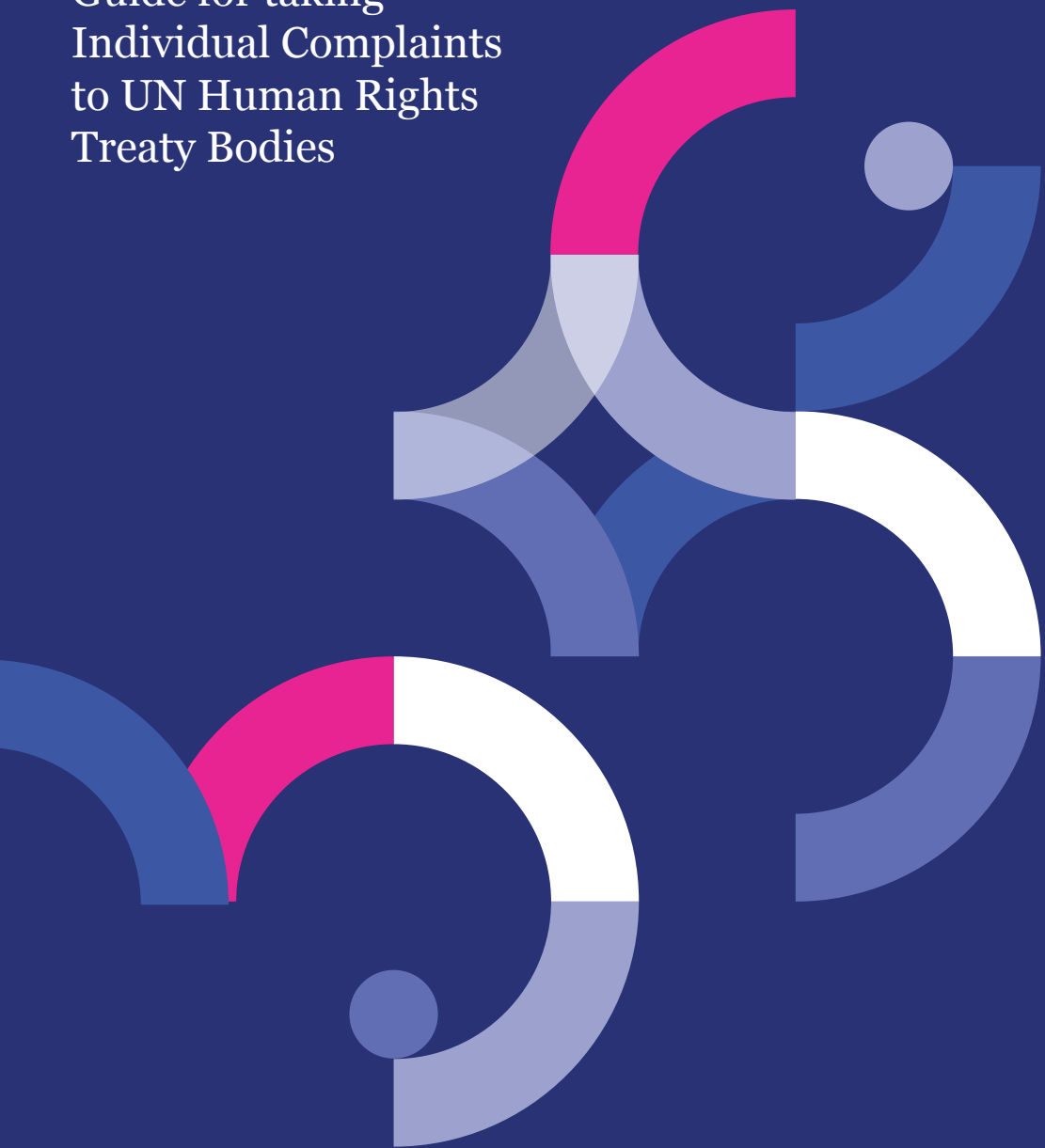




ENGAGEMENT GUIDE SERIES

Guide for taking  
Individual Complaints  
to UN Human Rights  
Treaty Bodies





This project is a cross-border collaborative effort between law firms and NGO partners to develop guidelines on recourses to action for the NGO community in the areas of UN and EU mechanisms, judicial review and the appointment of an *amicus curiae*.

