

## Using UN Human Rights Mechanisms

1. Individual communications - An individual's human rights are violated and they want to seek redress through UN mechanisms.<sup>1</sup>

- a. CRPD Optional Protocol

If the country concerned has ratified the UN Convention on the Rights of Persons with Disabilities ('CRPD') and the CRPD Optional Protocol ('OP'), and the violations are ongoing or took place after the CRPD and OP entered into force for that country,<sup>2</sup> the individual can send a communication to the Committee on the Rights of Persons with Disabilities.<sup>3</sup> The Committee is a group of 18 independent experts elected by CRPD states parties to monitor states' compliance with the CRPD.

There are certain technicalities that have to be satisfied. Ordinarily the person must exhaust domestic remedies, meaning they first have to go through all court procedures and appeals that could rule in their favor. They do not have to make futile attempts. If the country's Supreme Court has already ruled that forced psychiatry is constitutional, this indicates that a court challenge will be futile. The individual can then proceed directly to the CRPD Committee.

The Committee will receive the communication and request the state to reply. It will make a decision based on these written submissions, indicating which if any articles of the Convention have been violated and the remedies the state should undertake. The Committee's decision is not enforceable, but it can help with advocacy and should be given weight as an authoritative statement about the application of the Convention to the particular situation.<sup>4</sup>

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<sup>1</sup> Communications can also be submitted by a group of individuals or by someone acting on behalf of one or more individuals, with their consent.

<sup>2</sup> Entry into force is May 3, 2008 for the first group of ratifying countries, and 30 days after the deposit of ratification for all others. Dates of ratification are found here, along with any declarations or reservations:

[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15&chapter=4&lang=en&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en&clang=en) (CRPD) and

[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15-a&chapter=4&lang=en&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15-a&chapter=4&lang=en&clang=en) (CRPD Optional Protocol)

<sup>3</sup> Find out more here: <https://www.ohchr.org/en/issues/detention/pages/wgadindex.aspx> and

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/5/2/REV.1&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/5/2/REV.1&Lang=en) (fact sheet) and

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/5/3/REV.1&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/5/3/REV.1&Lang=en) (model complaint form).

<sup>4</sup> Some countries may adopt the view that treaty bodies' decisions in individual cases are binding; see this article about a recent judgment of Spain's Supreme Court

## b. Working Group on Arbitrary Detention

Individuals who have been deprived of their liberty or are at risk of being deprived of their liberty can send a communication to the Working Group on Arbitrary Detention (WGAD). The WGAD is composed of 5 independent experts appointed by the UN Human Rights Council; it is one of a number of human rights mechanisms grouped together as Special Procedures.<sup>5</sup>

The WGAD will issue a decision in individual cases, similarly to the CRPD Committee acting under the Optional Protocol. The WGAD procedure has the advantage that it can be used by individuals in any country, whether or not the country has ratified the CRPD, CRPD Optional Protocol, or any other human rights treaty. Also, the WGAD does not require exhaustion of domestic remedies. The WGAD issues its decision within 6 months.

Communications sent to the WGAD require a nexus with deprivation of liberty, so violations unrelated to deprivation of liberty in the mental health system or otherwise disability-related, or the threat of such deprivation, should probably be taken elsewhere.

## c. Other Special Procedures of the UN Human Rights Council

Special Procedures of the Human Rights Council can contact the state concerned about present or past violations (Urgent Appeal and Letter of Allegation) in response to individual communications.<sup>6</sup> The procedure is confidential but becomes public after six months, and they can issue a press release if they deem it necessary. They can act jointly as well as separately.

Several Special Procedures besides the WGAD have upheld the CRPD standard for people with psychosocial disabilities. (Note that it is necessary to research the individual holding the mandate at the time you make your complaint; they change often and individual differences can be crucial.) These include:

Special Rapporteur on the Rights of Persons with Disabilities<sup>7</sup>

Special Rapporteur on the Right to Health<sup>8</sup>

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<https://www.ejiltalk.org/supreme-court-of-spain-un-treaty-body-individual-decisions-are-legally-binding/>.

<sup>5</sup> Find out more here:

<https://www.ohchr.org/EN/Issues/Detention/Pages/Complaints.aspx>.

<sup>6</sup> Find out more here:

<https://www.ohchr.org/EN/HRBodies/SP/Pages/Communications.aspx>.

<sup>7</sup> Find out more here:

<https://www.ohchr.org/en/issues/disability/srdisabilities/pages/srdisabilitiesindex.aspx> and <https://spsubmission.ohchr.org>.

Special Rapporteur on Torture (not recommended as of this writing in 2018)<sup>9</sup>  
Special Rapporteur on Violence Against Women<sup>10</sup>

Consider also addressing the Special Rapporteur on Housing<sup>11</sup> and the Special Rapporteur on Extreme Poverty,<sup>12</sup> who have expressed interest in working on disability issues.

d. Individual communication mechanisms of other treaties

In addition to the CRPD Optional Protocol, there are individual communication mechanisms under several other UN human rights treaties. It is necessary to research whether a treaty has such a mechanism, the jurisprudence of the treaty body on issues of concern in prior decisions as well as in Concluding Observations and General Comments, in order to determine feasibility and weigh pros and cons.

2. Systemic advocacy - Activists want to bring to the attention of the UN systemic human rights violations in their country.

a. Shadow reports to CRPD Committee

Shadow reports (also called parallel reports, alternative reports or NGO reports) are reports made by disabled people's organizations (DPOs) or other civil society organizations (CSOs)<sup>13</sup> to provide information relevant to the CRPD Committee's review of the country's compliance with its obligations. There is no need for an organization to be formally registered or accredited to the UN in order to make a report to the CRPD Committee. Any group can come together to submit a shadow report, and it can even be done by an individual.

