions monitor human rights conditions in the countries of the Middle East and Southeast Asia: the Arab Human Rights Committee and the Association of Southeast Asian Nations (ASEAN) Intergovernmental Commission on Human Rights, respectively.

The Inter-American and African systems appoint individual experts to monitor human rights conditions in a range of specific priority areas, such as human rights defenders and arbitrary detention. These experts are often called rapporteurs and they carry out their work by receiving information from civil society, visiting countries, and reporting on human rights conditions and the ways in which they violate or comply with international norms. Both the African Commission on Human and Peoples' Rights (AfCmHPR) and the Inter-American Commission for Human Rights (IACmHR) have created a mandate of the Special Rapporteur on human rights defenders, who plays a key role in the protection of lawyers.

The Council of Europe's (CoE's) Commissioner for Human Rights fulfils a similar role, although his mandate is not issue-specific.

Table 1. Regional human rights systems

Europe	Inter-Americas	Africa
<p>European Convention on Human Rights (1950) 47 States Parties</p>	<p>American Declaration of the Rights and Duties of the Man (1948) All OAS Member States (35) are bound to respect the Declaration.</p> <p>American Convention of Human Rights (1969) 25 States Parties</p>	<p>African Charter on Human and Peoples' Rights (1981) 54 States Parties</p> <p>Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights (1998) 30 States Parties</p>
<p>European Court of Human Rights (ECtHR) Based in Strasbourg, France. Began its activities in 1959.</p>	<p>Inter-American Commission on Human Rights (IACmHR) Based in Washington DC, US. Began its activities in 1959.</p> <p>Inter-American Court of Human Rights (IACtHR) Based in San José, Costa Rica. Began its activities in 1979.</p>	<p>African Commission on Human and Peoples' Rights (AfCmHPR) Based in Banjul, The Gambia. Began its activities in 1987.</p> <p>African Court on Human and Peoples' Rights (AfCtHR) Based in Arusha, the United Republic of Tanzania. Started its operations in 2006.</p>

COMPETENCES OF INTERNATIONAL HUMAN RIGHTS MECHANISMS

Table 2. Competences of the UN and regional human rights mechanisms

Human rights mechanisms	Established/ entered into force	No of Member States/States Parties	Rapid response mechanism	Early-warning and monitoring functions		Accountability mechanism
				Country visits (inquiry or early-warning visits)	Country review	
UN HRC	2006	47	✗	✗	✗	Complaint procedure for gross human rights violations
UPR	2006	193	✗	✗	✓	
UN SPs	Since the 1980s	NA	Communications	✓	✓	
CCPR, CESCR, CERD, CAT, SPT, CRC, CMW, CRPD, CED	CCPR (1976) CESCR (1976) CERD (1969) CEDAW (1981) CAT (1987) SPT (2006) CRC (1990) CMW (2003) CRPD (2008) CED (2010)	CCPR(173) CESCR (170) CERD(182) CEDAW (189) CAT (169) SPT (90) CRC (196) CMW (55) CRPD (181) CED (62)	Precautionary or interim measures	✓ (CERD, CAT, SPT, CRC, CRPD, CED, CEDAW, CESCR)	✓	Individual complaints (all TBs, except CMW)
AfCHPR	1987	54	precautionary or 'interim' with 'provisional' measures	✓	✓	Individual complaints →

Table 2. Competences of the UN and regional human rights mechanisms (continued)

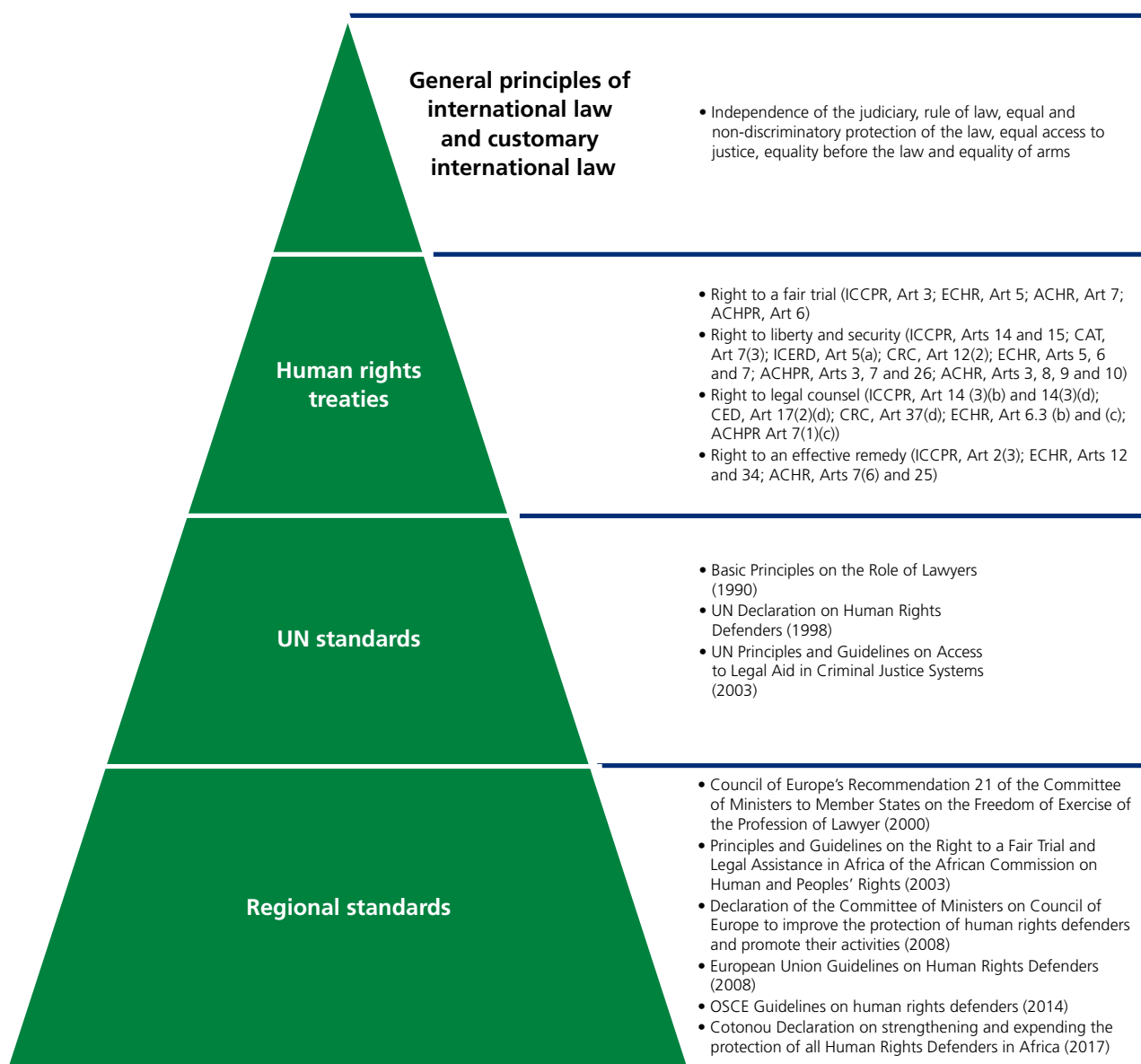
Human rights mechanisms	Established	No of Member States/States Parties	Rapid response mechanism	Early-warning and monitoring functions		Accountability mechanism
				Country visits (inquiry or early-warning visits)	Country review	
AfCHPR	2006	30	Precautionary or interim measures	✗	✗	Individual complaints
ECtHR	1959	47	Precautionary or interim measures	✗	✗	Individual complaints
IACmHR	1960	35	Precautionary or interim measures	✓	✓	Individual complaints
IACtHR	1979	25	Precautionary or interim measures	✗	✗	Individual complaints
CoE Commissioner on Human Rights	1999	47	✗	✓	✗	Individual complaints

INTERNATIONAL LEGAL FRAMEWORK PROTECTING LAWYERS AND THOSE EXERCISING LAWYERS' FUNCTIONS AT A GLANCE

Lawyers and those exercising lawyers' functions benefit from three international legal regimes of protection. In addition to the general regime of the protection of human rights, they are protected through the specific regimes applicable to lawyers and human rights defenders. As reiterated by the UN SRIJL:

'when acting on behalf of their clients in defending their human rights and fundamental freedoms, lawyers should also be regarded as human rights defenders, and in that role they should fall under the protective scope of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms'.²

Figure 2. International Legal Sources of Protection for Lawyers and Those Exercising Lawyers' Functions



2 HRC, 'Report of the Special Rapporteur on the Independence of Judges and Lawyers, Monica Pinto' (2016) UN Doc A/71/348, para 35.

CHAPTER I: RAPID RESPONSE MECHANISMS

LEARNING OBJECTIVES

At the end of this chapter, you will be able to:

- identify the domestic, regional and international human rights mechanisms relevant to respond to the emergency situation at stake; and
- describe how to request a communication to a UN SP or provisional measure to a regional human rights mechanism.



KEY MESSAGES

- In the case in which the life of a person is in danger or the human rights situation is rapidly deteriorating in a country (eg, during mass protests):
 - At the UN level, you may request the relevant UN SPs to issue a communication to the state in issue. The UN SPs are the only rapid response mechanism provided by the UN system. Regardless of the treaties ratified by the country and the non-exhaustion of local remedies, any UN SP can issue a communication addressed to the state in relation to the scope of his/her specific mandate. Though not binding, the UN SPs' communications put pressure on the state and raise the awareness of the international community.
 - At the regional level, you may request the regional human rights commission or court to issue provisional or interim measures to the state, in the case of serious risk of irreversible damage.