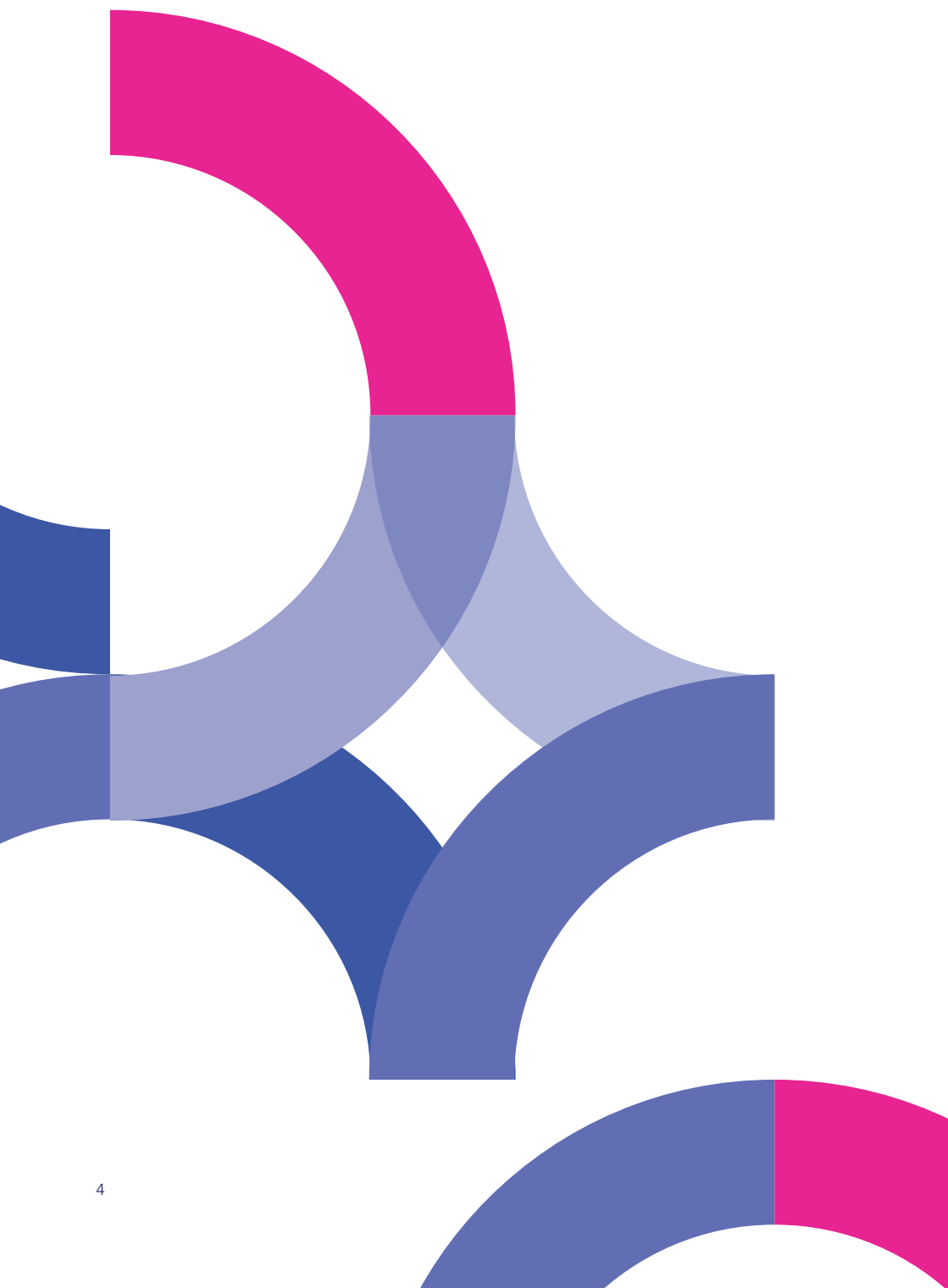
The pathways to justice described in these guides are all too often overlooked or misunderstood due to the overwhelming amount of complex or academic information on these mechanisms. These guidelines steer our NGO partners through easily accessible resources on the different avenues to accessing justice.

The Free Legal Advice Centre (FLAC), The Public Interest Law Alliance (PILA), a project of FLAC based in Dublin, and The Public Interest Litigation Support (PILS) Project in Belfast identified a need in the NGO community for better information and resources on legal recourses to action in the following areas:

1. Individual non-court mechanisms at European level
2. Engagement with UN Special Procedures mandate holders
3. Taking individual complaints to UN treaty bodies
4. *Amicus curiae* procedure
5. Judicial Review

To address this need, PILA, The PILS Project and Arthur Cox offices in Belfast and Dublin collaborated to develop and finalise guideline documents in each of the target areas. The guides were written or revised by the Arthur Cox offices on a *pro bono* basis and were peer reviewed by colleagues from the legal sector in the North and South.

The aim of this project is to provide NGOs with the information they need to understand the available recourses to action and to determine which (if any) to pursue. Should an NGO decide to explore a recourse to action further, the NGO may contact PILA or The PILS Project for assistance through the respective *pro bono* referral schemes.



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Information sources and useful websites are hyperlinked throughout this guide. Updated links to the NGO Engagement Guides are available on the Public Interest Law Alliance website ([www.pila.ie](http://www.pila.ie)) and the PILS Project ([www.pilsni.org](http://www.pilsni.org)) website.