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<sup>8</sup> Find out more here:

<https://www.ohchr.org/EN/Issues/Health/Pages/SRRightHealthIndex.aspx> and  
<https://www.ohchr.org/EN/Issues/Health/Pages/IndividualComplaints.aspx>.

<sup>9</sup> Find out more here:

<https://www.ohchr.org/EN/issues/Torture/SRTorture/Pages/SRTortureindex.aspx> and  
<https://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/Appeals.aspx> and  
<https://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/Allegation.aspx>.

<sup>10</sup> Find out more here:

<https://www.ohchr.org/en/issues/women/srwomen/pages/srwomenindex.aspx> and  
<https://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/Complaints.aspx>.

<sup>11</sup> Find our more here:

<https://www.ohchr.org/EN/Issues/Housing/Pages/HousingIndex.aspx>.

<sup>12</sup> Find out more here:

<https://www.ohchr.org/EN/Issues/Poverty/Pages/SRExtremePovertyIndex.aspx>.

<sup>13</sup> The CRPD Committee is expected to include a definition of DPOs in its forthcoming General Comment No. 7 on Article 4.3. Generally the disability community has defined them as organizations with a majority of members being persons with disabilities and led and controlled by persons with disabilities.

States parties are required to make reports within two years after the Convention's entry into force for that country, and periodically every four years.<sup>14</sup> These reports, along with other materials related to the reporting cycle, are posted on the Committee's website.<sup>15</sup>

Once a country has submitted its initial report, there is a two-stage review process, in which DPOs/CSOs can participate.<sup>16</sup>

First, the Committee or a subgroup of the Committee meets to draw up a List of Issues, i.e. questions for the country to respond to with additional information.<sup>17</sup> DPOs/CSOs have the opportunity to submit written suggestions for questions to be included in the List of Issues, and some submit their full shadow report at this time. Many also meet with Committee members in Geneva to discuss and lobby for their concerns.

Next, the Committee meets with the country's delegates for an Interactive Dialogue.<sup>18</sup> This dialogue is public and is generally held in two sessions, one in the afternoon and the second on the following morning. DPOs/CSOs should submit their full shadow report for that session if they have not already done so; if already submitted, they can provide new and updated information for the session. Many also meet with Committee members in Geneva to discuss and lobby for their concerns.

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<sup>14</sup> For more information, see

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/2/3&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRPD/C/2/3&Lang=en) and

<https://www.ohchr.org/EN/HRBodies/CRPD/Pages/Simplifiedreportingprocedure.aspx>.

<sup>15</sup> For information arranged according to session, see

[https://tbinternet.ohchr.org/\\_layouts/TreatyBodyExternal/SessionsList.aspx?Treaty=CRPD](https://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/SessionsList.aspx?Treaty=CRPD).

<sup>16</sup> For more information about DPO/CSO participation, see

<https://www.ohchr.org/Documents/HRBodies/CRPD/guidelinesDisabledPersonsOrganizationsCivilSocietyOrganizations.doc> and check the CRPD Committee's home page for specific information for the next upcoming session, including deadlines, at

<https://www.ohchr.org/EN/HRBodies/CRPD/Pages/CRPDIndex.aspx>. See also

<https://www.ohchr.org/EN/HRBodies/CRPD/Pages/Accreditation.aspx> about registration to attend sessions in Geneva.

<sup>17</sup> For countries that are in the second reporting cycle or later, the process is substantially similar, however most countries opt for the Simplified Reporting Procedure, which begins with the Committee's preparation of a List of Issues Prior to Reporting. The state party then submits detailed information in response.

<sup>18</sup> For more information, see

[https://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=INT/CMW/INF/7956&Lang=en](https://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT/CMW/INF/7956&Lang=en).

Following the Dialogue with the state, the Committee issues Concluding Observations with specific recommendations to the country. It is advisable to include in the shadow report specific language that the Committee might use in their concluding observations and recommendations, along with supporting references (e.g. a recommendation to abolish specific legal provisions, referred to by name and number, that authorize involuntary treatment, involuntary hospitalization and/or guardianship).

b. Shadow reports to other treaty bodies

Use great discretion and care in deciding whether to approach treaty bodies other than the CRPD on issues of forced psychiatry or legal capacity. Research carefully, discuss with experienced international activists, and weigh pros and cons.

c. Visits by Special Procedures of the Human Rights Council

Special Procedures such as the Working Group on Arbitrary Detention, Special Rapporteur on the Rights of Persons with Disabilities, and others, schedule visits based on their interests and priorities, after a country has invited them or accepted their request to visit. The schedules are announced in advance and can be found by checking the website <https://spinternet.ohchr.org/Layouts/SpecialProceduresInternet/Forthcomingcountryvisits.aspx>.

Do not hesitate to contact these Special Procedures directly when they have scheduled a visit to your country, to arrange meetings, provide information and suggest places to visit and officials or other civil society organizations they should contact. If they are willing, you can organize one or more meetings between the Special Procedure visiting your country and members of the movement of users and survivors of psychiatry/ people with psychosocial disabilities to present your issues.

You can also advocate with your government to invite or accept a visit from Special Procedures.

d. Propose inquiry under the CRPD Optional Protocol

In addition to authorizing the CRPD Committee to receive individual complaints, the CRPD Optional Protocol allows the Committee to undertake an investigation of grave or systematic violations occurring in a particular country, on the basis of reliable information. Check to make sure the country has ratified the CRPD and the CRPD Optional Protocol, and that it has not made a declaration to opt out of the inquiry procedure (Article 6 and 7 of the Protocol).