SECTION 1. DOMESTIC RESPONSES

Three main avenues may be considered, depending on the circumstances:

1. The police should be contacted as soon as threats have been received. The state is responsible for the lawyer's protection, and shall adopt protection measures in the case of a real and imminent threat the state knows or should know of.³

As per the Basic Principles on the Role of Lawyers, 'where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities'.⁴

The IACtHR has extensively developed the state obligation of protection through the concept of 'integral protection', covering the obligation to investigate the threat and take necessary measures to protect the person.⁵ Ultimately, the state is responsible for diligently and independently investigating the death of the lawyer.

³ See International legal digest on lawyers' protection, states' obligation (upcoming).

⁴ Basic Principles, n 1 above, Principle 17. See also the ACHPR Guidelines and Principles on the Right to a Fair Trial and Legal Assistance in Africa, I(f).

⁵ IACmHR, 'Towards Effective Integral Protection Policies for Human Rights Defenders' (2017) UN Doc OEA/Ser.LV/II.Doc.207.

2. The local bar association should be informed as soon as possible and is expected to actively protect its individual members, whether accused, threatened or attacked by state or non-state actors.

The CoE Recommendation (2000) 21 provides that:

'Bar associations or other professional lawyers' associations should take any necessary action, including defending lawyers' interests with the appropriate body, in case of:

- a. arrest or detention of a lawyer;
- b. any decision to take proceedings calling into question the integrity of a lawyer;
- c. any search of lawyers themselves or their property.
- d. any seizure of documents or materials in a lawyers' possession;
- e. publication of press reports which require action on behalf of lawyers.'⁶

The IBA Standards mention that when lawyers are arrested or detained, '[the bar association] shall be informed immediately of the reason and legal basis for the arrest or detention and place of detention of any lawyer' and 'have access to the lawyer arrested or detained.'⁷

The CoE Recommendation, as well as the SRIJL, highlight the duty of the state to respect 'the role of bar associations or other professional lawyers' associations in protecting their members and in defending their independence against any improper restrictions or infringements'.⁸

In practice, bar associations may have a very different understanding of their mission and ignore or restrain the function of protection assigned to them in international standards. It is important to engage with the bar association on its protection mandate. In case of failure of the bar, it is important to make sure that human rights mechanisms, for example, states at the UPR, TBs and SPs, address the issue and call upon the domestic bar association to fulfil its mission to protect its members.

3. The NHRI constitutes another level of intervention to speak out and raise awareness about the threat encountered by a lawyer.

SECTION 2. UN SPS' COMMUNICATIONS

STRENGTHS AND LIMITATIONS OF SPS' COMMUNICATIONS

There is no prior requirement that the state concerned has ratified an international or regional human rights treaty, or that the alleged victim has exhausted domestic remedies to send a communication. This is one of the main advantages of this mechanism.

The working languages of the SPs are however limited to English, French and Spanish.

SPs' recommendations are not legally binding. SPs do not have the power or authority to enforce their views or recommendations. However, once published by the HRC, communications provide visibility to human rights violations and put political pressure on the state/the company at stake.

For example, an urgent appeal was submitted to the Special Rapporteur on Torture after credible information led them to believe that a citizen who had been illegally arrested and arbitrarily detained for the second time was, at the time of the submission, being tortured. Within two days, the Special Rapporteur, through informal channels, communicated with the state. Eventually the victim was

⁶ CoE Recommendation (2000) 21, Principle V.5.

⁷ IBA Standards for the Independence of the Legal Profession (1990), para 20.

⁸ CoE Recommendation (2000) 21, Principle V.3. HRC, 'Report of the Special Rapporteur on the independence of judges and lawyers' (2018) UN Doc A/73/365, para 106.

released, thanks to multiple actions, including the Special Rapporteur's intervention.

PURPOSE AND LEGAL NATURE OF THE SPS' COMMUNICATIONS

UN SPS' communications are the only UN rapid response mechanism aimed at stopping violations that are about to happen or worsen.

The term 'communications' refers to letters sent by SPS to governments and other entities, such as intergovernmental organisations, businesses, the military or security companies.

The purpose of SPS' communications is to:

- draw the attention of governments and other entities to alleged human rights violations;
- ask states to prevent, stop and investigate violations, and provide remedy; and
- report to the HRC on communications sent and replies received, raising awareness on individual and collective cases, as well as legislative and policy developments they have addressed.

TYPES OF LETTERS

Based on the information received, the SP can send to the state/company two types of letters:

1. an **urgent appeal**, when there is credible information that the victim will be subjected to a violation; and/or
2. a **letter of allegation** in any other cases.

The SP can decide to send both a letter of allegation and an urgent appeal, for example, in the case of a lawyer who has been threatened by the state for conducting his/her normal legal duties (letter of allegation) but is also subject to torture and enforced disappearance (urgent appeal).

The SP can decide to issue a third type of letter constituting:

3. a **comment on the legislation and policy of the country**.

This third type of letter is referred to as 'other letters'. It consists of comments on the legislation and policy of a country in light of international standards. Unlike the urgent appeals and letters of allegation, which are kept confidential for a couple of respectively 1 and 3 months, 'other letters' are immediately published on the website of the SP.

SPS' COMMUNICATIONS REQUEST

Who can send a communication request and when?

Any individual, lawyer, group, civil society organisation, intergovernmental entity or national human rights body can submit information to an SP in the case of:

- past human rights violations;
- ongoing or potential human rights violations; and
- concerns relating to bills, legislation, policies or practices that do not comply with international human rights law and standards.

The violation denounced can be the deed of governments, intergovernmental organisations, businesses, the military or security companies.

Which SP to address?

The communication request can be addressed to one or several SPS. In the case of lawyers, the SRIJL will play a key role, together with the Special Rapporteur on human rights defenders.

You can find the complete list of UN SPs on the OHCHR website (country mandates and thematic mandates).⁹

Content of the submission

- **Consent and names of the victims:** You must indicate in the submission:
 - the consent of the victims to request a communication (in the case of submission by the victims and/or their families or representatives) unless impossible due to the situation;
 - whether the victims DO or DO NOT consent that:
 - their names be disclosed in the SP's communication;
 - their names appear in a public report to the HRC:
 - if it is clear from the submission that concerns relating to the security of the alleged victim(s) exist, the communication of the Special Rapporteur and the report of communications will not mention the victim(s) by name. In any case, the name of the source of the information (eg, family, civil society organisation, alleged victim or lawyer) is never disclosed.
- **Detailed facts and legal bases:** The communication should contain:
 - a factual description of the alleged violations of human rights, which should be as comprehensive, detailed and precise as possible as to when, what, who and how; and
 - national and international legal provisions applicable to the case that may have been infringed (legal analysis).
- **Evidence:** It is important to provide in an attachment:
 - all pieces of legislation and documents (eg, press releases and reports published by intergovernmental organisations or NGOs) corroborating the facts; and
 - an official or unofficial translation of key documents (eg, pieces of legislation) in English, if possible; otherwise, in one of the six UN languages.

Key requirements for requesting a communication

- The communication should not be manifestly unfounded or politically motivated.
- The communication should contain a factual description of the alleged violations of human rights.
- The language in the communication should not be abusive.
- The communication should be submitted on the basis of credible and detailed information – because communications are aimed at soliciting a response on the measures taken to stop and investigate the violations, punish those responsible and provide remedies to victims, these have to be as comprehensive, detailed and precise as possible.
- The communication should not be exclusively based on reports disseminated by the mass media.

How to submit a submission?

You can submit information and request a communication online: <https://spsubmission.ohchr.org>

If you are not able to complete the form online, you may send your submission via email to urgent-action@ohchr.org. Post submissions may be sent to: OHCHR-UNOG, 8–14 Avenue de la Paix, 1211 Geneva 10, Switzerland.

To keep track of your submission, you are encouraged to use the online form.

Please note that:

- Other procedures and requirements are applicable to the Working Group on Arbitrary Detention and the Working Group on Enforced or Involuntary Disappearances. Their methods of work are available on their

⁹ See www.ohchr.org/EN/HRBodies/SP/Pages/Welcompage.aspx accessed 30 December 2019.

webpages, at:

- Working Group on Arbitrary Detention;¹⁰ and
- Working Group on Enforced or Involuntary Disappearances.¹¹

Follow-up on a communication

Each expert decides whether he/she will take action after receiving a submission based on the information received and the scope of his/her mandate.

Cases may be taken up within 24 hours of their submission. However, it may take longer, particularly when information in the submission is insufficient. Urgent appeals may be taken up in a matter of hours or days due to the gravity of the situation. A letter of allegations may be sent to the state within six months.

States are given 60 days to reply to the SP's communication. Communications sent by the SP are confidential for a few months. Communications and state responses, if any, are then published in one of the three reports compiling the communications to the HRC each year in March, June and September.

You will not be notified by the SP of the actions taken. You can directly check with the SP's secretariat and regularly check the annual communications reports.

Useful resources

- OHCHR submissions to SPs.¹²
- SPs' communications reports¹³ and communication search engine.¹⁴

SECTION 3. PRECAUTIONARY MEASURES AT UN AND REGIONAL LEVELS

Strengths and limitations of precautionary measures

Regional human rights mechanisms and TBs' capacity to respond to an imminent threat remain limited, and a few months may still be needed for any of the quasi-judicial or judicial bodies to indicate precautionary measures to a state in order to avoid irreparable harm. Furthermore, the success rate of a request of such measures remains relatively low in all regional systems, given the condition of irreversible harm. Refusals cannot be appealed against.