# Introduction

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

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

While this guide focuses on the applicability of UN Treaties to Ireland, this content also applies to Northern Ireland because the United Kingdom is a signatory to the below international human rights treaties listed below. Northern Ireland is not itself a signatory but as a territory within a member state of the UN it also has an obligation to comply with international law.

There are nine core international human rights treaties:

- i. The International Convention on the Elimination of All Forms of Racial Discrimination;
- ii. The International Covenant on Civil and Political Rights;
- iii. The International Covenant on Economic, Social, and Cultural Rights;
- iv. The Convention on the Elimination of All Forms of Discrimination against Women;
- v. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- vi. The Convention on the Rights of the Child;
- vii. The Convention on the Rights of Persons with Disabilities;
- viii. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and
- ix. The International Convention for the Protection of All Persons from Enforced Disappearance.

Of these, Ireland has currently ratified the first seven. The UK have also ratified the first seven. Ratification of (viii) the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families; and (ix) The International Convention for the Protection of All Persons from Enforced Disappearance is not pending in the UK.

# UN Treaty Bodies

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UN Treaty Bodies were established to ensure compliance with the core international human rights treaties by the States that are parties to the treaties. Where it appears that a State is not complying with its obligations, individuals can, in certain circumstances, submit a complaint (called a “petition”) about that violation to a UN Treaty Body. For this to be possible, the State must have agreed to allow the relevant UN Treaty Body to receive complaints either through ratifying an Optional Protocol linked to the particular treaty or by making a declaration provided for in the particular treaty itself.

At present, eight UN Treaty Bodies are empowered to receive and consider individual complaints. More information on each of these UN Treaty Bodies is provided below. Of these, Ireland currently allows complaints to be made against it to five i.e. the Human Rights Committee, the Committee on the Elimination of Racial Discrimination, the Committee on the Elimination of Discrimination Against Women, the Committee Against Torture and the Committee on the Rights of the Child.

For the avoidance of doubt, the United Kingdom and by extension, Northern Ireland, allows individual complaints to the Committee on the Elimination of Discrimination Against Women, and the Committee on the Rights of Persons with Disabilities. While the UK has not opted-in to the individual complaints procedure of the Committee Against Torture, it has, however, opted into the inter-state communications mechanism.



## Human Rights Committee

The Human Rights Committee monitors compliance with the International Covenant on Civil and Political Rights (the “ICCPR”) (which protects rights such as the rights to life, liberty, freedom of religion or belief, freedom of expression and freedom of peaceful assembly) and the Second Optional Protocol to the ICCPR (which seeks the abolition of the death penalty). Ireland ratified the ICCPR in 1989 and the Second Optional Protocol in 1993.

The Committee comprises 18 independent experts who are persons of “high moral character” with recognised competence in the field of human rights. Although formally independent, members must be nationals of a State that is party to the ICCPR, are nominated by their State and are elected by the States. Members serve four-year terms, but may be re-nominated and re-elected at the end of a term. In order to ensure impartiality, members do not take part in discussions of complaints directed against their own State.

To enable individuals to bring complaints to the Human Rights Committee, States must ratify or accede to the First Optional Protocol to the ICCPR. Ireland acceded to this Optional Protocol in 1989 and, therefore, individual complaints may be (and have been) brought against Ireland to the Human Rights Committee. Click [here](#) for further details on the individual complaints against Ireland to the Human Rights Committee (which are discussed in the case studies section at the end of this Guide). The United Kingdom has not ratified the First Optional Protocol to the ICCPR and therefore, complaints cannot be brought against the United Kingdom, and by extension Northern Ireland, to the Human Rights Committee.

## Committee on the Rights of the Child

The Committee on the Rights of the Child monitors compliance with the Convention on the Rights of Child (the “CRC”), the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (the “OP-CRC-SC”) and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (the “OP-CRC-AC”). The CRC and its Optional Protocols aim to give priority to the rights of children for the purposes of all State actions, including through protecting children from violence and recognising their rights to education, freedom of expression and freedom of thought, conscience and religion. Ireland ratified the CRC in 1992 and the OP-CRC-AC in 2002. Ireland signed the OP-CRC-SC in 2000, but has yet to ratify it (and so, is not yet bound by it). The United Kingdom ratified the CRC and OP-CRC in 1991 and 2003 respectively and is bound by both.

The Committee comprises 18 independent experts who are persons of “high moral character” with recognised competence in the field of human rights. Although



formally independent, members must be nationals of a State which is party to the CRC, are nominated by their State and are elected by the States. Members serve four-year terms, but may be re-nominated and re-elected at the end of a term. In order to ensure impartiality, members do not take part in discussions of complaints directed against their own States.

