



# Best practices and complaints follow-up

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# Choosing the forum: ICCPR or CAT?

- Check whether the State concerned is a party to either or both
- Benin, Georgia, Kyrgyzstan, Philippines, Sierra Leone, Togo, Zambia = parties to ICCPR-OP
- Burundi, Georgia, Togo, Tunisia = art.22 declarations to CAT



# Choosing the forum: ICCPR or CAT?

- Compare substantive provisions
- Compare jurisprudence
- Issue of delay – CAT has at the moment a smaller backlog than ICCPR

# Where to send a complaint

- By post: Petitions Team

Office of the High Commissioner  
for Human rights

United Nations Office at Geneva  
1211 Geneva 10

- By fax: 022 917 9022
- By email: [tb-petitions@ohchr.org](mailto:tb-petitions@ohchr.org)

# How to present a complaint

- Written procedure – use model complaint form
- The complaint should be written in English, French, Russian or Spanish.
- Preferably in the language of the State party
- Annexes which are in another language should be summarized in a working language if they cannot be translated.
- Send complaint in electronic form as well, if possible and/or duplicate, if possible.



# How to present a complaint

- Provide authorisation from the victim or close relative (power of attorney)
- Provide precise contact details, inc. email, fax and tel.
- Identify articles of the ICCPR/CAT – clearly indicate if the complaint is brought under the ICCPR or CAT.
- Include any relevant documents, esp. medical reports.



# Main admissibility criteria

- No concurrent application to another “procedure of international investigation or settlement”
- Complaint cannot be registered if domestic remedies have not been exhausted
- Must show that “some efforts” have been made – dates of complaints, receipts, etc.
- Or provide arguments as to why no attempts to exhaust domestic remedies

# Dimitrijevic v. Serbia and Montenegro (CAT 207/2002)

- The author's arguments :
- 2.5 Furthermore, under article 153 (1) of the CPC, if the public prosecutor decides that there is no basis for the institution of a formal judicial investigation he must inform the complainant, who can then exercise his prerogative to take over the prosecution in the capacity of a "private prosecutor". However, the CPC sets no time limit in which the public prosecutor must decide whether or not to request a formal judicial investigation. In the absence of such decision the victim cannot take over the prosecution of the case on his own behalf. Prosecutorial inaction following a complaint filed by the victim therefore amounts to an insurmountable impediment in the exercise of the victim's right to act as a private prosecutor and to have his case heard before a court. Finally, even if there were a legal possibility for the victim himself to file for a formal judicial investigation because of the inaction of the public prosecutor, this would in effect be unfeasible if, as in the instant case, the police and the public prosecutor had failed to identify all of the alleged perpetrators beforehand. Article 158 (3) of the CPC provides that the person against whom a formal judicial investigation is requested must be identified by name, address and other relevant personal data. A contrario, such a request cannot be filed if the alleged perpetrator is unknown.



# Dimitrijevic v. Serbia and Montenegro (CAT 207/2002)

- The Committee's response:
- 5.2. With respect to the exhaustion of domestic remedies, the Committee took note of the information provided by the complainant about the criminal complaint which he filed with the public prosecutor. The Committee considers that the insurmountable procedural impediment faced by the complainant as a result of the inaction of the competent authorities rendered the application of a remedy that may bring effective relief to the complainant highly unlikely. In the absence of pertinent information from the State party the Committee concludes that the domestic proceedings, if any, have been unreasonably prolonged. With reference to article 22, paragraph 4 of the Convention and rule 107 of the Committee's rules of procedure the Committee finds no other obstacle to the admissibility of the complaint.

# Remedy is futile

- Regarding the contention that the complaint should not be entertained owing to the failure to exhaust domestic remedies, while taking into consideration the State party's description of its legal and court system, the Committee notes that the incident in question took place on 26 April 2000 at El Manar 1 police station; that the only investigations made were made by the chief of the security service of the Tunis district and by the Public Prosecutor who eventually filed the case with no further action; that on the day the complaint was submitted to the Committee against Torture, 6 July 2005 (over five years after the incident), no substantive decision had been reached; and that that is an abnormally long time to spend dealing with extremely serious acts which qualify as crimes attracting severe penalties under Tunisian law. In the light of the above, the Committee considers that the requirements of article 22, paragraph 5, of the Convention, have been met.



# Interim measures of protection

- Objective: to avoid « irreparable damage»
- Risk: imminent, real and personal
- Decision by the Special Rapporteur on New Complaints and Interim Measures
- Usually granted provisionally
- May be contested by State party afterwards



# Procedure after registration

- State party's comments on admissibility and merits (within six months)
- Author's comments (within two months)
- Ready for decision
- Special case: the State party contests admissibility within two months, then may be decision of the Committee on admissibility only



