

MODULE 8

Introduction

Lawyers representing survivors of torture can turn to regional and international human rights claims as avenues for strategic litigation to obtain justice and reparation. These typically require that domestic proceedings have been exhausted in the national jurisdiction, unless it can be shown that judicial remedies were not available, were not effective, or that there were undue delays. However, some human rights mechanisms are willing to accept claims directly without exhausting domestic remedies, such as the Economic Community of West African States (ECOWAS) Community Court of Justice.

Depending on a variety of factors, such as type of violation, geographical location of the violation, treaty ratification status of the country of violation, admissibility criteria, effectiveness of the forum, speed of the proceedings, impact of decisions, and the views of the survivor, a forum can be chosen above another (see *Module 2: UNCAT and the Definition of Torture*). There are human rights mechanisms within the United Nations system and regional human rights mechanisms for the African, American, and European continents able to hear claims by individuals. To date, there is no human rights mechanism in Asia and the Pacific able to hear such individual complaints against States.

UN human rights system

Survivors of torture can submit their complaints to the relevant UN human rights and treaty monitoring bodies. Individual complaints to the Treaty Bodies can only be filed after the exhaustion of domestic remedies (although this can be waived where remedies are not available, where it would be futile to do so, or when there is undue delay), and only when the State party has ratified the relevant treaty and accepted the competence of the specific treaty body to review individual complaints. There are several avenues within the UN system that victims can use to pursue justice, including those below:

- The *Human Rights Committee* (HRC) is an 18-member body of experts tasked with monitoring State parties' compliance with the International Covenant on Civil and Political Rights (ICCPR). The Committee may consider individual communications regarding violations of the ICCPR by any States that are party to the First Optional Protocol to the Covenant. 116 States have ratified the Optional Protocol so far. Some States have lodged reservations limiting the HRC's competence to examine particular complaints, despite having ratified the Optional Protocol. Check the list on the [United Nations website](#).
- The *Committee against Torture* (CAT) is a committee of 10 international experts who monitor the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). Individuals can file an individual complaint if the State party ratified the treaty and consented to the Committee's jurisdiction under Article 22. Check the list on the [United Nations website](#).

- The *Committee on Enforced Disappearance (CED)* has 10 independent experts who monitor the implementation of the International Convention on the Protection of All Persons from Enforced Disappearances (ICPPED). Article 31 of ICPPED provides for the CED to receive individual complaints from victims of enforced disappearance, but only if the State ratified the ICPPED and consented to the competence of the CED to receive individual complaints. Check the list on the [United Nations website](#).
- The *Committee on the Elimination of all forms of Discrimination against Women (CEDAW)* has 23 independent experts who monitor the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Based on Articles 1 and 2 of the Optional Protocol to CEDAW, the Committee may consider individual communications submitted by or on behalf of individuals or groups of individuals against State parties to the Optional Protocol regarding violations of CEDAW. 114 States have ratified the optional Protocol so far. Check the list on the [United Nations website](#).

There are also a number of UN working groups which can also be approached in the context of a strategic litigation campaign. Their decisions do not have the authority of a court judgement but can be highly persuasive. Domestic remedies do not need to be exhausted, and so these bodies can be approached as part of an ongoing campaign.

- The *UN Working Group on Arbitrary Detention (WGAD)* was established to investigate cases of deprivation of liberty imposed arbitrarily or inconsistently with the international standards set forth in the Universal Declaration of Human Rights (UDHR), or the international legal instruments accepted by the States concerned. Amongst others, the WGAD considers individual complaints, leading to the adoption of opinions as to the arbitrariness of the detention. The WGAD is an effective forum to denounce the arbitrary detention of an individual, which could exert pressure on the State and prevent torture and other violations.
- The *UN Working Group on Enforced or Involuntary Disappearances (WGEID)* was established in 1980 with a mandate to examine questions relevant to enforced disappearances and provide assistance to the families in determining the fate or whereabouts of their relatives. The WGEID accepts individual reports of disappearances regardless of whether the State has ratified the ICPPED. Upon receipt of a communication, the WGEID can forward a communication within 1-2 days to the Ministry of Foreign Affairs of the country concerned if the case is less than three months old. If the disappearance occurred more than three months ago, the WGEID may authorise communication to the government requesting to carry out investigations and inform the Group of the results.

There are other special mandates (both thematic and country-specific) which are appointed by the Human Rights Council. Thematic mandates include for instance the Special Rapporteur on torture and other CIDTP, the Special Rapporteur on violence against women, its causes and consequences, or the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence. They will often have the ability to receive information and make urgent appeals to States in relation to individuals at risk of violations, or communications on past violations.

