



LITIGATION TOOLKIT ON STATELESSNESS

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VOLUME I: IMPACT LITIGATION AND
JUDICIAL MECHANISMS TO EFFECT CHANGE

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INTRODUCTION

To be stateless is to have no nationality, and for the millions of stateless people around the world, this can mean denial of basic rights most people take for granted. Stateless people often do not have access to basic and fundamental rights, including the right to access education, health care, employment, and other social rights such as the right to marry or register the birth of their children, to legally 'exist'. Statelessness affects both recent migrants and those who have lived in the same place for generations. It can be intertwined with other root causes of displacement, such as the persecution of minority groups and armed conflict, or occur as a result of conflicts of laws between States, discrimination and gaps in nationality laws, or even deliberate policies by States to strip people of nationality. Many in Europe are also stateless *in situ*, or "in their own country",¹ often in situations linked to State succession and discriminatory laws or practices against certain communities trapped in intergenerational statelessness.²

STATELESS PERSON

A person 'who is not considered as a national by any State under the operation of its law'.¹ This definition is set out in the 1954 Convention relating to the Status of Stateless Persons, is part of customary international law and has been authoritatively interpreted by the United Nations High Commissioner for Refugees (UNHCR) as requiring 'a mixed question of fact and law'.

PERSON AT RISK OF STATELESSNESS

A person who is not stateless but is at risk of becoming so, a person whose statelessness has not yet been determined but there are indications that they may be stateless, or a person whose statelessness may become evident over time. Hidden statelessness can come to light in an immigration detention context, as well as at different stages in migration or international protection procedures.

Stateless people often lack access to fundamental civil, political, economic, cultural, and social rights, and statelessness also increases the risk of experiencing poverty, marginalisation, exploitation, and arbitrary immigration detention. Statelessness pushes people to the margins of society and puts them at risk of discrimination and human rights abuses. It is essential that European governments and institutions recognise and address this issue by protecting everyone's fundamental right to a nationality.

Statelessness is a legal anomaly that affects over half a million people in Europe, but it is solvable. A key component of the work to end statelessness is litigating for change, both in domestic and international (or supranational) courts and bodies, with the

¹International Covenant on Civil and Political Rights, Article 12(4). A person's "own country" is a country they have a significant attachment to, which is often the country where they were born and have always lived, and do not have significant ties to other countries. See also UNHCR (2014), Handbook on Protection of Stateless Persons Under the 1954 Convention Relating to the Status of Stateless Persons, para. 164: <https://bit.ly/3uY4VHg>.

²European Network on Statelessness, Statelessness determination and protection in Europe: good practice, challenges, and risks (2021): https://index.statelessness.eu/sites/default/files/ENS-Statelessness_determination_and_protection_in_Europe-Sep_2021_0.pdf.

purpose of developing and effectively implementing the right to a nationality and the human rights of stateless people. In particular, the European Court of Human Rights and the Court of Justice of the European Union play an important role at regional level in providing clarity in the interpretation of international law and harmonising the standards of protection of stateless people.

As it is fundamentally a human rights issue, another way to tackle statelessness is through advocacy and engagement with human rights monitoring mechanisms, including the UN's Universal Periodic Review mechanism, as well as other bodies and monitoring mechanisms, including – but not limited to – the Committee on the Rights of the Child, the Committee on the Elimination of Racial Discrimination, and the Committee on the Elimination of Discrimination against Women.

NATIONALITY AND CITIZENSHIP

The words “national” and “nationality” have various meanings, in some contexts referring to a shared identity, sometimes based on race, ethnicity, language, religion, or affinity and connection to a particular place, people, or political identity. Nationality also has a legal meaning under international law and is often considered equivalent to the meaning of ‘citizenship’ in domestic law. In this toolkit, except where otherwise specified, references to nationality mean nationality solely in the legal sense: the formal bond of a person to a particular State, with the rights and duties inherent in belonging to that State.

The Litigation Toolkit on Statelessness aims to provide a framework and guidance for legal practitioners on conducting litigation on statelessness. Volume I provides an overview of statelessness and the right to a nationality (section I), a framework to understand impact or strategic litigation and guidance to identify impactful cases (section II), an overview of the key legal instruments, courts and mechanisms to address statelessness (section III), and considerations on the implementation of judgments (section IV). Volume II outlines a summary of the key jurisprudence from the European Court of Human Rights, the Court of Justice of the European Union and UN Treaty Bodies that either directly concern the rights of stateless people or address other connected human rights issues that impact on people without a nationality.

IMPORTANT NOTE

This toolkit does not purport to be exhaustive and should not be relied on as a single source for legal practitioners bringing cases before any court or monitoring body. Legal practitioners are strongly encouraged to read in detail the relevant instructions for litigation and the practice directions, the original judgments and decisions referred to in this toolkit, and to receive specialised training by qualified providers.

Legal practitioners are encouraged to consult complementary resources and stay up to date on developments, including through <https://www.statelessness.eu/>. There are also further materials available in different formats, including this [educational video](#) on Strategic Litigation in the field of International Protection, published by the Hungarian Helsinki Committee. For further information or assistance to this end please feel free to contact [ENS](#) and [The AIRE Centre](#).

STATELESSNESS AND THE RIGHT TO A NATIONALITY IN INTERNATIONAL LAW

The key international legal instruments relating to the protection of stateless persons and prevention of statelessness are the [1954 Convention Relating to the Status of Stateless Persons](#) ('1954 Convention') and the [1961 Convention on the Reduction of Statelessness](#) ('1961 Convention').

In determining whether a person is stateless and should be entitled to protection, States must refer to the definition of a stateless person in Article 1(1) of the 1954 Convention, which defines as stateless "*a person who is not considered a national by any State under the operation of its law*". This definition forms part of customary international law and is the internationally accepted definition of statelessness.³ It should be used in the interpretation and application of any other legal instruments referring to stateless persons, including the 1961 Convention.