MAIN FEATURES OF THE PROCEEDINGS AT REGIONAL AND UN LEVELS

- Outside any formal individual complaint proceedings, victims can request a regional body (ECtHR and IACHR)¹⁵ to indicate 'precautionary' (IACHR) or 'interim' (ECtHR) measures to a State Party to the convention they monitor in the case of imminent risk and irreparable harm.¹⁶ In such case, it is not required to have exhausted domestic remedies. Note that the AfCmHPR, which can only request provisional measures, after the receipt of a communication (individual complaint).¹⁶ with a fn: See Rule 98 of the AfCHPR Rule of Procedure
- Where an individual complaint has been submitted to them, a TB or regional mechanism may request the

10 See www.ohchr.org/EN/Issues/Detention/Pages/WGADIndex.aspx accessed 30 December 2019.

11 See www.ohchr.org/EN/Issues/Disappearances/Pages/MethodsWork.aspx accessed 30 December 2019.

12 See <https://spsubmission.ohchr.org> accessed 30 December 2019.

13 See www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx accessed 30 December 2019.

14 See <https://spcommreports.ohchr.org> accessed 30 December 2019.

15 Rule 39 of the ECtHR Rules of Court, Art 25 of the IACHR Rules of Procedure. In Art 63 s2 of the American Convention, measures are adopted in 'cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons'.

16 For instance, in the Inter-American system, the commission and the court assess the *prima facie* evidence of serious and urgent risks and that the measure is necessary to avoid irreparable harm to people.

state concerned to take interim measures to avoid irreparable damage to the alleged victim.¹⁷ These measures may be decided at any stage before the individual communication is examined and are decided without prejudging any subsequent decisions on the admissibility or merits of the case in question. The state can ask the committee to lift the request for interim measures at any stage in the proceedings.

- The IACmHR may also request a state to adopt precautionary measures on its own initiative, even if there is no pending petition or case before the commission. The commission may grant an order for precautionary measures in a matter of weeks in urgent cases.
- Interim provisional (AfCmHPR) and precautionary measures issued by the IACHR, ACHPR and TBs are not binding, unlike the provisional and interim measures issued by the IACtHR and ECtHR,¹⁸ which have a binding character.
 - In the Inter-American system, the IACtHR monitors compliance with the ordered measures through information provided by the state, the commission and the victims or their representatives. In 2017, 26 provisional measures were being monitored. Monitoring may also include *in loco* visits, such as the visit of a Brazilian prison in the context of the Matter of the Placido de Sa Carvalho Prison Complex. In the case of non-compliance, the only recourse of the court is to report the failure to the OAS General Assembly in its Annual Report. But this body has not shown sufficient political will to act or sanction a state in the case of non-compliance with provisional measures.
 - In Europe, the ECtHR finds the failure to comply with a Rule 39 interim measure in violation of Article 34 ECHR.¹⁹

SCOPE OF PRECAUTIONARY MEASURES

The scope of precautionary measures varies depending on the region:

- At the level of the ECtHR, in the majority of cases the applicant requests the suspension of an expulsion or an extradition, alleging that if the expulsion or extradition takes place, he/she would fear for his/her life (right to life) or would face ill-treatment (prohibition of torture or inhuman or degrading treatment). More exceptionally, such measures may be indicated in response to certain requests concerning the right to respect for private and family life or the right to a fair trial and to ensure that the applicant would benefit from appropriate representation in judicial proceedings.
- At the level of the Inter-American system, the commission and the court have indicated precautionary and provisional measures in cases in which a person has disappeared or is facing real and imminent threats.
- At the level of the TBs, the material scope of interim measures before some TBs has expanded to encompass the risk of 'damage' to the integrity of national proceedings and political rights.

17 For instance, The current wording of the Rules of Procedure of the HRCttee is 'such interim measures as the Committee considers necessary to avoid possible actions which could have irreparable consequences for the rights invoked by the author' (HRCttee, Rules of Procedure, Rule 94(1)).

18 See in that sense, ECtHR, *Mamatkulov and Askarov v Turkey*, 4 February 2005 (Grand Chamber – judgment).

19 *Ibid.*

Examples:**ECtHR**

In *Öcalan v Turkey* 12 May 2005 (Grand Chamber – judgment), the ECtHR requested that the Turkish government take interim measures within the meaning of Rule 39 of the Rules of Court, notably to ensure that the requirements of Article 6 (right to a fair trial) of the European Convention on Human Rights (ECHR) were complied in the proceedings that had been instituted against the applicant in the National Security Court and that the applicant was able to exercise his right of individual application to the European Court effectively through lawyers of his own choosing.

IACtHR

On 15 August 2017, the IACtHR decided to request that precautionary measures be adopted for a lawyer, Francisco Javier Barraza Gómez, in Mexico, who allegedly disappeared following his interception by a group of heavily armed men. In accordance with Article 25 of the IACHR Rules of Procedure, the commission requested that Mexico adopt the necessary measures to determine the status and whereabouts of the lawyer in order to protect his rights to life and personal integrity, and that it report on the actions taken to investigate the allegations that led to the adoption of this precautionary measure.

HRCttee

In 2018, the HRCttee requested as an interim measure that Lula da Silva, former Brazilian President, have his right to political participation (Article 25, ICCPR) protected. In this instance, the HRCttee requested the state to take measures to ensure that Lula could take part in the presidential election in Brazil.²⁰

SECTION 4. INTERNATIONAL ADVOCACY

In addition to an individual communication or precautionary measure, it is possible to reach out to relevant mandate holders or office holders at regional and UN levels in order to seek their personal and timely involvement in individual cases. Success in doing so can then lead to those individuals taking up a specific case, issuing a press release, and working to garner the attention of higher office holders or bodies.

At the CoE, individuals facing imminent danger in a CoE Member State can reach out to either the Human Rights Commissioner or mandate holders at the Parliamentary Assembly. At the level of the European Union, individuals can reach out to the EU Commissioner for Human Rights or Members of the European Parliament that have within their committee portfolio human rights or the individual country where the individual comes from.

In Africa and in the Americas, contact should be made with the Special Rapporteur on human rights defenders.

CHAPTER II: EARLY-WARNING AND MONITORING MECHANISMS (COUNTRY SITUATIONS)**LEARNING OBJECTIVES**

At the end of this section, you will be able to:

- identify which human rights mechanism may be relevant to you to obtain country recommendations supporting your advocacy work; and
- describe how to resort to human rights mechanisms when looking for support in such cases.



20 OHCHR, 'Information Note on Human Rights Committee', www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23464&LangID= accessed 30 December 2019.

KEY MESSAGES

In the case of serious violations happening, you can consider the following:

- **TBs' early-warning process or inquiry procedure:** Some TBs have an inquiry procedure or early warning or urgent action procedure, on the condition that your country has ratified the relevant treaty.

Other mechanisms are available to raise awareness and contribute to prevent the situation from deteriorating:

- **SPs' country visits:** A country visit by an SP can be requested in any circumstance for all countries, notwithstanding whether they have ratified an international or regional human rights treaty. Country visits can only take place upon a formal invitation of the country.
- **UPR:** Every 4.5 years, the UPR of the country provides the opportunity to address systemic human rights violations in the country. The UPR reviews all human rights obligations of the country, treaty and non-treaty based, and takes place following a strict calendar, determined at the beginning of each UPR cycle.
- **TBs' country review:** Every four to five years, depending on the treaty, State Parties are to submit a report on compliance with the treaty in issue.
- **HRC resolutions:** Advocacy activities can be organised during HRC sessions (ie, oral or written statement and parallel event).

SECTION 1. COUNTRY VISITS BY UN MECHANISMS

SECTION 1.1. SPS' COUNTRY VISITS

SPs can only visit a country when officially **invited by the country**. They usually send requests for specific states to invite them.

Each SP visits one to three countries per year. A visit lasts between one and three weeks. The SP then meets on-site with different stakeholders to assess the situation.

During the country missions, the SRIJL meets with representatives of the legal and judicial professions, and liaises with partners to collect information on the situation of the independence of the justice system in the country.

Why assist the SPs in their country visits and how?

Each country report provides an assessment of the implementation of human rights treaties, and a number of recommendations within the thematic scope of the mandate. These recommendations are expert recommendations with no legal force. However, they are instrumental in supporting changes when channelled, supported and monitored by local stakeholders, especially legal professionals. They also inform other human rights mechanisms, TBs and the UPR.

You can:

- **suggest countries for the SP to visit during consultations, organised by his/her office with NGOs** or by contacting the SP and his/her secretariat directly. In order to assess the relevance of a visit, it is important to check:
 - whether the SP has already visited the country, and if so, when; if the mandate has recently visited the country, it is less likely that another visit will be planned;
 - whether other SPs are planning to visit the country (check the forthcoming visits using the SPs' database – see below); due to the number of SPs, it is very unlikely that an SP will undertake a visit where another SP with a relatively close mandate is visiting the country in question (Note that joint visits can be organised);
- once the SP has requested an invitation from a country, you can **pressure the state authorities**, for example, the office of the Attorney-General, to accept the country visit requested by the SP; and
- when a country visit is scheduled, and before it takes place, you can **send information and analysis on**

specific human rights concerns to the SP. You can offer to meet with the SP or recommend individuals, organisations or members of bar associations to meet once the SP is in the country.

How can you contact an SP?

Each SP can be contacted directly through the contact details indicated on his/her respective website.

Each SP has an assistant or support team located at the OHCHR, Palais Wilson, Geneva. You can approach them and request a meeting while in Geneva.

Useful resources

- Country visited/to be visited:
 - the SPs' database provides a list of previous and forthcoming visits and pending invitation requests.²¹
- Country visit reports to be presented:
 - to the HRC: reports are available on the webpage of the upcoming HRC session.²² Select the relevant session to access the reports submitted by the SPs under the item 'documentation'. Note that reports are available two or three weeks prior to the start of the session; however, some reports may only be available a few days before their presentation in plenary at the HRC.
 - to the UNGA: reports are available on the Official Document System (ODS) website a few weeks before the beginning of the UNGA session.
- Country visit reports, after presentation at the HRC/UNGA, are available on the website of each SP.