The Committee may consider individual complaints against States who have ratified the Third Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure. Ireland ratified the Third Optional Protocol in 2014 and, therefore, individual complaints may be brought against Ireland to the Committee on the Rights of the Child (although none have been submitted to date).

### Committee against Torture

The Committee against Torture monitors compliance with the Convention against Torture (the "CAT"). This Treaty requires States to take measures to prevent torture and protects the right to bodily integrity and the right to non-refoulement (i.e., the right not to be returned to a country where you will face torture or cruel, inhumane or degrading treatment). Ireland ratified the CAT in 2002. The United Kingdom ratified the CAT in 1988.

The Committee comprises 10 independent experts who are persons of "high moral character" with recognised competence in the field of human rights. Although formally independent, members must be nationals of a State that is party to the CAT, are nominated by their State and elected by the States. Members serve four-year terms, but may be re-nominated and re-elected at the end of a term. In order to ensure impartiality, members do not take part in discussions of complaints directed against their own States.

The Committee may consider individual complaints against States who have made a declaration under Article 22 of the CAT, recognising the competence of the Committee to do so. Ireland made such a declaration in 2002 and, therefore, individual complaints may be brought against Ireland to the Committee against Torture. On 29 January 2020, the Committee against Torture determined that it has jurisdiction to hear a complaint made against Ireland under the CAT by Ms Elizabeth Coppins. This complaint relates to Ireland's alleged failure to investigate and ensure accountability and comprehensive redress for abuse suffered in three 'Magdalene Laundries'. This complaint, the first to be brought against Ireland under the CAT, is awaiting full determination.

### Committee on the Elimination of Racial Discrimination

The Committee on the Elimination of Racial Discrimination monitors compliance with the International Convention on the Elimination of Racial Discrimination (the

“CERD”) (which calls on States to prohibit racial discrimination, to take measures to combat prejudices which lead to racial discrimination and to guarantee the right to equality before the law for everyone). Ireland ratified the CERD in 2000. The United Kingdom ratified the CERD in 1969.

The Committee comprises 18 independent experts who are persons of “high moral character” and acknowledged impartiality. Although formally independent, members must be nationals of a State which is party to the CERD, are nominated by their State and are elected by the States. Members serve four-year terms, but may be re-nominated and re-elected at the end of a term. In order to ensure impartiality, members do not take part in discussions of complaints directed against their own States.

The Committee may consider individual complaints against States who have made a declaration under Article 14 of the CERD, recognising the competence of the Committee to do so. Ireland made such a declaration in 2000 and, therefore, individual complaints may be brought against Ireland to the Committee on the Elimination of Racial Discrimination (although none have been submitted to date).

### **Committee on the Elimination of all forms of Discrimination against Women**

The Committee on the Elimination of all forms of Discrimination Against Women monitors compliance with the Convention on the Elimination of all forms of Discrimination Against Women (the “CEDAW”) (which obliges States to combat discrimination against women in a number of areas such as education, employment, health care and in matters related to marriage). Ireland ratified the CEDAW in 1985. The United Kingdom ratified the CEDAW in 1986.

The Committee comprises 23 independent experts who are persons of “high moral standing” and competence in the field of women’s rights. Although formally independent, members must be nationals of a State that is party to the CEDAW, are nominated by their State and are elected by the States. Members serve two-year terms, but may be re-nominated and re-elected at the end of a term. In order to ensure impartiality, members do not take part in discussions of complaints directed against their own States.

The Committee may consider individual complaints against States who have ratified the Optional Protocol to the Convention on the Elimination of all forms of Discrimination against Women. Ireland ratified the Optional Protocol in 2000 and, therefore, individual complaints may be brought against Ireland to the Committee on the Elimination of all forms of Discrimination Against Women (although none have been submitted to date). Likewise, the United Kingdom ratified the Optional Protocol in 2004 which enables complaints to be brought against it.

## Committee on Economic, Social and Cultural Rights

The Committee on Economic, Social and Cultural Rights monitors compliance with the International Covenant on Economic, Social and Cultural Rights (the "ICESCR"). This treaty protects human rights such as the rights to health, education, social security, culture, work and housing. Ireland ratified the ICESCR in 1989. The United Kingdom ratified the ICESCR in 1976.

The Committee comprises 18 independent experts who are persons of "high moral character" with recognised competence in the field of human rights. Although formally independent, members must be nationals of a State that is party to the ICESCR, are nominated by their State and are elected by the States. Members serve four-year terms, but may be re-nominated and re-elected at the end of a term. In order to ensure impartiality, members do not take part in discussions of complaints directed against their own States.

To enable individuals to bring complaints against them to the Committee, States must ratify the Optional Protocol to the ICESCR. Ireland signed the Optional Protocol in 2012, but has yet to ratify it. Thus, individuals cannot yet bring individual complaints alleging violations of the ICESCR against Ireland. The United Kingdom has neither signed nor ratified the Optional Protocol which means complaints cannot be brought against it in relation to alleged breaches of the ICESCR.