Under the 1954 Convention and international human rights law, States must ensure that stateless persons on their territory have access to juridical rights, the right to work, economic and social rights including housing, education and social security, freedom of movement, identity and travel documents, and protection from expulsion. The 1954 Convention also requires that States facilitate the integration and naturalisation of stateless persons, 'as far as possible'.⁴ As States cannot meet these obligations towards stateless persons without a mechanism to identify who on their territory is stateless, the obligation to identify and determine statelessness is implicit in the 1954 Convention.⁵

The only way to fully resolve statelessness is to acquire a nationality. However, it is important to distinguish between the solutions required to address *in situ* statelessness (impacting people who are stateless in their own country) and statelessness in a migratory context. States should resolve *in situ* statelessness by confirming or granting nationality to those who lack it, and work to identify and eliminate discriminatory laws, policies, and practices that perpetuate intergenerational (risk of) statelessness affecting minoritized and marginalised populations. In the case of stateless migrants or refugees, States should have in place mechanisms and procedures to identify and determine who on their territory is stateless, formally determine their statelessness, and

³ International Law Commission, Draft Articles on Diplomatic Protection with commentaries, Yearbook of the International Law Commission, 2006 Vol. II (Part Two): <https://www.refworld.org/docid/525e7929d.html>.

⁴ Chapters II-V of the 1954 Convention.

⁵ UNHCR, Statelessness Determination Procedures and the Status of Stateless Persons ("Geneva Conclusions") (2010): <https://www.refworld.org/docid/4d9022762.html>; Gyulai, G. 'The determination of statelessness and the establishment of a statelessness-specific protection regime', in Edwards, A. & Waas, L. (eds) Nationality and Statelessness under International Law, Cambridge: Cambridge University Press (2014), pp. 116-117. This obligation has been reiterated by UNHCR, the UN Human Rights Committee, and the European Court of Human Rights has also noted that Contracting States have an obligation to provide an effective and accessible procedure enabling the applicant to have the issue of their status determined with due regard to their private-life interests under Article 8 ECHR (see below).

then grant them an adequate protection status and rights in line with international human rights law.⁶ States should also take steps to prevent new cases of statelessness arising and reduce existing cases of statelessness, by establishing facilitated routes to naturalisation for stateless persons and implementing strong safeguards in their nationality laws to prevent statelessness in acquisition and loss of nationality.

The 1961 Convention obliges States to contribute to the reduction of statelessness “by setting out general rules for the prevention of statelessness, and simultaneously allowing some exceptions to those rules”.⁷ It does so by establishing safeguards against statelessness in various contexts, including acquisition of nationality at birth and later in life, loss of nationality, and deprivation of nationality. One of the key provisions of the 1961 Convention is a safeguard to prevent statelessness at birth which requires States to grant nationality to children born on their territory who would otherwise be stateless, with some conditions allowed.

Core regional instruments in Europe also include the Council of Europe’s statelessness conventions. The [1997 European Convention on Nationality](#) (ECN) explicitly provides for the right to a nationality, and sets out the principles that statelessness should be avoided and that no one shall be arbitrarily deprived of their nationality. Other relevant provisions of the ECN include the principle of non-discrimination, rules for acquisition of nationality, naturalisation, rules concerning the loss and recovery of nationality, and principles relating to State succession and nationality. The [2006 Convention on the Avoidance of Statelessness in Relation to State Succession](#) provides several safeguards to prevent statelessness within the context of State succession, which remains a major source of statelessness globally.

Beyond these four core statelessness conventions, a range of other international and regional instruments contain norms relating to nationality and statelessness, including:

- International Covenant on Civil and Political Rights (Article 24.3)
- International Covenant on Economic, Social and Cultural Rights (Articles 2.2 and 3)
- Convention of the Rights of the Child (Articles 2, 3, 7 and 8)
- Convention on the Elimination of All Forms of Discrimination against Women (Article 9)
- International Convention on the Elimination of All Forms of Racial Discrimination (Article 5(d)(iii))
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention on the Rights of All Migrant Workers and Members of their Families
- Convention on the Rights of Persons with Disabilities (Article 18)
- Universal Declaration on Human Rights (Article 15)

⁶ Ibid.

⁷ UN Convention on the Reduction of Statelessness, 30 August 1961 (1961 Convention), Introductory note by the Office of the United Nations High Commissioner for Refugees (UNHCR): https://www.unhcr.org/ibelong/wp-content/uploads/1961-Convention-on-the-reduction-of-Statelessness_ENG.pdf.

The European Convention on Human Rights (ECHR) also establishes rights that are important in preventing statelessness and protecting the rights of stateless persons. In particular, Article 3 (prohibition of inhuman or degrading treatment or punishment) and Article 8 (right to respect for family and private life) can be vital tools in protecting the rights of some stateless persons. In the context of European Union (EU) law, it is also relevant to take into consideration the Charter of Fundamental Rights of the EU (Charter) and EU law in the field of asylum and migration, including specific instruments on this issue. Further information on statelessness under the ECHR and in EU law is available in the section on 'Courts and mechanisms for impact litigation'.

Updated information on which countries have acceded to each of the above mentioned instruments is available on the website of the [United Nations Treaty Collection](#) and the [Council of Europe Treaty Office](#).