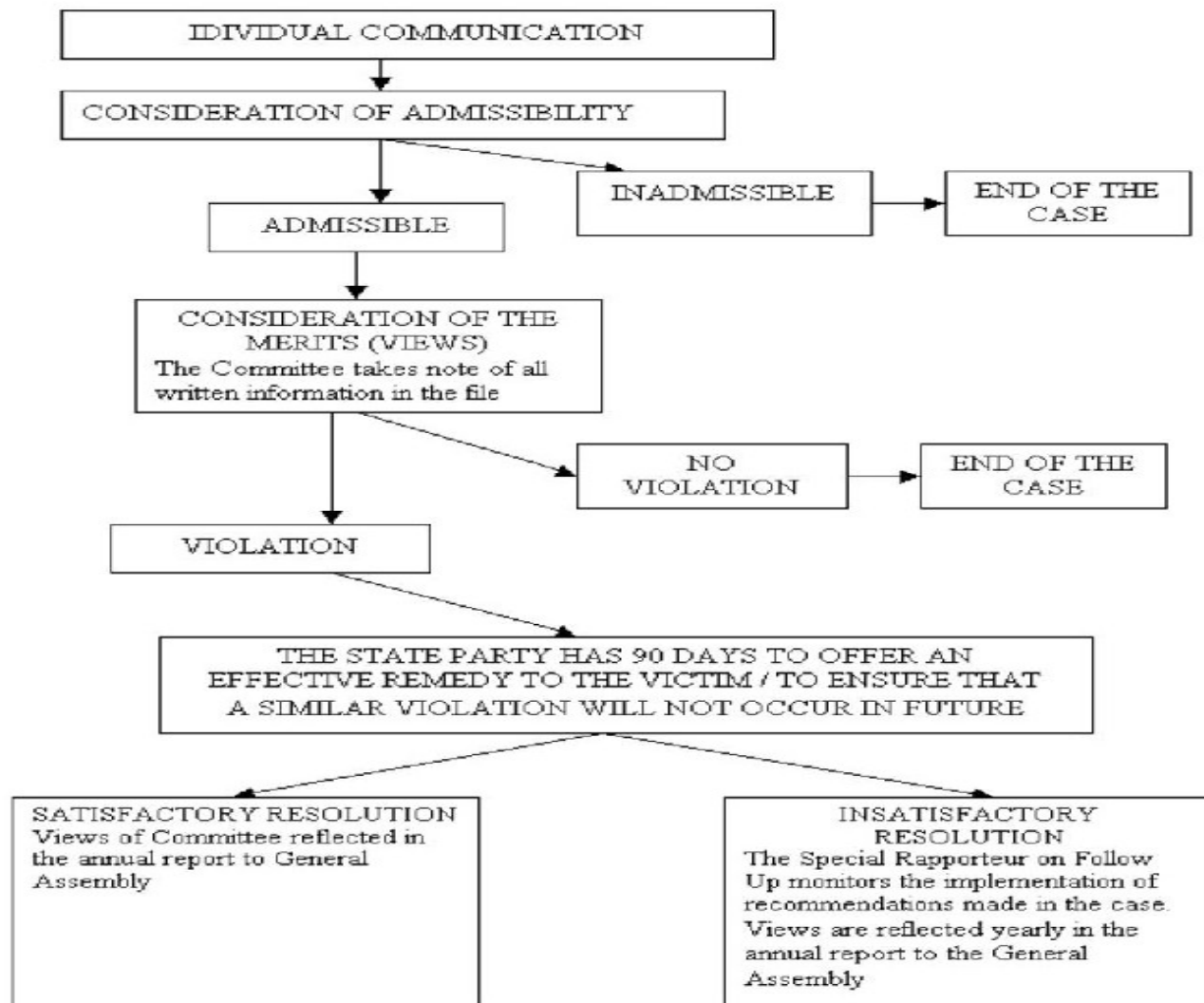
# Inadmissibility decision

- ▶ The Committee examines the complaint under the admissibility requirements
- ▶ if one inadmissibility criterion is found to apply: the case is declared inadmissible (end of the case)
- ▶ if no inadmissibility criterion is found to apply: the case is declared admissible



# Consideration of the merits

- Either “no violation” -> end of the case
- Or “violation” -> Follow-up






# Follow-up procedure


- SP to provide information on implementations of Views within 90 days
- Author to comment on this information within two months
- Special Rapporteur on follow-up
- Information included in Annual Report to GA





## Follow-up to *Ristic v. Serbia and Montenegro* (CAT 113/1998)

- Views adopted by CAT on 11 May 2001
- Court decisions on compensation, but not on investigation
- Supreme Court of Serbia, 8 Feb 2006 – duty to investigate



# Follow-up to Domukhovsky v. Georgia (623/1995)

- Views adopted on 6 April 1998
- SP challenged Views on 19 August 1998
- SP informed HRC on 27 November 1998 that the President of Georgia has pardoned the author.



# Means to improve follow-up

- Meetings with States parties
- Missions
- Examination of State reports
- Publicity – translation of the Views into local language, role of NGOs and media
- Obstacles to implementation – specific legislation to be adopted?



# Further information

- <http://www.ohchr.org>
- [SIM Documentation Centre <http://sim.law.uu.nl/SIM/Dochome.nsf?Open>]
- Complaint procedures, Fact sheet No.7
- The Human Rights Committee, Fact sheet No.15