TIP: Register for the OHCHR Civil Society Weekly newsletter to receive notification by email about SPs' activities – for example, country visits and consultations.²³

SECTION 1.2. TBS' COUNTRY VISITS

Early warning procedure: Some TBs have specific procedures to respond to imminent threats through early-warning and urgent procedures. Early warning and urgent procedures were originally introduced by the CERD in order to prevent violations to escalate and prevent a resumption of conflict where it has previously occurred. The same procedures have been included in the most recent treaties, the Committee on the Rights of Persons with Disabilities (CRPD Committee) and Committee on Enforced Disappearances (CED).

Inquiry procedures: Six TBs (Committee against Torture (CAT Committee), Committee on the Elimination of Discrimination against Women (CEDAW Committee), Committee on Economic, Social and Cultural Rights (CESCR), Committee on the Rights of the Child (CRC) and CRPD Committee) can conduct inquiries when they receive reliable information indicating grave or systematic violations by a state party of rights set forth in the treaty.

The Subcommittee on Prevention of Torture (SPT) has a mandate to visit all places where persons are or may be deprived of their liberty within the jurisdiction and control of States Parties to the Optional Protocol to the Convention against Torture (OPCAT).²⁴ It communicates to the State Party its confidential observations and recommendations.

The CED also has the mandate to undertake country visits if it receives reliable information indicating that a State Party is seriously violating the provisions of the International Convention for the Protection of All Persons from Enforced Disappearances.

The inquiry procedure is available if the state has not opted out from the inquiry procedure. It is confidential and the cooperation of the State Party shall be sought at all stages of the proceedings.

21 See <http://spinternet.ohchr.org/SitePages/Home.aspx> accessed 30 December 2019.

22 See www.ohchr.org/EN/HRBodies/HRC/Pages/Sessions.aspx accessed 30 December 2019.

23 Sign up at https://visitor.constantcontact.com/manage/optin?v=0015de0J6wWFJ5woeZbEcmRY9w-0zZjN0_6 accessed 30 December 2019.

24 See www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx accessed 30 December 2019.

SECTION 2. COUNTRY REVIEW BY UN MECHANISMS

Strengths and limitations of country review by UN mechanisms

Two mechanisms of country review co-exist at the UN: one undertaken by TBs and the other by all UN Member States in the peer-review process of the UPR.

The TBs review is, in principle, triggered by the submission of the State Party's report. Countries are obligated to report to TBs every four to five years on the implementation of the treaties they have ratified. In practice, the delay in reporting is one of the main weaknesses of the TB system. As a mitigating measure, some TBs have initiated a simplified process. They have also initiated reporting processes in the absence of state reporting. The uncertainty as to when a country will be reviewed by a TB still remains. However, as quasi-judicial mechanisms, recommendations from TBs are recognised as having strong authority.

Through the UPR, UN Member States ('Recommending States') review the human rights situation of a 'State under Review', based on all its human rights obligations, every 4.5 years according to a predetermined agenda of the UPR cycle. The predictability, transparency of the review process, and the wide basis of information provided by all types of stakeholders supporting the review, are the strengths of the UPR. The cooperation demonstrated by states to engage in the process confirms the importance attached to it by them and the potential impact recommendations made at the UPR may have. Even if UPR recommendations are not legally binding, they represent a commitment from the executive of the state under review.

While the TB review is limited to the scope of the treaty applicable, the UPR review covers all human rights obligations of the state under review. In practice, the Universal Declaration of Human Rights, human rights treaties, standards from UN agencies, recommendations from TBs and regional instruments can serve as the legal basis of a recommendation.

IMPORTANT: When submitting information to a human rights mechanism, you should clearly state if you wish your report to be kept **confidential**.

In the event of reprisals after engaging or attempting to engage with the UN human rights system, you can report the case to the relevant UN SPs or the special UN reporting mechanism.

SECTION 2.1. TBS' COUNTRY REVIEW

Why engage in the country review by the TBs and how?

A country review by a TB is often portrayed as a dialogue between the TB and the state on how to improve the human rights situation in the country.

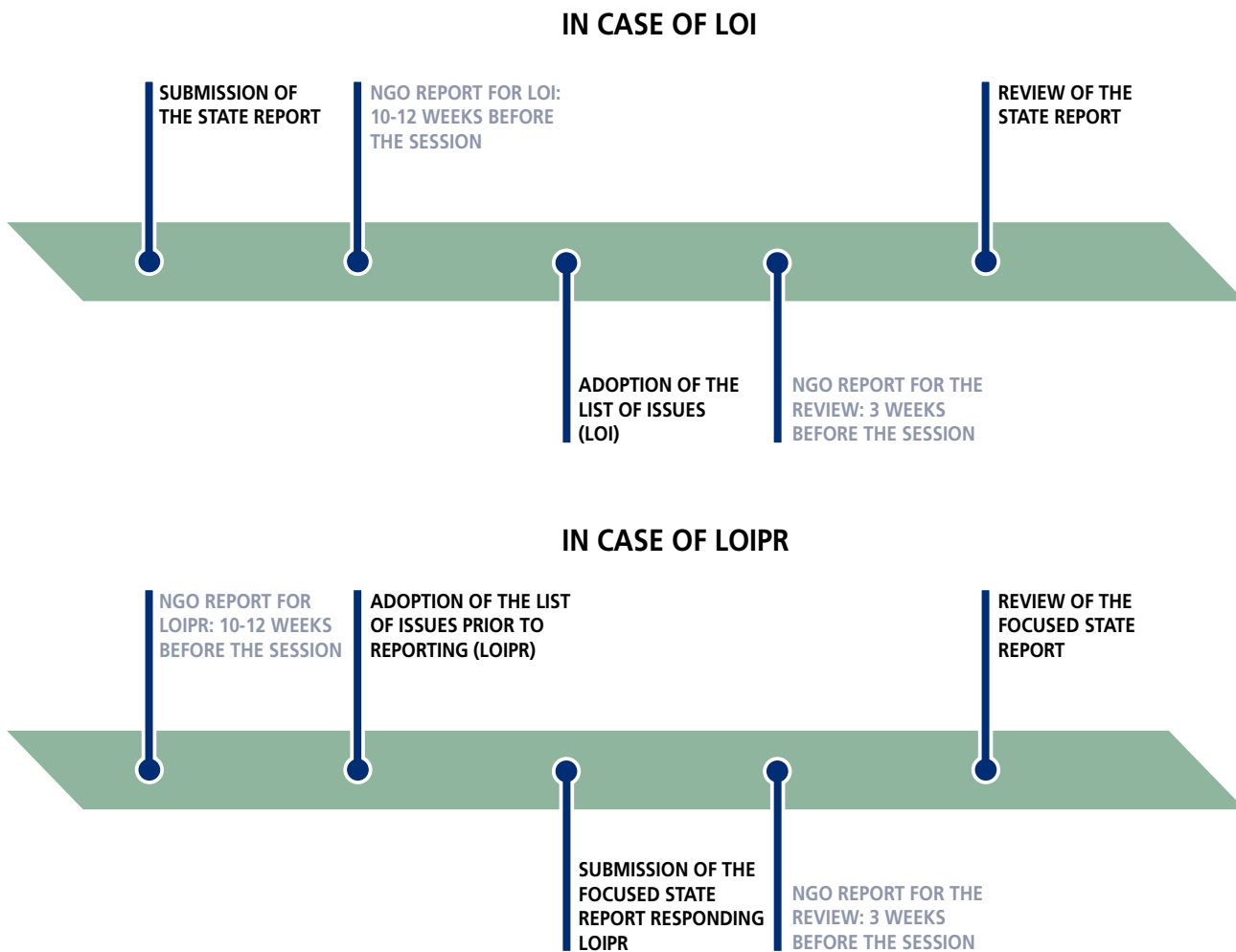
Although concluding observations have no judicial authority and are not legally binding, as such, they benefit from the authority attached to the TBs, usually perceived as having quasi-judicial authority.

In preparation for the country review

After the submission of the state report, the TB prepares a list of issues (LOI) to the state under review based on its initial report in order to prepare for the review. Some committees have initiated a simplified procedure, starting the process with an LOI prior to reporting (LOIPR).

Anyone can send information prior to the deadline set up for the LOIPR (when applicable), LOI and actual reviewing process of the country, by submitting a shadow report monitoring the implementation of human rights in the country. Information and recommendations submitted should revolve around the period of time since the last country review by the TB addressed. You can choose to send information at all stages of the process or only one (see figure 3 below, p 26).

The modalities for submitting information vary from one human rights TB to another. Generally, you should submit information and material following the submission of the State Party report to a TB and before its consideration.

Figure 3. Participation of NGOs at the country review process by the HRCttee

Source: CCPR Centre, UN Human Rights Committee: Participation in the reporting process (2015)

During the country review

Country reviews are public and webcast. You need to have an accreditation to attend the TB session on-site.

For most TBs, **two briefings**, one **formal** and one **informal**, are organised with civil society prior to the country review:

1. **During formal briefings**, NGOs that have submitted a written report for the session are allowed to register through the TB secretariat or the NGO supporting the work of the TB (eg, the NGO CCPR Centre for a briefing with the HRCttee) to **make a statement**. They will be called to make it during the formal briefing. NGOs' statements are aimed at drawing the attention of the TB members to existing concerns and violations in the country under review. TB members may then ask for complementary information. Translation in the six UN languages is provided.
2. **For informal briefings**, NGOs may need to register with the NGO facilitating the briefing (eg, the NGO CCPR Centre for informal briefings with HRCttee members) to attend or intervene. Committee members ask questions to NGOs and seek clarification on issues mentioned in the NGO reports or other concerns the committee may have. By default, there is no interpretation provided, other than that arranged by the NGOs participating.

After the country review

The output of the dialogue between the TB and the state is the adoption of ‘concluding observations’ by the TB. Concluding observations have and are not legally binding. They constitute non-binding legal recommendations addressed to states.