According to the instruments to which they have acceded, European countries have obligations under international law to protect stateless persons and to prevent statelessness. However, many States lack legal frameworks to respond to statelessness together with the challenges associated with it, or have put in place adequate laws and policies but fail in their implementation in practice. The lack of effective legal frameworks leaves stateless persons in a state of legal limbo without an effective legal mechanism to resolve their situation and acquire nationality which would secure access to fundamental rights. One step to address this challenge is for States to improve procedures to identify who is stateless or at risk of statelessness, determine their statelessness and ensure access to rights. Most members of the Council of Europe do not have dedicated statelessness procedures in place and less than half of European countries have full safeguards in their nationality laws to prevent childhood statelessness. For more information on how some European States address statelessness, visit the [Statelessness Index](#).

Another way of effecting change is through impact litigation, drawing on legal mechanisms that exist at national, European and/or international level to protect the rights of stateless persons.

STRATEGIC OR IMPACT LITIGATION

This section provides a framework to understand impact or strategic litigation as well as some guidance to identify strategic cases. It explains the concept of impact litigation and its aims, suggests ways to prioritise and identify cases, how to strategically assess a case and gives guidance on the risks and limitations of pursuing impact litigation. It also includes an indicative example of these issues.

2.1. Concept and aims

Impact litigation, or strategic litigation, focuses on litigating individual cases in a way that will bring about a broader legal or social change. A case may be litigated strategically when it focuses not only in obtaining a remedy for one specific person or case, but it also aims to effect broader change and have an impact on a wider group of people. Impact litigation often focuses on issues that are both systemic and systematic, which have historically affected many people and may be deeply rooted in the social system or institutional regimes.

Some of the aims of impact litigation are to:

- ensure effective and adequate application of the law
- clarify the meaning of the law
- challenge a law or practice that is inconsistent with human rights standards
- foster the adoption of new law and spark policy changes
- seek interpretation of an existing law to redefine rights in favour of stronger protection
- address gaps in legal protection or framework on a particular issue
- raise awareness and publicise the issue
- encourage public debate
- set important precedents
- achieve systemic change for people in similar situations
- bring States to account for systematic or widespread human rights violations

Impact litigation has the potential to effect deep legal change, and it may also be used to challenge political decisions, achieve certainty around policy changes, or to address systematic human rights violations that affect large numbers of individuals. The judiciary has (sometimes) the power to address such issues and specific challenges. Impact litigation can therefore be a powerful tool to influence law and policy development, to persuade public bodies, institutions, and governments to reconsider their policies or their implementation in practice.

In issues such as statelessness, nationality deprivation and the right to a nationality, the current legal framework is mostly based on historic legal instruments, sometimes with a wide margin of discretion for States to decide how to design their nationality laws. Such instruments must be interpreted and applied in light of present-day developments and the evolving human rights landscape. As such, impact litigation also has the advantage

of providing a legal avenue to achieve clearer, more comprehensive and concrete standards on the protection of stateless persons and prevention of statelessness.

Impact litigation has the advantage of documenting injustices and legally challenging issues that may not be widely known, understood, or even visible. The negative impact of statelessness is often invisible or, as a result of the precarious legal status or the 'limbo' in which stateless persons live, stateless persons are forgotten even in issues and debates that directly affect them.

Impact litigation has been used to help achieve important societal change in many countries, including to [abolish slave trade in Britain](#), to force racially segregated schools that segregated students on racial or ethnic grounds to desegregate in the [United States of America](#) and [in Europe](#). In these examples, and in many instances, litigation was an important part of a wider effort to bring change.⁸

2.2. Prioritisation and identification of cases

One of the first steps in any impact litigation work is to have a clear understanding of the issues and areas of law that are a priority for your work. For example, this may include cases concerning protection of stateless persons, asylum, acquisition or deprivation of nationality, childhood statelessness, birth registration, detention of stateless persons, or discriminatory treatment leading to statelessness. An overview of key international and regional jurisprudence on these topics is provided in Volume II of this toolkit.

These priorities should fall within the litigator's area of expertise and they should have a clear understanding of the legal issues in the case. This is crucial as one of the considerations of impact litigation is that your knowledge, experience, and ability to bring issues to the attention of courts and other international mechanisms will bring added value to a particular case. This is especially important when litigating on issues such as statelessness, which are not often addressed by courts and in impact litigation.

Identifying cases for potential litigation requires legal professionals to actively seek out and monitor ongoing or recent cases that fall within the scope of their priorities. For example, it is possible to monitor cases communicated by the European Court of Human Rights, United Nations Treaty Bodies, and the Court of Justice of the European Union, as well as cases brought at a national level. Legal practitioners who provide legal advice and assistance to stateless persons (or to populations who may be affected by statelessness) should also regularly consider whether there are cases within their casework that reflect a wider trend, systematic issue or that highlight a protection gap, and whether those cases could become strategic. It is important to note that actively seeking out a case is different to a phenomenon witnessed in several European jurisdictions consisting of practitioners qualified abroad bringing a case before the courts of a jurisdiction they are not familiar with, without prior knowledge of the

⁸ See more examples of impact litigation at Public Law Project, Guide to Strategic Litigation: https://publiclawproject.org.uk/content/uploads/data/resources/153/40108-Guide-to-Strategic-Litigation-linked-final_1_8_2016.pdf

domestic context (e.g., jurisprudence, networks, partnerships and other sensitivities), with the sole purpose of litigating a case in order to improve their track record and visibility. The latest phenomenon is frowned upon and is in no way consistent with the larger aim and purpose of impact litigation.

WHAT TO REMEMBER TO IDENTIFY AND PRIORITISE CASES:

- ✓ Ensure a clear understanding of the issues
- ✓ Establish priority areas within your area of expertise and where you bring added value
- ✓ Prioritise cases that address a systematic, widespread problem on the ground; and/or that address gaps in legal protection
- ✓ Actively monitor pending and recent international, regional and national jurisprudence
- ✓ Regularly reflect on your casework to find systematic and strategic issues

2.3. Strategic assessment

Once a case has been identified as potentially strategic, it is then necessary to make an assessment as to whether, and how, it should be taken forward, whether through direct representation or third-party intervention, what would be the most suitable mechanism and which role you are best placed to assume. An assessment should consider the strengths and weaknesses of the facts of the case, the complaints (legal violations) that are alleged, as well as the expertise that can be added to the case.

