



Defence for Children  
DCI-BELGIUM

*The worldwide movement for children's rights*

# Children's Rights Behind Bars

Global overview of the Complaint and  
Monitoring Mechanisms at the UN level

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# Effectiveness, what a wonderful word

## Definition:

*“Effectiveness is then defined as the production, by the legal standard, of effects consistent with the aims that it pursues, whether these effects are concrete or symbolic, legal or extra-legal, planned or not, desired or not, immediate or delayed”*

Yann LEROY, *la notion d'effectivité du droit*, Droit et Société, 2011/3, n°79



## The Right to an effective remedy (1/2)

Enshrined in number of international and European legal instruments:

- Article 8 of the Universal Declaration on Human Rights
- Article 2§3 of the International Covenant on Civil and Political Rights
- Article 13 of the European Convention on Human Rights
- Article 47 of the European Social Charter



## The Right to an effective remedy (2/2)

A remedy is only effective if it is:

- **Available and sufficient** (ECHR, *McFarlane v. Ireland*, 10 September 2010, application n° 31333/06, § 114)
- **Sufficiently certain not only in theory but also in practice** (*Ibidem*)
- **Effective in practice and in law** (ECHR, *El-Masri v. the former Yugoslav Republic of Macedonia*, 13 December 2012, application n° 39630/09, § 255)
- **Account must be taken of the personal circumstances of the applicant** (*Dorđević v. Croatia*, 24 juillet 2012, requête n° 41526/10, § 101)



## UN Treaty-based bodies

- The Human Rights Committee (CCPR)
- The Committee on Economic Social and Cultural Rights (CESCR)
- The Committee on the Elimination of Racial Discrimination (CERD)
- The Committee on the elimination of Discrimination against Women (CEDAW)
- The Committee against Torture (CAT)
- The Subcommittee on Prevention of Torture (SPT)
- The Committee on the Rights of the Child (CRC)
- The Committee on Migrant Workers (CMW)
- The Committee on the Rights of Persons with Disabilities (CRPD)
- The Committee on Enforced Disappearances (CED)



## The principle of subsidiarity

- International complaint bodies should **intervene only where States have failed in their obligations.**
- The principle of subsidiarity is characterized by the criterion of admissibility which requires that all domestic remedies must be exhausted.
- The rationale for the exhaustion rule is to **afford the national authorities**, primarily the courts, **the opportunity to prevent or put right the alleged violations of the Convention** (*Practical Guide on Admissibility Criteria*, Council of Europe/European Court of Human Rights, 2014).



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## The Third Optional Protocol to the Convention on the Rights of the Child

- Entered into force on 14 April 2014
- Children's Rights = Human Rights
- A child-friendly procedure
- Individual communications
- Inter-states communications
- Inquiry procedures for grave or systematic violations



## Advantages

- Effective participation of the child
- Interim measures (Art.6)
- Friendly settlement (Art.9)
- Closed meetings when examining communications received under the Protocol (Art.10)
- The State shall submit its response to the Committee as soon as possible and within 6 months (Art.11)

=> Child-friendly procedure





## Obstacles

- Slow ratification process : 50 signatories, only 25 State Parties !
- The burden of proof falls on the applicant
- Length of the procedure
- The Office of the High Commissioner for Human Rights does not provide legal aid and the legal assistance guarantees are not the same from one State to another
- Lawyers have to be trained to use this legal instrument
- Very demanding admissibility criteria



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## Admissibility criteria in front of the Committee on the Rights of the Child (1/2)

The Committee shall consider a communication inadmissible when:

- The communication is anonymous
- The communication is not in writing
- The communication constitutes an abuse of the right of submission of such communications or is incompatible with the provisions of the Convention and/or its Protocol
- The same matter has been already examined by the Committee or is being examined under another procedure of international investigation or settlement



## Admissibility criteria in front of the Committee on the Rights of the Child (2/2)

The Committee shall consider a communication inadmissible when:

- All available domestic remedies have not been exhausted
- The communication is manifestly ill-founded or not sufficiently substantiated
- The facts that are the subject of the communication occurred prior to the entry into force of the Present Protocol for the State party concerned, unless those facts continued after that date
- The communication is not submitted one year after the exhaustion of domestic remedies, except in cases where the author can demonstrate that it had not been possible to submit the communication within that time limit



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## International Monitoring Bodies at the UN level

- The Subcommittee on Prevention of Torture
- The UN Special Rapporteur on Torture
- The Special Representative of the Secretary-General on Violence against Children
- The UN Working Group on Arbitrary Detention
- All UN Treaty-based bodies (Concluding Observations, General Comments)
- The Universal Periodic Review of the Human Rights Council