In recent years, some committees have strengthened their monitoring process, and now request the state to send a monitoring report on the implementation of their recommendations within an agreed timeframe during the country review. There is no sanction if a state fails to send a monitoring report.

Legal professionals can use TBs’ recommendations and decisions to interpret international and national law in their practice. In particular, they can:

- integrate the TB’s recommendation within the national legal proceedings – include it in their legal strategy before domestic courts and pleadings;
- use some of the TB’s arguments/interpretation of a human rights violation to interpret/extend the definition of violations (eg, rape as a form of torture, close family members of a victim of torture can also be considered victims and large definition of reparation); and
- also invoke these recommendations to discuss law reform or reform in the administration of justice in their country.

SECTION 2.2. UPR

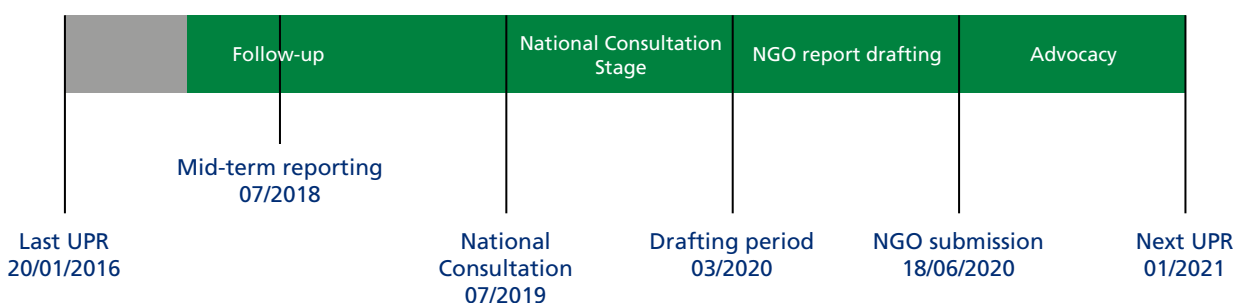
UPR stages

The UPR process has three main stages:

1. Based on the submission of information by all stakeholders, the review of the country takes place at the HRC during the UPR sessions.
2. Four months later, the UPR report and recommendations are formally adopted by the HRC during an ordinary session. Between the review of the country and the adoption of the report, the state under review must ‘support’ or ‘note’ the recommendations. When a state does not ‘support’ a recommendation, we say that the ‘recommendation is noted’ – in practice, this equates to rejecting the recommendation.
3. During the 4.5 years separating two UPRs, the state should plan the implementation and monitoring of the recommendations. States are encouraged to provide a mid-term report on the implementation of the recommendations they have accepted.

Figure 4. Example of the UPR timeline for Belgium

Timeline for UPR engagement in the current cycle



Source: UPR Info website

INFORMATION SUBMITTED IN SUPPORT OF THE UPR

Three reports are systematically prepared in support of the UPR:

1. the report presented by the state under review;
2. the OHCHR report gathering the country-specific recommendations made by human rights mechanisms and UN bodies; and
3. the OHCHR report summarising in a ten-page document the country-specific inputs submitted by the civil society and other stakeholders.

HOW CAN YOU CONTRIBUTE TO THE UPR PROCESS?

Legal professionals and their organisations, with or without ECOSOC status, can take part in the UPR process by submitting information and monitoring the implementation of the recommendations.

Before the UPR

You can:

- **Inform the national report and engage in the consultation process** that the government is due to organise in preparation for the national report. Engaging on an independent footing with the formal government consultation process will ensure that civil society experience and perspective are reflected in the national report.
- Prepare and submit an **independent shadow report to the OHCHR**. With the knowledge acquired through their work within the court system, legal professionals are in a strong position to reflect the human rights situation in the administration of justice, leading to a more evidence-based and credible review. Legal professionals can include specific and accurate recommendations for the UPR Working Group to reflect on.
- Take part in **the NGO UPR Info pre-sessions**. They are an opportunity for NGOs to inform the diplomatic missions in Geneva.

The UPR pre-sessions are organised at the initiative of the NGO UPR Info. NGOs can attend the NGO UPR Info in Geneva by applying on the UPR pre-sessions website.

Only five or six NGO representatives are selected to attend the pre-session of a country. It is therefore recommended to apply in a coordinated manner with other NGOs.

The pre-sessions are organised **about a month** prior to the UPR of the country.

The application process takes place **about four months prior** to the pre-sessions.

For the UPR Info pre-session, it is recommended to prepare an advocacy fact sheet summarising the information and recommendations of the shadow report submitted.

Once an NGO's participation in the pre-session is confirmed, it is requested to prepare a briefing and oral statement (opportunity to also present a PowerPoint (optional)). The advocacy fact sheet can be used as briefing and support for the oral statement.

After the pre-session, UPR Info will send you the list of Permanent Missions present along with their contact details. We suggest that you send to these missions your statement and your submission to the UPR, as well as any additional information you might have.

- **Lobby diplomatic missions** in your country, at the regional level and/or in Geneva. It is recommended to prepare an advocacy strategy by:
 - identifying the diplomatic missions to address and the message to address with each diplomatic mission. By using the OHCHR matrix or the NGO UPR Info database, you can identify the countries that made recommendations related to your priorities/message during the last UPR; and

- developing an advocacy fact sheet, summarising the international obligations of the country and previous UPR recommendations; the situation in the country and progress, gaps and obstacles in the implementation of the recommendations since the last UPR; and your key recommendations in a concise and clear manner.

Between the UPR of the country and the adoption of the UPR report by the country

You can attend the review of the country. However, the review is webcast and attending the session does not provide any further advocacy opportunity at that stage. NGOs cannot take the floor during the review.

Between the review of the country and the adoption of the UPR report by the HRC, you can put pressure on the state to support the recommendations made.

During the adoption of the UPR report by the HRC

NGOs with ECOSOC status can take the floor during the interactive dialogue with the state under review. NGOs are entitled to intervene immediately after the state under review during the adoption of the outcome of the review by the HRC plenary.

Between two UPRs

You are encouraged to:

- **cooperate with the state** under review to implement the UPR recommendations, and contribute to the development of legislation, institutional frameworks, policies and programmes by the state under review geared towards implementing the outcomes and addressing key human rights issues of concern;
- **foster exchanges** on human rights issues and related case law between national bar associations and members of the judiciary, especially between countries receiving similar recommendations at the UPR;
- **publicise and disseminate** the outcomes of the UPR in the country;
- **use and mainstream** UPR recommendations into your work;
- **cooperate** with international and regional organisations; and
- **report to the HRC on the progress by publishing a mid-term report** or by making a statement at any 'general debate' under item 6 of the HRC session.

Useful resources

The OHCHR UPR website²⁵ is the official source of information about the UPR.

In addition, the website of the NGO UPR Info provides complementary information on:²⁶

- country timeline and relevant documentation on the UPR;
- statistics on recommendations, states under review and recommending states;
- a database to search recommendations by country, topics, etc;
- organisation of and registration to the upcoming UPR pre-sessions;²⁷ and
- key resources for engaging at the UPR:
 - *UPR Info Pre-sessions, Empowering human rights voices from the ground* (2016);²⁸

25 See www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx accessed 30 December 2019.

26 See www.upr-info.org/en accessed 30 December 2019.

27 See www.upr-info.org/en/upr-process/pre-sessions/upcoming-pre-sessions accessed 30 December 2019.

28 See www.upr-info.org/sites/default/files/general-document/pdf/2016_pre-sessions_empowering_human_rights_voices_from_the_ground.pdf accessed 30 December 2019.

- UPR Info, *The Civil Society Compendium, A comprehensive guide for Civil Society Organisations engaging in the Universal Periodic Review* (2017).

Other relevant resources:

- OHCHR Technical Guidelines available on the UPR website: 'Universal Periodic Review (Third Cycle): Information and guidelines for relevant stakeholders' written submissions;²⁹ and
- useful contacts:
 - UPR Submissions Helpdesk: uprsubmissions@ohchr.org; and
 - OHCHR National Institutions, Regional Mechanisms and Civil Society Section:
 - National Institutions and regional Mechanisms: nationalinstitutions@ohchr.org
 - Civil Society: civilsociety@ohchr.org or Tel: +41 22 917 96 56.

SECTION 3. INTER-STATE DIALOGUE AT THE HUMAN RIGHTS COUNCIL

HRC AGENDA

All HRC sessions, in March, June and September, follow the same agenda items; however, each of the sessions addresses specific themes and countries. For instance, a resolution on the independence of judges and lawyers is currently presented at the June session every two years, and a resolution on the situation of human rights in Myanmar is currently presented at each March session.

Agenda items of the HRC sessions

- Item 1. Organisational and procedural matters
- Item 2. Annual report of the UN High Commissioner for Human Rights and reports of the OHCHR and the Secretary-General
- Item 3. Promotion and protection of all human, civil, political, economic, social and cultural rights, including the right to development
- Item 4. Human rights situations that require the Council's attention
- Item 5. Human rights bodies and mechanisms
- Item 6. UPR
- Item 7. Human rights situation in Palestine and other occupied Arab territories
- Item 8. Follow-up and implementation of the Vienna Declaration and Programme of Action (VDPA).
- Item 9. Racism, racial discrimination, xenophobia and related forms of intolerance follow-up and implementation of the Durban Declaration and Programme of Action (DDPA).
- Item 10. Technical assistance and capacity-building.

For a description of each of the agenda items of the HRC's sessions, see *The Human Rights Council: A practical guide*.³⁰

²⁹ See www.ohchr.org/EN/HRBodies/UPR/Pages/NgosNhris.aspx accessed 30 December 2019.