2.4. Strengths of the case and advantages

When considering the strengths of a case, one consideration may be the potential impact of a case in one or multiple countries, and whether it provides an opportunity to raise specific legal arguments that may not otherwise be addressed by the court or mechanism.

The primary benefit of impact litigation is the potential to document injustices. Litigation creates an official record of practices, evidencing abuse and telling victims' stories. By identifying particular issues, or particular alleged violations, it provides an opportunity to try to shape the way in which the court will interpret and apply the legal framework and applicable human rights provisions, and will offer an opportunity to apply these arguments consistently in many cases. In cases before regional courts and international bodies, it may also promote the harmonisation of issues across several countries. Practitioners should therefore assess whether a given case has the potential to achieve this goal.

Other considerations include assessing whether strategically litigating a case will seize the political momentum and foster certain policy changes; whether it may be useful to lobby politicians and persuade public bodies to reconsider their policies; whether it will help frame issues as problems of law rather than of minority politics; or whether this issue is better suited to be addressed before courts, as the role of the judiciary is to be an impartial and independent body that is well positioned to interpret and apply the law in line with international and human rights instruments.

2.5. Risks and limitations

Practitioners should be aware of the risks and limitations of impact litigation.

Firstly, impact litigation should be based on relevant and specific expertise of practitioners and fall within their litigation priorities. Whether through direct representation or third-party submissions, impact litigation should help the individual (or group of individuals) seek redress as well as have the potential to achieve broader change. As such, cases should be carefully selected and assessed to consider whether you have the required expertise and knowledge to contribute to a favourable outcome for the applicant and/or an improvement in law and practice. Litigating on issues on which the legal practitioner does not have sufficient expertise is dangerous and could lead to an undesired and harmful result.

While there is a risk of losing in all cases, as part of any case assessment, practitioners should consider the likely outcomes. Indeed, a case that is lost could result in a setback to the aim of improving a relevant area of law. At a European or international level, such an outcome may negatively impact future cases in that jurisdiction as well as cases in other jurisdictions. It is therefore essential to contribute to cases only where you have the necessary expertise, knowledge, and capacity to effect change.

The assessment should include considering whether the facts of the case are weak, i.e., where they do not indicate a violation has occurred, the evidence is contradictory about whether a violation occurred, or where the applicant's or a key witness's testimony contains serious and material inconsistencies and they are unlikely to be accepted as credible. In some circumstances, even a case with weak facts may result in a favourable decision for the applicant or a positive precedent in case law, but it is risky to bring litigation where the facts or evidence are weak. In impact litigation, effecting legal change can often be a slow and incremental process, and it is best to proceed with strong cases.

Practitioners should also consider the court's analysis at any preliminary stages of litigation and whether there are any particular issues that the court is not addressing (e.g. when considering whether to intervene before the European Court of Human Rights, are there any particular issues that are relevant to the facts but omitted from the Court's questions in the communication of the case?). By evaluating the strengths and weaknesses of a potential intervention, you may also consider the specific added value that can be brought to the case and the opportunity that the case presents for effecting change.

Impact litigation can be resource and time intensive. Proceedings are likely to be lengthy, and therefore individual and team capacity should be considered before pursuing a case. As a result, the costs of impact litigation in terms of human resources, particularly for non-governmental organisations (NGOs) or charities, may be prohibitive without seeking additional funding.

This may be further complicated by the uncertain timelines of cases. For example, when requesting permission to intervene as a third party in cases at the European Court of

Human Rights, there is no prescribed timeframe within which the Court decides whether or not to grant permission, and this will vary from case to case.

Before deciding to represent an applicant, including in impact or strategic cases, practitioners should carefully consider the impact on the individual applicant, as their interests are at the heart of the case. Practitioners should consider whether they share their client's objectives, whether they are ready for the proceedings, and whether they are aware that the proceedings may last for some time.

Practitioners should also consider whether alternative avenues to litigation are more suitable (e.g. policy, advocacy, campaigns, community-based actions). In any of these avenues, as well as in submitting third party interventions, the interests of and risks to the applicant should also be considered, even if there is no lawyer-client relationship with the applicant. Below is a non-exhaustive list of some of the elements that should be considered in the assessment of whether a case is suitable for (impact) litigation, whether through direct representation or third-party intervention:

VALUE

- Opportunity to clarify a certain point of law/previous jurisprudence
- Opportunity to evidence injustices and abuse
- Opportunity to seize political momentum and foster policy change
- Opportunity to lobby politicians and persuade public bodies to reconsider policies
- Opportunity to frame an issue as a problem of law as opposed to minority politics
- Potential impact in one or more countries
- Dimension of the issue and importance of the case
- Potential for the case to be linked with other similar cases (if beneficial)
- Link to previous litigation
- Connection with other advocacy priorities
- Likelihood of a positive judgment

ADDITIONAL CONSIDERATIONS FOR THIRD-PARTIES

- Opportunity to raise specific legal points missing in the application
- Added value to the case for third party interventions

RISKS

- Risk of setting a negative precedent and its impact.
- Compliance with your litigation priorities
- Potential conflicts with other projects, partners & advocacy goals
- Weak facts of the case/lack of information about background
- Impact on the applicant: is litigation in their interest, is this something they want?
- Admissibility issues
- Risk of case being linked with other similar cases (if prejudicial)
- Existence of more suitable alternative avenues
- Media impact
- Internal capacity
- Costs
- Time intensive
- Staff safety

EXAMPLE OF IMPACT LITIGATION

Ana is a lawyer at a small NGO in Plutocratia. She has worked mainly on cases relating to asylum, immigration, and nationality for 5 years. She and her supervisor are the only lawyers at their NGO, Humanitaria. They have colleagues in a policy and advocacy team who have been campaigning for equality in nationality laws for several years, so far with limited success.