## Committee on the Rights of Persons with Disabilities

The Committee on the Rights of Persons with Disabilities monitors compliance with the Convention on the Rights of Persons with Disabilities (the "CRPD"). This treaty obliges States to recognise the equal right of all persons with disabilities to live in the community and to protect people with disabilities from all forms of exploitation, abuse and violence. States must also maintain, strengthen, designate or establish a framework within their country to promote, protect and monitor the implementation of the CRPD. Ireland ratified the CRPD in 2018. The United Kingdom ratified the CRPD in 2009.

The Committee comprises of 18 independent experts who are persons of "high moral standing" and recognised competence and experience in the field of disability rights. Although formally independent, members must be nationals of a State that is party to the CRPD, are nominated by their State and are elected by the States. Members serve four-year terms, but may be re-nominated and re-elected at the end of a term. In order to ensure impartiality, members do not take part in discussions of complaints directed against their States.

To enable individuals to bring complaints against them to the Committee, States must ratify the Optional Protocol to the CRPD. In 2015, the Irish government published a "Roadmap to Ratification of the United Nations Convention on the

Rights of Persons with Disabilities” committing to ratify the Optional Protocol at the same time as the CRPD itself. However, this did not occur and Ireland is still to ratify the Optional Protocol. Thus, individuals cannot yet bring individual complaints alleging violations of the CRPD against Ireland. Contrarily, the UK ratified the Optional Protocol in 2009 which enables complaints to be brought against it.

### Committee on Enforced Disappearances

The Committee on Enforced Disappearances monitors compliance with the International Convention for the Protection of All Persons from Enforced Disappearance (the “CED”) (which requires States to refrain from perpetrating enforced disappearances, to investigate any alleged cases of enforced disappearance and to ensure that enforced disappearances constitute an offence under the criminal code). Although Ireland signed the CED in 2007, it has not yet ratified it and so, is not yet bound by its terms.

The Committee consists of 10 independent experts who are persons of “high moral character” and recognised competence in the field of human rights. Although formally independent, members must be nationals of a State that is party to the CED, are nominated by their State and are elected by the States. Members serve four-year terms, but may be re-nominated and re-elected at the end of a term. In order to ensure impartiality, members do not take part in discussions of complaints directed against their States.

To enable individuals to bring complaints against them to the Committee, States must make a declaration under Article 31 of the CED, recognising the competence of the Committee to receive such complaints. As Ireland has not yet ratified the CED as a whole, it has similarly not made any such declaration and, therefore, individuals cannot yet bring individual complaints alleging violations of the CED against Ireland. Similarly, the United Kingdom has not ratified the CED and as such, complaints against it in relation to breaches of the CED cannot be brought.

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

The Committee on the Protection of the Rights of Migrant Workers is responsible for monitoring compliance with the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (the “CRMW”) (which grants rights to documented and undocumented migrants including in the areas of employment and healthcare). Ireland has neither signed nor ratified the CRMW and has not announced plans to do so. Successive governments have taken the position that ratification would require significant changes to a wide range of existing legislation and would have implications for Ireland’s European Union

commitments.

The Committee consists of 14 independent experts who are persons of “high moral character”, impartiality and recognised competence in the field covered by the CRMW. Although formally independent, members must be nationals of a State that is party to the CRMW, are nominated by their State and are elected by the States. Members serve four-year terms, but may be re-nominated and re-elected at the end of a term.

The individual complaints mechanism under the CRMW has not yet entered into force. In order to come into force, 10 States must make a declaration under Article 77 of the CRMW, recognising the power of the Committee to receive complaints. So far, only 6 States have done so (with one more, Turkey, expressing an intention to do so at a later time). Click [here](#) for further information on the ratification status of Article 77 of the CRMW.

Once the individual complaints mechanism comes into force, additional States may allow complaints to be made against them to the Committee by making a declaration to that effect under Article 77 of the CRMW. As Ireland has not yet signed (or ratified) the CRMW and the individual complaints mechanism under the CRMW has not yet entered into force, individuals cannot yet bring individual complaints alleging violations of the CRMW against Ireland. Similarly, the United Kingdom has not ratified the CRMW and as such, complaints against it in relation to breaches of the CRMW cannot be brought.