³⁰ Office of the Permanent Mission of Switzerland to the United Nations Office and other international organisations, *The Human Rights Council: A practical guide*, www.eda.admin.ch/dam/eda/en/documents/publications/InternationaleOrganisationen/Uno/Human-rights-Council-practical-guide_en accessed 30 December 2019.

Under each agenda item, reports prepared by the OHCHR or other UN mechanisms (ie, SPs, UPR Working Groups and the HRC Advisory Committee) are discussed.

When an NGO makes written and oral statements, the statement (ECOSOC status required) must be made in relation to a specific agenda item and relates to the reports presented under this agenda item.

While the reports presented to the HRC are usually available on the HRC website one month before the start of the HRC session, reports may be published after the HRC session has started. This may prevent NGOs from submitting written statements, considering that written statements have to be submitted two weeks before the start of the HRC session (the exact date is communicated before each session and can be checked online).

All HRC sessions are webcast, archived and can be watched on the website webtv.un.org.

CAN YOU ATTEND AN HRC SESSION AND WHAT ACTIVITIES CAN YOU ORGANISE?

In addition to HRC Member States, observers – which includes non-observer states, intergovernmental organisations, NHRIs and NGOs – may participate in sessions.

Lawyers and lawyers' organisations, like NGOs, can actively contribute to the discussions and drafting of the resolutions.

Organisations in consultative status with ECOSOC can:

- **attend the sessions** of the HRC in the plenary room and side events organised on the margins of sessions;
- **make a written submission**, which will then be issued with the UN document symbol;
- **make oral statements** under any substantive agenda items of the HRC, also through video intervention; oral statements can be made in the HRC plenary debates, including during the adoption of the outcome of the UPR of the country by the HRC, the interactive dialogue following the presentation of a country mission report by an SP mandate holder, and panels or annual discussions;
- **organise side events**;
- take part in **expert meetings and panels** mandated by the HRC;
- advocate for the adoption of a country or thematic resolution through sponsor missions; and
- **attend the informal drafting resolutions meetings** and contribute to the drafting of resolutions before and during the HRC sessions.

Organisations without ECOSOC status can:

- **attend the sessions** of the HRC from the public gallery, once accredited with a public gallery badge;
- **attend side events** held during the HRC sessions, once invited by the organisers of the side event (the organisers send a list to the participants to their side events three days prior to the event); and
- **join written or oral statements** submitted by an ECOSOC-accredited NGO.

WRITTEN SUBMISSIONS TO THE HRC

NGOs with special consultative status (or on the roster) may submit written statements of up to 1,500 words. NGOs with general consultative status may submit up to 2,000 words.

As noted, although only ECOSOC-accredited NGOs with consultative status can formally submit a written statement, NGOs without ECOSOC consultative status can be associated with:

- a written statement made by an NGO without ECOSOC accreditation – the name of the NGO will appear in a footnote of the written submission. Note that the format for written submissions is defined by the OHCHR and that reference to ECOSOC/non-ECOSOC NGOs cannot be modified.

ORAL STATEMENT TO THE HRC

Oral statements can be made at all of the HRC sessions (during general debates, interactive dialogues or panels and discussions).

During interactive dialogues, the mechanism with a mandate related to the subject under discussion is expected to react or respond to points raised in oral statements. Given the number of statements made by HRC members and observers, responses provided often only address some of the issues raised during the interactive dialogue.

Time allocated for an oral statement is usually 90 seconds or two minutes, depending on the session you intervene in, and can be shortened due to time constraints. The time allocated for NGOs' intervention during general debates, interactive dialogues or panels and discussions varies and is to be checked for each HRC session.

Registering for an oral statement follows a **three-step process**:

1. NGOs must register as soon as **registration** for NGO oral statements is open: due to the 'first registered, first served' basis, only NGOs registering in the first few minutes may expect to have a time slot (except for the general debates, where time is made for everybody to speak).
2. Once **time slots** are allocated (the information is available on the HRC extranet, just before the HRC session starts), NGOs are requested to sign-in at the NGO desk in the plenary room (Room XX) of the HRC to confirm their registration. This confirmation can only be made on-site and must be done a day prior to the date the statement is due at the latest, and before 6pm.
3. NGOs are expected to **deliver** one hard copy of their statement to the NGO desk prior to their presentation in order to assist the interpretation services.

Oral statements are to be uploaded by each organisation onto the HRC webpage on which registrations take place. The HRC secretariat then makes these statements available on the HRC extranet.

In the case of joint statements, NGOs with ECOSOC consultative status should fill in a joint oral statement form³¹ and send it via email³² or take it to the list of speakers desk in person. As noted, NGOs without ECOSOC accreditation can be associated with an oral statement submitted by an NGO with ECOSOC accreditation. Only NGOs with ECOSOC accreditation can formally align with an oral statement made by another ECOSOC-accredited NGO by filling in the 'joint oral statement form'. NGOs without ECOSOC status can only be mentioned in the statement as associated with the statement.

ORGANISATION OF A PARALLEL EVENT DURING AN HRC SESSION

An NGO with ECOSOC status can make a room booking through the HRC webpage, under the 'NGO participation' section.

31 See www.ohchr.org/EN/HRBodies/HRC/Pages/NgoParticipation.aspx accessed 30 December 2019.

32 Statements should be sent to hrcngo@ohchr.org.

CHAPTER III: ACCOUNTABILITY MECHANISMS (INDIVIDUAL OR GROSS VIOLATIONS)

LEARNING OBJECTIVES

At the end of this chapter, you will be able to:

- describe when and how to submit an individual complaint before regional and international quasi-judicial mechanisms; and
- describe the different accountability mechanisms for mass and serious violations at the international level.

KEY MESSAGES

- Regional human rights mechanisms receive individual complaints, some upon condition that the State Party has formally recognised their jurisdiction.
- All but one UN TB can receive individual complaints on the condition that the State Party has recognised their jurisdiction. The individual complaint mechanism of the Committee on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW) has not yet entered into force.
- The Working Group on Arbitrary Detention is the only UN SP with a quasi-judicial function. It issues 'opinions', which can be used as evidence of systematic practice and used in further proceedings.
- Through the individual complaint system at regional or international level, a TB or regional court or commission can:
 - recognise the state's responsibility for human rights violations;
 - request reparation for the victims;
 - request a guarantee of non-recurrence; and
 - request provisional measures to protect the victims.
- In addition to individual complaint mechanisms, some mechanisms exist to address cases of mass violations. The complaint mechanism for mass violations at the level of the HRC is confidential and it is difficult to assess its impact so far. The system of fact-finding missions and commissions of inquiries kept evolving as new country mechanisms were created. These mechanisms have greater or lesser investigation powers.

SECTION 1. INDIVIDUAL HUMAN RIGHTS COMPLAINTS MECHANISMS

SECTION 1.1. REGIONAL HUMAN RIGHTS MECHANISMS

Each regional human rights mechanism in Africa, Europe and the Americas allows individual complaints against States Parties to the regional human rights convention.

One major pitfall is common to the three systems. The backlog in the regional human rights mechanism is significant and the proceedings for a complaint will last a couple of years.

Moreover, regional commissions (IACmHR/AfCmHPR) are quasi-judicial bodies, the recommendations of which are not legally binding, unlike the decisions of the regional courts (ACtHR/IACtHR/ECtHR).

- In Africa, the ACtHR's jurisdiction has been recognised by a small number of States Parties to the African Charter. As to the recommendations of the AfCmHPR, the secretariat does send letters of reminder; however, much remains on the good will of the states as to the implementation of the recommendations of the ACHPR.

- In Europe, the Committee of Ministers of the CoE is responsible for monitoring the execution of the court’s judgments. While individual measures (eg, compensation) are usually adopted quickly, it can take many years for the state to comply with general measures. Claimants can send submissions to the committee. The European Implementation Network facilitates engagement with the committee.

Table 3 provides an overview of the complaint proceedings in each system.

The manual published by the Equal Rights Trust, *Navigating Human Rights Complaints Mechanisms*, provides more detailed information on the requirements and different steps of the proceedings in each mechanism.

Table 3. Individual complaints mechanism at regional level

	African human rights system	European human rights system	Inter-American human rights system
Against whom can a complaint under a treaty be brought?	<ul style="list-style-type: none"> • The AfCmHPR may consider individual communications relating to the 53 States Parties to the ACHPR (Article 55 of the African Charter, Rule 102 of the Commission’s Rules of Procedure) • The AfCtHPR is able to consider state communications when the state has accepted the court’s jurisdiction by ratifying the Protocol to the ACHPR on the Establishment of the African Court on Human and Peoples’ Rights (the ‘Protocol’) (30 states as of January 2019) • Nine states have authorised the ACtHR to hear complaints brought by NGOs with observer status, pursuant to Article 34(6) of the Protocol (see Article 5(1) of the Protocol) 	<ul style="list-style-type: none"> • The EctHR has jurisdiction to decide complaints (‘applications’) against all 47 CoE Member States 	<ul style="list-style-type: none"> • The IACmHR may decide complaints (‘petitions’) against all 35 Member States of the Organization of American States (OAS); petitions must allege a violation of the American Declaration of the Rights and Duties of Man or of the American Convention on Human Rights (ACHR), provided the state concerned is one of the 23 states that are parties to the convention. • The IACtHR may only examine contentious cases against states that have both ratified the American Convention and recognised the Inter-American Court’s jurisdiction (currently 20 states).
Who can bring a complaint?	<ul style="list-style-type: none"> • Before the AfCmHPR: <ul style="list-style-type: none"> - individuals or NGOs on behalf of individual victims of the alleged violations; and - States Parties to the African Charter. • Before the AfCtHPR: <ul style="list-style-type: none"> - a State Party that has recognised the jurisdiction of the AfCtHPR; - the AfCmHPR; - NGOs with observer status before the AfCmHPR or an individual if the respondent state has recognised the competence of the AfCtHPR in such case; or - African intergovernmental organisations. 	<ul style="list-style-type: none"> • Individuals, groups of individuals, NGOs and states may submit applications concerning alleged violations of the ECHR, as direct/ indirect or potential (actio popularis) victims 	<ul style="list-style-type: none"> • Before the IACmHR: <ul style="list-style-type: none"> - individuals, groups of individuals, NGOs recognised by any OAS Member State; or - states • Before the IACtHR: <ul style="list-style-type: none"> - Cases must first be decided by the commission before they can be referred to the court, either by the State Party involved or the commission.