Plutocratia is a member of the Council of Europe, but not the European Union. It has a law that says children can only inherit nationality from their fathers. It has no safeguards in its nationality laws that prevent children from being born stateless and remaining stateless, but it is a party to all European and international treaties that relate to statelessness, nationality, and human rights. International treaties have direct effect in Plutocratia's legal system.

Ana has a potential new client, Zeta. Zeta is a female citizen of Plutocratia and is married to a stateless man, Xavier. Xavier entered Plutocratia legally 12 years ago, but 10 years ago was arbitrarily deprived of his nationality by his home country for political reasons. He could acquire nationality of Plutocratia through a lengthy process, but he has not attempted to do so because he desperately hopes to one day regain his original nationality. It is likely that acquiring Plutocrat nationality would jeopardise that. Zeta and Xavier have an 8-year-old child, Theva, who is stateless. They applied for a Plutocrat identity card for Theva when she was 5, but the application was rejected. They have since told their story in the press and sought help from a political representative, who is supportive but has not been able to achieve any change so far.

Zeta wants to challenge Plutocratia's nationality law on the basis that it discriminates against women and violates children's right to a nationality. She'd like to go straight to the European Court of Human Rights or the Committee on the Rights of the Child, but Ana explains that it is first necessary to bring a challenge in the courts of Plutocratia and exhaust domestic remedies.

Ana wants to proceed with the case. She assesses the facts. They are strong, and Zeta will be an excellent witness, as she is consistent, clear, and of good character. She and Xavier speak compellingly about the difficulties that lack of nationality are already posing for Theva and her worries for Theva's future, as she will not be able to access higher education or formal employment without nationality.

Ana thinks there is a good chance that they could eventually succeed with the case. She is knowledgeable about Plutocratia's nationality laws and has successfully litigated many cases in the lower appeal tribunals. However, she knows this litigation will likely take a long time and may require appeals at 2 or more appellate bodies. She has talked to Zeta and Xavier about what would be involved in this litigation, and they seem determined and ready to proceed. However, Ana is worried that neither she nor her supervisor have a lot of experience with impact litigation or higher appeals work, and she is concerned about how much of her time this case would take and adverse impacts on her ability to help other potential clients.

Ana talks to her supervisor, who agrees with her assessment of the case and her concerns, and they decide to seek help from a larger NGO, FreePlutocratia, that has expertise with higher appeals and impact litigation. The Legal Director at FreePlutocratia agrees that it's an important case that could have a wide impact, and they could devote significant resources to it over several years. They agree they could work in collaboration with Ana and her supervisor, and they come up with a detailed plan about who would do what at each potential stage of the litigation, with FreePlutocratia progressively taking on more of the work if it reaches higher appeals stages. Ana feels confident that she will have the support she needs to proceed with the case and maintain her other work. She discusses the potential collaboration with her clients, and they are delighted that the other NGO is willing to help.

This is a good case to take forward as impact litigation, and Ana and her supervisor have taken a considerate approach to address their concerns about their lack of experience with higher appeals work and their limited capacity.

COURTS AND MECHANISMS FOR IMPACT LITIGATION

This section provides an overview of the key legal instruments, courts and mechanisms to address statelessness.

The first route that any person should pursue to seek the implementation of their rights is through the national courts, which are best placed to assess the claim in light of the State's international obligations, taking into consideration the domestic law and the cultural and socio-economic context of that State. Most international bodies exclude from their consideration any complaint that has not previously been brought before the domestic courts of the relevant country. Unfortunately, domestic remedies often fail to protect stateless persons, particularly as the lack of awareness on statelessness and nationality issues remains one of the major obstacles in Europe and beyond to advance the protection of people affected by statelessness. The regional and international courts and bodies therefore play a crucial role in reviewing whether decisions taken by national authorities are compatible with human rights law, providing clarity on how such norms should be interpreted and implemented, and elevating the standards of protection of stateless persons.

This section provides an overview of some international legal mechanisms and their procedures for monitoring cases and submitting applications or third-party interventions, to enable practitioners to select the best suited mechanism. The main judicial or quasi-judicial mechanisms to consider are:

- the European Court of Human Rights,
- the Court of Justice of the European Union, and
- various United Nations monitoring mechanisms.

In any impact litigation work, practitioners must be familiar with the relevant court or mechanism procedures for submitting applications, requests for leave to intervene as third-party interveners, and any relevant deadlines. This requires a close and thorough reading of the relevant rules and directions corresponding to each court or monitoring body and, if possible, undertaking tailored training on each mechanism. Legal practitioners should by no means restrict themselves to what is included in this guide, which is intended to be an introduction to the different courts and mechanisms available for impact litigation.

It will also be sensible, particularly in cases where practitioners are representing applicants directly, to consider which mechanism or legal instrument is best suited for the case. For instance, a specific forum may be more likely to have favourable case law on the particular facts of a case and the questions or issues raised than another forum. Some mechanisms may also allow for more effective implementation.