# Rules governing complaints mechanisms

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There are a number of basic requirements which must be met in order for a complaint to be considered by a UN Treaty Body. These include that:

- The State against whom the complaint is made must have ratified the human rights treaty which provides the rights breached and accepted that treaty's individual complaints procedure;
- The nature of the complaint must fall within the scope of the relevant treaty;
- The person making the complaint must have exhausted all available and effective remedies in the State against which the complaint has been made (known as "domestic remedies") before submitting the complaint (except where there is sufficient evidence that domestic remedies are unavailable, ineffective or unduly prolonged). This usually involves bringing a court case before national courts and obtaining a final decision from the highest national court possible;
- The complaint must relate to one or more specific individuals who have been a victim of an alleged violation. If the person making the complaint is acting on another individual's behalf, they must have obtained authorisation (or alternatively provide justified reasons for why they are doing so). Individual complaint mechanisms are not generally designed for considering allegations of gross or systemic human rights violations;
- The complaint must generally not be under consideration by another international or regional decision-making body (e.g. the European Court of Human Rights). One exception to this appears to be the Committee on Elimination of Racial Discrimination, where parallel consideration by the European Court of Human Rights and International Court of Justice has been allowed; and
- The complaint should be submitted as soon as possible after the alleged breach has occurred and / or domestic remedies have been exhausted. Some UN Treaty Bodies have also set more specific time limits for filing complaints. For example, complaints to the UN Committee on the Elimination of Racial Discrimination should normally be submitted within six months of the final decision by a national authority in the case, except in the case of duly verified exceptional circumstances.

# Form of the individual complaint

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Most of the UN Treaty Bodies provide model complaint forms or guidelines for the submission of complaints. While the design and operation of the complaints mechanisms are similar, requirements vary for each. Further information is available [here](#).

While submissions styled on model complaint forms and guidelines are preferred, UN Treaty Bodies do consider complaints, irrespective of the format they are submitted in, once they contain all of the **necessary information**, are **signed** and are **written in one of the UN languages** (i.e., Arabic, Chinese, English, French, Russian or Spanish). It is not necessary to have a lawyer prepare the complaint, though legal advice may be helpful for NGOs, where available.

Necessary information includes:

- Identification of the victim's name; nationality; date of birth; mailing address; email. This person must have been personally and directly impacted by the breach complained of; it is not possible to complain about a law, policy or practice in the abstract without demonstrating how the victim is individually affected;
- Identification of the State against which the complaint is directed;
- A complete chronological account of all of the facts on which the complaint is based;
- An explanation as to why the facts described constitute a breach of the relevant treaty, preferably indicating the specific treaty rights that have been allegedly violated;
- Details of the steps which have been taken to exhaust domestic remedies;
- Confirmation of whether the case has been sent to another means of international investigation;
- Copies (not originals) of relevant documents, particularly any relevant administrative or judicial decisions issued by national authorities. If these documents are not in a UN official language, a full or summary translation must also be submitted. The documents should be listed in order by date, numbered consecutively and accompanied by a concise description of their contents; and
- Confirmation of whether a request for interim measures (e.g., preventing a deportation or execution) is being made and, if so, the details of and reasons for

such a request. Interim measures are aimed at preventing irreparable harm to the author of the complaint (or, if different, the victim of the treaty breach) while the complaint is being determined.

Although not required, it is also highly advisable to include details of the particular right(s) that has/have been breached (in considering how a particular UN Treaty Body interprets a certain right, you should consult their General Comments and Concluding Observations, which are accessible on the websites of each of the UN Treaty Bodies) and the kind of remedies that you are seeking from the State alleged to be in breach.

Complaints may be brought by the individual whose rights have been breached themselves or by another on their behalf (in which case the individual's written consent must be obtained or, where not possible in the circumstances, the author of the complaint should state clearly why such consent cannot be provided).

Complaints to UN Treaty Bodies should not exceed 50 pages (excluding annexes). Where submissions exceed 20 pages, you should include a short summary of no more than five pages highlighting the main elements of the complaint.

Final decisions adopted by the UN Treaty Committees are made public. Therefore, if you require your (and/or, if different, the identity of the person on whose behalf the complaint is being made) their identity not to be disclosed in the final decision, you should indicate this as soon as possible.

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

**Email:** [petitions@ohchr.org](mailto:petitions@ohchr.org)

**Postal address:**

Petitions and Inquiries Section  
Office of the High Commissioner for Human Rights  
United Nations Office at Geneva 1211 Geneva 10, Switzerland

If the complaint lacks essential information or the description of facts is unclear, you will be contacted by the secretariat of the Office of the High Commissioner for Human Rights with a request for additional details or resubmission. You should be diligent in responding to the secretariat and the information requested should be sent as soon as possible and no later than one year. If the information is not received within a year from the date of the request, the file will be closed.

In order to prevent irreparable harm, some Committees may issue a request to the State for interim measures, for example, if the complaint is in relation to deportation of an individual when there is a risk of torture. If the person making the complaint wants the relevant Committee to consider a request for interim measures, this should be explicitly stated in the complaint.





# Complaints procedure

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If a complaint contains the necessary information, the case is formally listed for consideration with the relevant UN Treaty Body and you will be informed of this listing. The duration of the procedure then varies depending on the UN Treaty Body in question, but, generally, it takes between 1 and 2 years for a case to be considered after registration (although the Human Rights Committee has a backlog of complaints and its procedure usually takes longer).