Procedure?	Before the AfCmHPR:	Before the ECtHR:	Before the IACmHR:
	<ul style="list-style-type: none"> • Seizure of the commission (by vote of the members of the commission) • State Party’s comments on admissibility and merits (within three months) • Commission offers its good offices for an amicable settlement • Examination of the merits 	<ul style="list-style-type: none"> • An application will be allocated to: <ul style="list-style-type: none"> - a single judge, if clearly inadmissible; - a committee (three judges), when considered as a repetitive case; or - a Chamber (seven judges), when is not considered as a repetitive case; the Chamber can relinquish jurisdiction to the Grand Chamber (17 judges) if the case raises a serious question of the interpretation of the ECHR or a risk of inconsistency with a previous decision of the ECtHR. 	<ul style="list-style-type: none"> • Decisions are considered in the order received, unless urgent • State Party’s comments on admissibility; • Precautionary measures: at the request of a party or on its own initiative • Procedure on merits and time to reach a friendly settlement • In the case of state non-compliance with its recommendations, and if the IACtHR has jurisdiction, the commission shall refer the case to the IACtHR <p>Before the IACtHR:</p> <ul style="list-style-type: none"> • ‘Provisional measures’ can be adopted by the court on its own motion or following a victim’s request, at any time of the proceedings. • Presentation of the applicant’s brief and the respondent’s brief • Oral proceedings • Final written arguments • Judgments on merits
Decision?	<ul style="list-style-type: none"> • Decisions (called ‘recommendations’) from the AfCmHPR: <ul style="list-style-type: none"> - can be appealed before the ACTHPR by the respondent State Party, if it has recognised its jurisdiction; - are not in themselves legally binding on the states concerned; the mandate of the AfCmHPR is quasi-judicial; and - are included in the Commissioner’s Annual Activity Reports, which are submitted to the OAU Assembly of Heads of State and Government in conformity with Article 54 of the Charter. If they are adopted, they become binding on the States Parties and are published. • Judgments from the AfCtHPR are final and binding 	<ul style="list-style-type: none"> • An admissibility decision is final and cannot be challenged • A decision on the merits of a committee is final and cannot be appealed • A judgment from the Chamber can be appealed to the Grand Chamber 	<ul style="list-style-type: none"> • Decisions (called ‘recommendations’) from the IACmHR <ul style="list-style-type: none"> - can be referred to the IACtHR; and - are not legally binding. • Judgments of the IACTHR are legally binding

Useful resources

See the 'Useful resources' section in the Annex, 'Engaging with Regional Human Rights Mechanisms', p 42.

SECTION 1.2. UN TBS

INDIVIDUAL COMPLAINTS

An individual complaint to a TB is a last resort remedy an individual may have, after all remedies are exhausted domestically.

The decision of the TB may:

- recognise the state's responsibility for human rights violations;
- request reparation for the victims;
- request a guarantee of non-recurrence; and
- request provisional measures to protect the victims.

The process of individual complaint before TBs is quasi-judicial. It is a very lengthy process due to the response expected respectively from the state and the author of the complaint. Committees take on average about four years to hold a decision (referred to as 'views').

The TBs' decisions qualify as 'international jurisprudence'. While some countries do recognise their legal binding force, others still disregard it.

List of TBs that can receive individual complaints

The following TBs can consider individual complaints under certain circumstances:

- HRC (for States Parties to the First Optional Protocol to the International Covenant on Civil and Political Rights);³³
- CED (upon states' declaration under Article 31 CEPD);
- CESCR (for States Parties to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR));³⁴
- CERD (upon states' declaration under Article 14 ICERD);
- CEDAW Committee (for States Parties to the Optional Protocol to the CEDAW);
- CAT Committee (upon states' necessary declaration under Article 22 CAT);
- CRC Committee (for States Parties to the Third Optional Protocol on a communications procedure (OPIC)); and
- CRPD Committee (for States Parties to the Optional Protocol to the CRPD).

The CMW's individual complaint procedure has not yet entered into force. This individual complaint mechanism will become operative when ten States Parties have made the necessary declaration under Article 77.

³³ See www.ohchr.org/EN/ProfessionalInterest/Pages/OPCCPR1.aspx accessed 30 December 2019.

³⁴ See www.ohchr.org/EN/ProfessionalInterest/Pages/OPCESCR.aspx accessed 30 December 2019.

Admissibility criteria for an individual complaint

- your state has ratified both the treaty and its Optional or Additional Protocol or made the relevant declaration, as relevant;
- the TB has jurisdiction over the violation (both *ratione temporis* and *ratione loci*);
- the incident that happened to the victim violates a right contained in the treaty;
- the violations are sufficiently substantiated;
- you are the victim or an NGO representing the victim (ie, if you need the consent of the victim/family);
- you have exhausted domestic remedies; for the ICCPR, the complaint shall be submitted within five years after national remedies have been exhausted or three years after an international remedy – this varies depending on the committee; and
- the matter has not been submitted to another international or regional human rights mechanism (submission to SPs is permitted).

Form of the complaint

For some TBs (eg, CCPR and CAT), a form that can be completed and is available on their website.

Review process by the TB

The TB first assesses the admissibility requirements. If the TB finds the complaint admissible, its merits are assessed and the TB adopts a decision as to whether or not a violation of a provision of the treaty has occurred.

States have six months to reply. The state's response is sent to the complainant, who then has the opportunity to answer the state's response before the TB publishes its final decision.

Follow-up of the TBs' decisions

The CCPR, CAT, CERD and CEDAW have established a monitoring mechanism – they appoint a rapporteur for monitoring the implementation of the committee's decision.

Legal professionals play a key role in the enforcement of TBs' decisions at the national level. As a legal professional, you can:

- **integrate TBs' decisions** within national legal practice – by using them in your legal strategy before courts and in your pleadings;
- use **TBs' decisions as international legal precedents** in similar cases;
- if possible, **plan some public outreach around TBs' decisions** in order to pressure the state;
- **send the cases and TBs' decisions to a national human rights commission** or similar national institution (if it exists); and
- use **TBs' arguments/interpretation of a human rights provision to interpret/extend the definition of human rights at the national level** (eg, rape as a form of torture).

Useful resources

- Human Rights Treaty Bodies – Individual Communications, 23 FAQ about TB complaints procedures.³⁵

³⁵ See www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#proceduregenerale accessed 30 December 2019.

SECTION 1.3. WORKING GROUP ON ARBITRARY DETENTION

The Working Group is the only non-treaty-based mechanism whose mandate expressly provides for the consideration of individual complaints. This means that its actions are based on the right of petition of individuals anywhere in the world.

The Working Group's opinions on arbitrary detention

On the basis of an individual complaint, the Working Group may adopt an 'opinion' recognising that a person is arbitrarily detained.

According to the methods of work of the Working Group, deprivation of liberty is arbitrary if a case falls into one of the following five categories:

1. when it is clearly impossible to invoke any legal basis justifying the deprivation of liberty (as when a person is kept in detention after the completion of his/her sentence or despite an amnesty law applicable to him/her) (Category I);
2. when the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by Articles 7, 13, 14, 18, 19, 10 and 21 of the Universal Declaration of Human Rights and, insofar as States Parties are concerned, by Articles 12, 18, 19, 21, 22, 25, 26 and 27 of the International Covenant on Civil and Political Rights (Category II);
3. when the total or partial non-observance of the international norms relating to the right to a fair trial, spelled out in the UDHR and in the relevant international instruments accepted by the states concerned, is of such gravity as to give the deprivation of liberty an arbitrary character (Category III);
4. when asylum seekers, immigrants or refugees are subjected to prolonged administrative custody without the possibility of administrative or judicial review or remedy (Category IV); and
5. when the deprivation of liberty constitutes a violation of international law for reasons of discrimination based on birth; national, ethnic or social origin; language; religion; economic condition; political or other opinion; gender; sexual orientation; or disability or other status, and which aims towards or can result in ignoring the equality of human rights (Category V).

Information submitted to the Working Group

The Working Group acts on information submitted by communications sent to it by the individuals directly concerned, their families, their representatives or NGOs for the protection of human rights, from governments and intergovernmental organisations regarding alleged cases of arbitrary detention.

Proceedings and final decision

The communication is forwarded to the government concerned through diplomatic channels with an invitation to communicate its comments and observations on the allegations made to the Working Group within 60 days, as regards both the facts and the applicable legislation, and concerning the progress and outcome of any investigations that may have been ordered.

A reply sent by the government to the Working Group is transmitted to the source for any final comments or observations.

In light of the information collected under this adversary procedure, the Working Group adopts one of the following measures in private session:

1. If the person has been released, for whatever reason, following reference of the case to the Working Group the case may be filed; the Working Group, however, reserves the right to render an opinion, on a case-by-case basis, whether or not the deprivation of liberty was arbitrary, notwithstanding the release of the person concerned.
2. If the Working Group considers that the case is not one of the arbitrary deprivation of liberty, it shall render an opinion to this effect.

- If the Working Group considers that further information is required from the government or the source, it may keep the case pending until that information is received.
- If the Working Group considers that it is unable to obtain sufficient information on the case, it may file the case provisionally or definitively.
- If the Working Group decides that the arbitrary nature of the deprivation of liberty is established, it shall render an opinion to that effect and make recommendations to the government.