For example, would it be more suitable to bring a case concerning violations of the rights of a stateless child applicant to the European Court of Human Rights, or the UN Committee on the Rights of the Child (where these options exist)? While the provisions of the Convention on the Rights of the Child specifically apply to children, you should

consider which mechanism, based on previous jurisprudence, may lead to a more favourable or positive outcome. One possible consideration in this respect is the admissibility criteria applicable to each court or body (please see below for further details). For instance, the Court of Justice of the European Union (CJEU) requires a reference for a preliminary ruling to be made by the relevant domestic court, and third-party interventions may typically only be submitted by people or entities who were already admitted to the domestic proceedings. In the procedure before the European Court of Human Rights (ECtHR), a case must be brought within 4 months after the exhaustion of domestic remedies and the issues must have been raised in substance before the domestic courts (more details on this below). The deadlines to bring a case before the UN mechanisms are less strict. The combination of these factors means that there may be a particular order in which a case should be brought before each instance or judicial body, and it is therefore **a part of** the strategic assessment to consider to which body a case should be brought and the applicable deadlines whilst being aware that taking a complaint to one body may, and usually does, prevent taking that complaint concurrently or subsequently to another body.

DECIDE WHICH MECHANISM TO USE

- ✓ Be familiar with the court or mechanism procedures
- ✓ Consider which forum and legal instrument is best suited for the case, including by assessing:
 - Previous case law
 - Implementation mechanisms that are available
 - Admissibility criteria: e.g. exhaustion of domestic remedies, deadlines
 - Possibility to intervene as a third party

Contrary to the other international and regional conventions, the core statelessness conventions do not have a specific court or mechanism to monitor their implementation or interpret their provisions, but they must be taken into consideration when any court assesses the body of international obligations that bind the particular State. As such, there are several instances where domestic, regional and international courts referred to the core statelessness convention and these were given weight in the judgment. That includes, for example, the meaning of the 1954 Convention before the ECtHR⁹ and in domestic proceedings,¹⁰ and consideration of States' obligations under the 1961 Convention before the CJEU¹¹ and before domestic courts.¹² The European Convention on Nationality has also been referred to in significant jurisprudence from the CJEU, ECtHR, the Human Rights Committee and the Committee on the Rights of the Child.¹³

⁹ See e.g. ECtHR, *Sudita Keita v Hungary* (application no. 42321/15), 13 May 2020, and *Andrejeva v Latvia* (application no. 55707/00), 18 February 2009.

¹⁰ See e.g. France, Conseil d'Etat, (Judgment No. 427017), 24 December 2019; Spain, Supreme Court, decision 994/2017 (appeal no. 2610/2016).

¹¹ See e.g. CJEU, *JY v Wiener Landesregierung*, Case C-118/20, 18 January 2022.

¹² See e.g. Netherlands, Council of State (Raad van State), ECLI:NL:RVS:2020:3045, 30 December 2020.

¹³ E.g. CJEU, NB, AB v Secretary of State for the Home Department, Case C-349/20, 3 March 2022; ECtHR, *A.S v France* (application no. 46240/15), 19 April 2019; UN Committee on the Rights of the Child (CRC), *A.M. (au nom de M.K.A.H.) c. Suisse*, no 95/2019, 6 October 2021.

3.1. European Court of Human Rights

The ECtHR is an international court that rules on individual or inter-State applications alleging violations of the civil and political rights set out in the ECHR, and individuals can apply to it directly. The Court's judgments are binding on the countries concerned and the Court's jurisprudence plays a key role in making the ECHR a living instrument.

Prospective litigators (either representatives or third-party intervenors) need to familiarise themselves with the general principles and specific caselaw of the ECtHR. The main database of the ECtHR is [HUDOC](#). HUDOC allows lawyers to search case law: Chamber and Grand Chamber judgments; Chamber and Grand Chamber decisions; and cases communicated by the European Court of Human Rights. The [Court's knowledge-sharing platform \(ECHR-KS\)](#), opened on 18 October 2022, shares knowledge on ECHR case law and complements the HUDOC database.

[General information and updates from the Court](#) can be found on the ECHR website. Further information can be found in the [HUDOC user manual](#).

Statelessness in the European Convention on Human Rights

The ECHR is relevant to the protection, status, and reduction of statelessness in Council of Europe Member States. While the ECHR does not include an express provision that guarantees nationality, there are various articles that apply indirectly to the protection of the rights of stateless persons, the withdrawal or revocation of citizenship or nationality, and the registration of nationality at birth. Especially in its modern jurisprudence, the ECHR has proven to be an effective instrument for securing the rights for stateless persons. Relevant provisions include, for example: Article 3 (prohibition of torture), Article 5 (right to liberty and security), Article 8 (right to respect for private and family life), Article 13 (right to an effective remedy), Article 14 (prohibition of discrimination).¹⁴

Article 53 provides an important safeguard for existing human rights. It provides that the provisions of the ECHR must not be construed as limiting or derogating from any of the rights and freedoms under any other international agreement to which a State is a party. While the Court is primarily concerned with its interpretation of its own provisions, if a Council of Europe member State is also a party to other international agreements, such as UN treaty bodies, the 1954 Convention or the 1961 Convention, there is an opportunity to present to the Court the relevant legal standards that should apply in light of the universal application of human rights, and in light of the requirements of Article 53. Even if a State is not bound by a particular instrument (and

¹⁴ For more information on how provisions of the ECHR are relevant to statelessness, see European Network on Statelessness, Strategic Litigation: An Obligation for Statelessness Determination under the European Convention on Human Rights?, Discussion Paper 09/14 (2014): https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS_Discussion_Paper_September_2014.pdf

Article 53 does not therefore directly apply), the Court will often examine such international standards to assist its analysis and evaluation of the merits of the case.

Applications to the European Court of Human Rights

The European Court of Human Rights' website has [detailed information about the life of an application](#) and a [simplified information sheet on the case processing of an individual application](#) to the Court.

Any application to the ECtHR must meet the requirements of Rule 47 of the Rules of Court and then the admissibility criteria (summarised below). The Court will rule a case to be admissible or inadmissible, which is referred to as the decision on admissibility. If it is deemed to be admissible, then the case can proceed and will be judged on the merits of the facts and relevant law. Where the Court rules on the merits, it will deliver a judgment.