African regional human rights mechanisms

Within the African Human Rights system, cases of torture can be filed before the African Commission on Human and Peoples' Rights (ACoMHRP), the African Court on Human and Peoples' Rights (ACtHRP) and the ECOWAS Court of Justice. The African Union (AU) adopted the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (Malabo Protocol) in June 2014, to merge the ACtHRP and the African Court of Justice into the African Court of Justice and Human and Peoples' Rights (ACTJHRP). However, this Protocol has not yet entered into force.

- The *ACoMHRP* can accept complaints from individuals, NGOs, and groups of individuals who believe their rights have been violated under the African Charter on Human and Peoples' Rights (African Charter). Under its protection mandate, domestic remedies must be exhausted.
- The *ACtHRP* has jurisdiction to hear cases involving torture and other human rights violations in relation to the 30 African States that have ratified the Protocol to the African Charter on the Establishment of the Court. However, only the ACoMHRP can refer cases to the ACtHRP. Additionally, six States have authorised the ACtHRP to hear complaints submitted directly by individuals or NGOs with observer status before the ACoMHRP. These States are Burkina Faso, Gambia, Ghana, Malawi, Mali, and Tunisia.
- The *ECOWAS Court of Justice* has the competence to hear individual complaints of alleged human rights violations, including rights deriving from the UDHR, the African Charter, and the ICCPR. However, only individuals whose countries are members of the ECOWAS can file a complaint within the court (see the list [here](#)).

European regional human rights mechanism

The *European Court of Human Rights (ECtHR)* was established in 1959. It rules on applications made by individuals, groups of individuals, NGOs, or States on violations of the rights and freedoms set out in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). There are 47 State parties to the ECHR. For the Court to have jurisdiction, the State must have ratified the ECHR before the violation occurred (or ended in the case of continuous violations).

For the ECtHR to have jurisdiction domestic remedies should be exhausted, unless such remedies would be unavailable, ineffective, or cause undue delay; there is a time limit of six months since the last domestic decision on the case to file a claim before the ECtHR (n.b. under Protocol 15 this will be reduced to four months from 1 August 2021).

An enforcement mechanism was introduced to the ECHR by Protocol 14. This mechanism enables the Committee of Ministers to ask the Court for interpretation of a judgement or bring a non-compliant member State back before the Court.

Inter-American human rights mechanism

The *Inter-American Commission on Human Rights (IACoMHR)* was established in 1959 under the umbrella of the Organisation of American States (OAS). The Commission is made up of seven independent experts elected by the General Assembly of the OAS. It rules on applications made by individuals, groups of individuals, or NGOs on violations of the rights and freedoms enshrined in the American Declaration of the Rights and Duties of Man

(American Declaration), the American Convention on Human Rights (ACHR), and other inter-American human rights treaties (including the Inter-American Convention to Prevent and Punish Torture). There are 35 member States in the OAS (see the list [here](#)).

The IAComHR examines petitions that allege violations of the ACHR, only in relation to States which have ratified it. For the other OAS member States, individuals can allege violations of rights contained in the American Declaration. They can also allege violation of a right under another human rights treaty of the OAS system to the extent that the State has ratified it.

Similarly, for the IAComHR to have jurisdiction domestic remedies must have been exhausted, unless such remedies would be unavailable, ineffective, or cause undue delay; there is a time limit of 6 months since the last domestic decision on the case to file a case.

The Inter-American Court of Human Rights (IACtHR) was established in 1979. It is made up of seven judges who are independent experts. Only States Parties to the ACHR which have accepted the IACtHR's jurisdiction can be brought before it (of which there are 20 – see the list [here](#)). Individuals cannot bring a case directly to the IACtHR; they must bring it to the IAComHR, which will decide whether or not to refer it to the IACtHR.

Table: Comparison of Admissibility Criteria Per Mechanism

	Add. protocol/ declaration	Complaints from individuals	Complaints from NGOs	Complaints from states	Interim measures	Exhaustion of domestic remedies	Time limits
CAT	Y	Y	Y	Y	Y	Y	Y
HRC	Y	Y	Y	Y	Y	Y	Y
CEDAW	Y	Y	Y	Y	Y	Y	Y
CED	Y	Y	Y	Y	Y	Y	Y
UN Special mandates		Y	Y	Y	Y		
AComHPR		Y	Y	Y	Y	Y	Y
ACTHPR	Y	Referred by the AComHPR	Referred by the AComHPR	Y	Y	Y	Y
ECOWAS CJ		Y	Y		Y		
ECtHR		Y	Y	Y	Y	Y	Y
IAComHR		Y	Y	Y	Y	Y	Y
IACtHR	Y	Referred by IAComHR	Referred by IAComHR	Y	Y	Y	Y

Across the board, for individual complaints to be admissible the same complaint must not be substantially the same as another petition submitted or considered by the same or another international or regional body. Also, these bodies do not operate as appellate bodies for domestic decisions.