The opinion is sent to the government, together with the recommendations. Two weeks after this notification, the opinion is also conveyed to the source for information.

The opinions are published in an addendum to the report presented annually by the Working Group to the HRC at the group's scheduled reporting session (see Revised Working Methods).

Useful resources

- Website of the Working Group on Arbitrary Detention, www.ohchr.org/EN/Issues/Detention/Pages/Complaints.aspx

SECTION 2. INTERNATIONAL ACCOUNTABILITY MECHANISMS FOR GROSS HUMAN RIGHTS VIOLATIONS

SECTION 2.1. COMPLAINT TO THE HRC (FORMER 1503 PROCEDURE)

The HRC complaints procedure addresses 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. Communications are submitted by individuals, groups or NGOs alleging to be victims of human rights violations or having direct, reliable knowledge of such violations.

It is confidential, with a view to enhance cooperation between the HRC and the state concerned. The new complaints procedure has been improved, where necessary, to ensure that the procedure is impartial, objective, efficient, victim-orientated and conducted in a timely manner. This procedure is confidential. Since the establishment of the HRC in 2006, thousands of complaints have been submitted to the procedure each year, with a total of only 14 complaints ultimately referred to the HRC, of which only two referrals were made public. Two of the 14 complaints resulted in recommendations in 2012 for the OHCHR to increase technical cooperation and capacity-building assistance to the country concerned (Iraq); one complaint resulted in encouragement by the HRC in 2006 for the new government of the state concerned (Kyrgyzstan) to investigate and address the allegations; and one complaint resulted in a referral of the situation to the Special Rapporteur on Eritrea in 2012.

Useful resources

For information about the complaints procedure process, see the OHCHR Frequently Asked Questions.³⁶

SECTION 2.2. FACT-FINDING MISSIONS AND COMMISSIONS OF INQUIRY

United Nations mandated commissions of inquiry, fact-finding missions and investigations are increasingly being used to respond to situations of serious violations of international humanitarian law and international human rights law, whether protracted or resulting from sudden events, and to promote accountability for such violations and counter impunity. These international investigative bodies have been established by the Security Council, the General Assembly, the Human Rights Council, its predecessor, the Commission on Human Rights, the Secretary-General and the High Commissioner for Human Rights.

The HRC has also established a number of fact-finding missions and commissions of inquiry (eg, on Syria, the Democratic People's Republic of Korea, Lebanon, Palestinian territories occupied since 1967, Darfur-Sudan, the Democratic Republic of Congo, Libya and Cote d'Ivoire) mandated to investigate alleged violations of international human rights and international humanitarian law in a given period and country. These mechanisms are typically tasked with establishing the facts and circumstances that may amount to such violations and crimes and, where possible, to identify those responsible with a view to ensuring that perpetrators of violations, including those that may constitute crimes under international law, are held accountable. In countries in which the Office of the Prosecutor of the International Criminal Court (ICC) had been mandated to investigate crimes under international law (eg, Libya), the commission of inquiry has consulted with the office. Commissions of inquiry eventually issue reports containing conclusions and recommendations, and in some cases, compile evidence and lists of persons who should be investigated concerning alleged criminal responsibility.

³⁶ See www.ohchr.org/EN/HRBodies/HRC/ComplaintProcedure/Pages/FAQ.aspx accessed 30 December 2019.

ANNEX: KEY RESOURCES

ENGAGING WITH UN HUMAN RIGHTS MECHANISMS (GENERAL MANUALS)

- OHCHR, Reporting to the United Nations Human Rights Treaty Bodies (Professional Training Series No 20), www.ohchr.org/Documents/Publications/PTS20_HRTB_Training_Guide_PartI.pdf
- OHCHR, Working with the United Nations Human Rights Programme – A Handbook for Civil Society, www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf
- UN, Working with ECOSOC, An NGOs Guide to Consultative Status, <http://csonet.org/index.php?menu=134>
- OHCHR, How to Follow Up on United Nations Human Rights Recommendations, www.ohchr.org/Documents/AboutUs/CivilSociety/HowtoFollowUNHRRRecommendations.pdf
- ISHR, Human Rights Law Center, Domestic Implementation of UN Human Rights Recommendations : A Guide for Human Rights Defenders and Advocates, www.ishr.ch/sites/default/files/article/files/domestic_implementation_of_un_human_rights_recommendations_-_final.pdf
- OSJI, From Judgments to Justice, Implementing International and Regional Human Rights Decisions (2010), www.opensocietyfoundations.org/sites/default/files/from-judgment-to-justice-20101122.pdf
- Equal Rights Trust, Navigating Human Rights Complaints Mechanisms – Rules, Tools and Resources (2019) www.ashurst.com/en/news-and-insights/legal-updates/navigating-human-rights-complaints-mechanisms-rules-tools-and-resources
- ICJ-TRIAL, Promoting Accountability through the Human Rights Bodies in Geneva. A Working Paper for Civil Society Organizations (2013), www.iccnw.org/documents/ICJTRIALREPORTNGO_Sept_2013.pdf

ENGAGING AT THE UNIVERSAL PERIODIC REVIEW

- OHCHR, Universal Periodic Review: Information and Guidelines for Relevant Stakeholders' Written Submissions, www.ohchr.org/Documents/HRBodies/UPR/TechnicalGuideEN.pdf
- IBAHRI, The Role of the Universal Periodic Review in advancing human rights in the administration of justice (March 2016), www.ibanet.org/Article/NewDetail.aspx?ArticleUid=742c8431-9c25-4d0b-bb05-f7950b22b5c4
- OIF, Universal Periodic Review, Implementation Plan of Recommendations and Pledges, www.upr-info.org/sites/default/files/general-document/pdf/oif_guide_upr_implementation.30.04.2013_e.pdf
- UPR Info, Tutorial about the UPR Process, www.upr-info.org/en/tutorials
- UPR Info, The Civil Society Compendium, A comprehensive guide for Civil Society Organisations engaging in the Universal Periodic Review (2017), www.upr-info.org/sites/default/files/general-document/pdf/upr_info_cso_compendium_en.pdf
- UPR Info, The Butterfly Effect, Spreading Good Practices of UPR Implementation (2016), www.upr-info.org/en/news/the-butterfly-effect-spreading-good-practices-of-upr-implementation
- For the preparation of an advocacy fact sheet, see examples provided here www.upr-info.org/en/how-to/documentation-for-ngos/fact-sheets
- Guide to the UPR Info pre-sessions, Empowering Human Rights Voices from the Ground (2016) www.upr-info.org/sites/default/files/general-document/pdf/2016_pre-sessions_empowering_human_rights_voices_from_the_ground.pdf
- For further documentation on the UPR for CSOs, see www.upr-info.org/en/how-to/documentation-for-ngos/advocacy

ENGAGING WITH UN TREATY BODIES

- Reporting to the UN Human Rights Treaty Bodies, Training Guide (Part I), Facilitators' Note (Part II) (2017): www.ohchr.org/Documents/Publications/PTS20_HRTB_Training_Guide_PartI.pdf
- Callejon et al, Treaty Bodies' Individual Communications Procedures: Providing Redress and Reparation to Victims of Human Rights Violations (Geneva Academy of International Humanitarian Law and Human Rights, 2019), www.geneva-academy.ch/joomlatools-files/docman-files/UN%20Treaty%20Bodies%20Individual%20Communications.pdf
- International Service for Human Rights (ISHR), Simple Guide to the UN Treaty Bodies, www.ishr.ch/sites/default/files/article/files/ISHR%20Simple%20Guide%20to%20the%20UN%20Treaty%20Bodies.pdf
- Centre for Civil and Political Rights (CCPR-Centre), UN Human Rights Committee: Participation in the Reporting Process (2015), http://ccprcentre.org/files/media/NGO_Guidelines_English1.pdf
- Child Rights Connect, The Reporting Cycle of the Committee on the Rights of the Child: A Guide for NGOs and NHRIs (2014), www.childrightsconnect.org/wp-content/uploads/2015/07/EN_GuidetoCRCReportingCycle_ChildRightsConnect_2014.pdf
- The International Movement against All Forms of Discrimination and Racism (IMADR), A Guide for Civil Society Actors (2011), www.ohchr.org/Documents/HRBodies/CERD/ICERDManual.pdf
- International Women's Rights Action Watch, Producing Shadow Reports to the CEDAW Committee: A Procedural Guide (2008), www1.umn.edu/humanrts/iwraw/proceduralguide-08.html#intro
- International Disability Alliance, The CRPD Committee, www.internationaldisabilityalliance.org/en/crpdcommittee
- OMCT, Handbook on individual complaints to treaty bodies (2014), www.omct.org/files/2014/11/22956/v4_web_onusien_en_omc14.pdf

ENGAGING WITH REGIONAL HUMAN RIGHTS MECHANISMS

African human rights system

- The AfCtHPR's website includes details about the latest decisions, finalised and pending cases, provisional measures issued and a statistical summary of received applications: African Court on Human and Peoples' Rights, Contentious Matters, www.african-court.org/en/index.php/cases
- African Court on Human and Peoples' Rights, Rules of Court (2010), www.african-court.org/en/images/Basic%20Documents/Final_Rules_of_Court_for_Publication_after_Harmonization_-_Final__English_7_sept_1_.pdf
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- The commission's website has an online library of its decisions related to admissibility, inadmissibility and merits:
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 - Inter-American Commission on Human Rights, Inadmissibility Reports, www.oas.org/en/iachr/decisions/inadmissibilities.asp
 - Inter-American Commission on Human Rights, Merits Reports, www.oas.org/en/iachr/decisions/merits.asp
- In addition, the commission has produced a publication on the friendly settlement procedure, www.oas.org/en/iachr/friendly_settlements/docs/Report-Friendly-Settlement.pdf
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