There are 4 possible judicial formations in the ECtHR:

- Single judge: may declare an application inadmissible or strike out a case from the list of cases. These decisions are final.
- Committee (comprised of 3 judges): may declare applications inadmissible or strike them out of the list, or declare applications to be admissible and deliver a judgment on the merits if the underlying question is the subject of well-established case law.
- Chamber judgment (comprised of 7 judges): may decide on admissibility and the merits of the case if a decision has not already been taken. Chambers may relinquish cases to the Grand Chamber before a ruling on the merits has been delivered.
- Grand Chamber (comprised of 17 judges): the Chamber can relinquish a case that it has not yet decided to the Grand Chamber. After the Chamber has delivered a judgment on the merits, either party can request the case to be referred to the Grand Chamber. A five-judge panel will consider that request. In both cases, the case must raise 'serious questions affecting the interpretation or application of the Convention'.

Individual applications

The content of an individual application to the European Court of Human Rights is addressed under Rule 47 of the European Court of Human Rights' [Rules of the Court](#). Rule 47 is applied very strictly.

Typically, a full application is submitted to the Court and a registry lawyer is assigned and does a preliminary assessment under Rule 47. An application should describe the facts of the case and clearly state the alleged violations of ECHR provisions. To stop the four-month time limit running, the application must comply **in every detailed respect** with the provisions of Rule 47 and the Practice Direction on instituting proceedings or it will never be assigned to a judge or judicial formation even to consider whether it meets the admissibility criteria. Practitioners must be aware that any

deficiencies leading to a rejection under Rule 47 cannot be remedied after the four-month time limit has expired and the case will therefore have failed irremediably.

If it passes Rule 47, an application goes to a single judge or committee or a chamber for a decision on admissibility according to the ECHR and the Rules of the Court. If the case goes to a Chamber, the Chamber will decide whether to communicate the case to the respondent State. This means that the State is notified that the case has been brought against it and has the opportunity to respond. At this stage interested third parties may ask the court for permission to intervene. The respondent Government will submit observations in the case and answer the questions posed by the Court in the communicated case. The applicant(s) will submit their observations in response to the Government's observations.

The Court will deliver a decision on the admissibility of the case and deliver a judgment on the merits of those parts of the case it considers admissible. The Chamber may, rarely and exceptionally, decide prior to delivering its judgment to hold an oral hearing or to relinquish the case to the Grand Chamber.

The Grand Chamber will always hold an oral hearing and then draft and deliver the judgment which is later published on the [HUDOC database](#) and [European Court of Human Rights website](#).

Completing an individual application form

Information and guidance on filing an application to the Court can be found [here](#). The Court has also published guidance on common mistakes when completing application forms. This can be found [here](#).

The application should contain, *inter alia*, a statement of facts and alleged violations. Any statement of facts should be simply stated and made as concise as possible, indicating if the facts as presented are disputed or not. When making a statement of violations, these should again be stated simply and in a concise manner. References to case law should be used to support the claims made.

Admissibility criteria – Article 35 of the European Convention on Human Rights

The European Court of Human Rights has published a [practical guide on admissibility criteria](#), last updated 1 February 2022. The guide intends to inform legal practitioners representing applicants before the Court of the conditions of admissibility in individual applications. This guide is a key resource referring to hundreds of cases. This should be the first point of reference when dealing with questions on the admissibility of applications. The guide is available in 25 languages.

Exhaustion of domestic remedies

Applicants must have exhausted all possible domestic remedies before a case can be brought to the European Court of Human Rights. This is based on the principle that States should have an opportunity to put right the alleged violations. Many cases fail

because applicants think (often rightly) that there is no point in trying a domestic remedy as it is bound to lose – but any available remedy must be pursued before approaching the Strasbourg court.

Applicants should therefore raise complaints before domestic courts, in compliance with domestic rules and time limits. Where several remedies may be available, applicants need only exhaust one set of remedies.

More information can be found in the [admissibility guide](#).

Compliance with time-limits

It is important to note that up to 1 August 2021, Article 35 § 1 ECHR referred to a six-month time limit. However, this is now amended by Article 4 [Protocol 15 amending the Convention on the Protection of Human Rights and Fundamental Freedoms](#) to a period of **four months**. This time limit applies only after Protocol 15 entered into force, i.e., as of 1 February 2022:

The time limit is very important and non-compliance with it may trigger a Rule 47 rejection of the application. Legal practitioners are strongly advised to seek more information on this issue in the ECtHR admissibility guidance.

Please note that the rules of the Court say that a **fax does not count** for meeting the four-month deadline according to Article 35(1) ECHR. Complaints must be submitted by post, and it is the postmark or proof of posting that matters. Applications cannot be submitted electronically.

Third party interventions

Third party interventions (TPIs) are a good opportunity for organisations with relevant expertise and knowledge about the particular issues of a case to formally address the European Court of Human Rights. As well as expert knowledge or insight, third party interventions may also offer a comparative analysis of how another Council of Europe Member State approaches similar cases.

For organisations seeking to intervene as third parties, it is important to closely and regularly monitor cases communicated by the European Court of Human Rights. Communicated cases are published on the HUDOC database. At this point, NGOs, IGOs, Governments and any other bodies with relevant expertise can apply to intervene as a third-party in the case. Potential third-party interveners have **12 weeks to request permission to intervene**. This is an important point to clarify, as there may often be two dates on communicated cases. The first is the date of communication and the second is the date of publication. The 12-week timeframe to request leave to intervene starts from the date the communicated case was published on the HUDOC database or (in the case of Grand Chamber cases) the date of the decision to relinquish jurisdiction to the Grand Chamber). Deadlines to request leave to intervene are strict.