There are two stages to the decision-making process – the **admissibility stage** and **merits stage**. The “admissibility” of a case refers to the formal requirements that a complaint must satisfy before the relevant UN Treaty Body can consider its substance. For more information on the factors the UN Treaty body will consider when assessing admissibility, please click [here](#). The “merits” of the case are the substance, on the basis of which the UN Treaty Body decides whether or not rights have been violated. UN Treaty Bodies tend to consider both the admissibility and the merits of a case jointly. For further information on the factors that the UN Treaty Body will consider when assessing merits, please click [here](#).

Once formally listed, the complaint (generally including the identity of the person making the complaint) will be transmitted to the relevant State for its comments (in respect of both admissibility and merits). Typically, the State will be given six months to respond (with any objections in respect of admissibility needing to be provided within the first two months). Upon receipt, you will be given the opportunity to comment on the State’s response (again, within a set timeframe, usually two months).

Generally, when comments are received from both the complainant and the State, the case is ready for a decision by the relevant UN Treaty Body. Where, however, the State fails to respond to the complaint, even after receiving several reminders from the secretariat, the UN Treaty Committee will make a decision on the case based on the information submitted by the complainant.

The UN Treaty Bodies consider each case in closed session. Although some have provisions for oral proceedings in their rules of procedure (e.g., the Committee against Torture and the Committee on the Elimination of Racial Discrimination), the practice has been to consider complaints only on the basis of the written

information supplied by the person(s) making the complaint and the State. Nor do the UN Treaty Bodies go beyond the information provided by the parties to seek independent verification of the facts.

Once a decision on admissibility and, if relevant, whether there has been a breach of treaty rights, has been made, it will be transmitted to the complainant and the State simultaneously. The text of any decision will also be posted on the website of the Office of the United Nations High Commissioner for Human Rights.

Decisions issued by UN Treaty Bodies cannot be appealed. When a UN Treaty Body decides that there has been no violation of the treaty or that the complaint is inadmissible, the case is closed.

On the other hand, where a UN Treaty Body decides that there has been a violation by the State of rights under the treaty, it identifies recommendations to redress the violation and invites the State to supply information within a set time frame (usually 180 days) on the steps taken to give effect to its findings and recommendations. Over the years, the UN Treaty Bodies have recommended various types of redress; the most common is compensation, but recommendations such as release, investigation, re-trial and commutation of a death sentence have also been made.

While their recommendations are not legally binding on the States, UN Treaty Bodies have developed procedures to monitor whether States have implemented these recommendations because they consider that, by accepting the relevant complaints procedure, the States have also accepted to respect the relevant UN Treaty Body's findings. If the State fails to take appropriate action within 180 days, the case is kept under consideration and a dialogue is pursued with the State until satisfactory measures are taken. Information related to this type of follow-up is not confidential and the meetings during which this information is discussed are public.

If a complaint has included a request for interim measures, UN Treaty Bodies can determine this and request that the relevant State impose interim measures at any time (including prior to determining admissibility of the complaint). A decision to issue a request for interim measures does not imply a determination on the admissibility or the merits of the complaint, but the UN Treaty Body must consider the complaint to have a reasonable likelihood of success on the merits for it to be concluded that the victim would suffer irreparable harm. It takes several working days for a UN Treaty Body to process a request for interim measures. Any such request should, therefore, reach the relevant secretariat as early as possible before the action sought to be prevented could materialise.

# How can civil society contribute?

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## Bringing a complaint/assisting an individual to bring a complaint

Civil society organisations are entitled to bring a complaint on behalf of an individual, generally once that person has provided written consent. Evidence of such consent (or a full explanation as to why such consent is not possible in the circumstances) must be provided to the relevant UN Treaty Body. Civil society actors also often assist individuals in preparing, submitting or lodging a complaint with a UN Treaty Body.

# The Individual Complaints Mechanisms

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To date, eight complaints to UN Treaty Bodies have been made against Ireland. Seven of these have been to the Human Rights Committee alleging violations of the International Covenant on Civil and Political Rights, while the last (and most recent) was a complaint to the Committee Against Torture alleging violations of the CAT.

Of these, five have been found to be admissible and considered on the merits and two (both relating to the application of Ireland's previous laws on abortion) resulted in a finding of a breach of the ICCPR. Full determination of the CAT complaint remains pending.

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



## Case Study: Mellet v Ireland

In *Mellet v Ireland*, the author of the complaint, who lived in Dublin, was informed that her fetus had a fatal fetal impairment and would either die in utero or shortly after birth. Medical staff suggested that, while abortions were not available in Ireland, she had the option to “travel”.

The author received very little information about abortion options from and was not referred by the Rotunda Hospital (the hospital at which her prenatal appointments were held) to a provider abroad that could terminate her pregnancy. During one appointment, however, a midwife suggested that the author contact an Irish family planning organisation for information and counselling. She did so and that organisation helped to arrange an appointment for her at the Liverpool Women’s Hospital.

The author travelled to the Liverpool Women’s Hospital with her husband, where she received medication to begin the process of terminating her pregnancy. After a 36-hour labour, the author gave birth to a stillborn baby girl. Just 12 hours later, still feeling weak and bleeding, the author had to travel back to Dublin.

After her return to Dublin, the author felt that she needed bereavement counselling. While the Rotunda Hospital offered such counselling to couples who suffered a spontaneous stillbirth, the service was not extended to those who chose to terminate a pregnancy. At the time of her complaint, the author still suffered from complicated grief and unresolved trauma and felt that she would have been able to accept her loss better if she had not had to endure the pain and shame of travelling abroad for an abortion.

The author made a complaint to the Human Rights Committee, arguing that the application of Ireland’s abortion laws had breached various Articles of the ICCPR by subjecting her to cruel and inhumane and degrading treatment and encroaching on her dignity and physical and mental integrity (Article 7), breaching her right to privacy (Article 17), breaching her right to access information (Article 19) and breaching her rights to non-discrimination, equal protection and equal enjoyment of other rights on the grounds of sex and gender (Articles 2(1), 3 and 26).

The Human Rights Committee found that the author's case had involved multiple breaches of the ICCPR. As an initial starting point, the Committee highlighted that, even where laws or actions are legal under national law, that does not prevent them from being breaches of international human rights treaties such as the ICCPR. The Committee then considered the complaint in detail and concluded that:

- the circumstances of the author's case, taken together (and, in particular, the unavailability of appropriate medical care in her own country and failure of medical staff to provide her with appropriate information on abortion options), amounted to cruel, inhuman or degrading treatment in violation of Article 7;
- a woman's decision to request a termination of pregnancy is an issue which falls under the scope of Article 17 and the interference in the author's decision as to how best to cope with her nonviable pregnancy was unreasonable and arbitrary and, therefore, in breach of that Article 17; and
- the different treatment applied to the author and other similarly-situated women (i.e., those who did not choose to have an abortion) constituted discrimination and violated the author's rights under Article 26. In light of this finding, the Committee did not consider it necessary to consider the author's other arguments around discrimination under Articles 2 (1), 3 and 19.

As the Human Rights Committee had found a breach (and, indeed, multiple breaches) of the ICCPR, it ordered Ireland to provide an effective remedy – in this case, compensation and making available to the author any psychological treatment she needed.

The Committee also stated that Ireland was under an obligation to take steps to prevent similar violations in the future and so, suggested that Ireland:

- Amend its law (including its Constitution, if necessary) to ensure effective, timely and accessible procedures for pregnancy termination in Ireland; and
- Take measures to ensure that health-care providers were in a position to supply full information on safe abortion services without fearing they will be subjected to criminal sanctions.

Since this complaint was heard, the Thirty-sixth Amendment of the Constitution of Ireland was enacted on 18 September 2018, following a referendum in favour of the amendment in May 2018. This has meant reform to the status of abortion in Irish Law and largely addressed the findings of the Committee in this case.



## Case Study: Kavanagh v Ireland

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

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

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

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

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

# Other ways to engage with treaty bodies

In addition to the individual complaints mechanism mentioned above, civil society organisations can engage with treaty bodies and their work in other ways:



## Case Study: CLC and the reporting process

The Children's Law Centre provides legal advice and information to children and young people living in Northern Ireland. Its youth advisory panel of 14 – 18 year-olds bring their concerns (and of their peers) directly into the offices of political parties, the education sector and the media.

Together, CLC staff and the Youth@CLC panel coordinated a youth-led submission to the Committee on the Rights of the Child in 2022. Youth@CLC ran 15 workshops to gather responses. Between March and April 2022, they also received survey responses from 1,000 children and young people aged 12 - 17.

This report will be considered as part of the UK government's official submission to the Committee in 2023.



In 2022, CLC Youth Participation Worker, Sinead McSorley said: "This is a very important way for children and young people in this jurisdiction to feed into the UNCRC reporting process. Their experiences and opinions are key to understanding if the UK government is fulfilling the obligations it signed up for when it ratified the UNCRC in 1991. We know children's rights have a massive impact on the lives of children and young people, from education and healthcare to leisure and youth justice. However, we can't fully understand how well these rights are being protected, or where the gaps are, unless we get the views of as many under-18s as possible."

1. Working with the United Nations Human Rights Programme:  
A Handbook for Civil Society,
2. Office of the UN High Commissioner for Human Rights,  
Geneva and New York, 2008.
3. Website of the Office of the UN High Commissioner for Human Rights  
[www.ohchr.org](http://www.ohchr.org)





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# The PILS Project

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