Requests for leave to intervene as a third-party are made in accordance with Rule 44 of the Rules of the Court. When requesting leave to intervene, parties should clearly

explain their relevant expertise and why they are suitably qualified to comment on the case. This includes notifying the Court of other cases where you have previously intervened or where your experience shows direct relevance and competence in the case. They should also briefly summarise the arguments they intend to make. Any request for permission to intervene should be communicated to the President of the relevant Chamber by post. Refusal or approval of requests are then made at the discretion of the President of the relevant Chamber. To learn more about the most common reasons why the Court may refuse permission for leave to intervene, such as late submission or lack of substantiation, please visit this [website](#).

If permission is granted, submissions must be no longer than 10 pages typescript (excluding annexes). The Court normally stipulates that submissions must not comment on the facts or merits of the case and must be communicated to the Court in either English or French.

Interim measures

Interim measures may be indicated under Rule 39 of the Court's rules to any State Party to the ECHR where the Court decides that urgent measures are required to prevent an imminent risk of irreparable harm. A factsheet on the Court's interim measures can be found [here](#). The Court has launched the [Rule 39 Site](#), a new secure platform that allows applicants to lodge requests for interim measures under Rule 39 of the Rules of Court, and the Court to correspond with them.

Friendly settlements

The rules of friendly settlements are set out in Article 39 of the European Convention on Human Rights. At any stage, the parties may secure a friendly settlement of the matter on the basis of respect for human rights as defined in the ECHR. Where the parties reach a friendly settlement, the Court will publish a decision to strike the case out of the list of cases. This decision will provide only a brief statement of the facts and the solution/agreement reached by the parties. Any friendly settlement decision will be passed to the Committee of Ministers, which is responsible for supervising the execution of the terms of the friendly settlement.

Further information about the procedures of the European Court of Human Rights:

- ECHR, [The European Court of Human Rights in 50 Questions \(frequently asked questions\)](#)
- [European Court of Human Rights, Questions and Answers](#)
- [European Court of Human Rights, case law analysis and information notes](#)
- [ECHR, Factsheets](#) (ordered by topics/violations)
- [ECHR, Country profiles](#)
- [ECHR, Case law analysis - overview of the Court's case law](#) (by year)
- [ECHR, Case law guides](#) (by theme)
- [Strasbourg Observers](#) (for analysis and posts on ECtHR's jurisprudence)

EXAMPLE OF IMPACT LITIGATION (CONTINUED)

Zeta and Theva bring their claim before the ECtHR.

Seven years have passed since Zeta first sought to challenge Plutocratia's discriminatory nationality law. Her daughter Theva is now 15 years old and remains stateless. Sadly, Theva's dad, Xavier, died three years ago.

In the past seven years, their lawyer at Humanitaria, Ana, has fought diligently on their behalf, in collaboration with a senior lawyer, Jex, at FreePlutocratia. Their case has progressed through the courts of Plutocratia but has failed at the Supreme Court. The Supreme Court declined to consider the arguments in substance, holding that Plutocratia's Parliament is vested with the sovereign authority to make laws about who is entitled to Plutocrat nationality and how it may be acquired.

- They applied for Theva to be registered as a national of Plutocratia. As expected, this application was refused because Theva did not meet the requirements for Plutocrat nationality as her father was not a national.
- They appealed this decision, arguing that Plutocratia's nationality law discriminated against women in preventing them to pass on their nationality to their children and violated Theva's right to a nationality. They submitted evidence that hundreds of children born in Plutocratia each year were denied Plutocrat nationality because their fathers were not nationals, and that at least 50 other children were, like Theva, stateless as a result of this law. They argued that Plutocratia's nationality law violated:
 - Plutocratia's Constitution, Art 10 (which prohibits discrimination on the basis of sex, ethnicity, race, language, religion, political opinion, national origin, birth or other status)
 - The Convention on the Rights of the Child, Art 7 (right to a nationality);
 - The Convention on the Elimination of all Forms of Discrimination against Women, Art 9 (equal rights for women relating to the nationality of their children);
 - The European Convention on Human Rights, Art 3 (prohibition of inhuman and degrading treatment), Art 8 (private and family life), and Art 14 (discrimination); and they cited Art 13 (effective remedy) and Art 53 (which brings other relevant international human rights treaties within the ambit of the ECHR and the ECtHR).
 - They also cited other relevant international law, UNHCR Guidelines, and relevant authorities.
- The **First Administrative Court** denied their application, holding that it did not have jurisdiction to find that Plutocratia's nationality law was unconstitutional or violated international treaties.
- They applied for permission to appeal to the **Court of Appeal** on the basis that their application to the First Administrative Court was the only way to challenge Plutocratia's nationality law, and that it therefore was obliged to exercise jurisdiction. This application was denied summarily, on the basis that there was no error of law in the First Administrative Court's decision.
- They applied to the **Supreme Court** on similar grounds, emphasising that there must be an effective remedy to protect against a discriminatory nationality law that denied a woman the ability to pass on her nationality to her children and denied a child born in Plutocratia her right to a nationality. By this time, Xavier (still stateless) had died, so they also included in their submissions that any chance Theva might have had to acquire Plutocrat nationality through her father, had he acquired Plutocrat nationality himself, was permanently lost.

Ana and Jex meet with Zeta and Theva three days after receiving the Supreme Court decision. They are all disappointed, but Ana and Jex have prepared Zeta and Theva for the possibility of refusal by the Supreme Court. Zeta and Theva want to challenge the Supreme Court's decision at an international court or with a UN treaty body. They discuss options and agree that the European Court of Human Rights is the most promising venue. Jex advises that although the ECHR does not explicitly protect a child's right to nationality, it protects the right to family and private life, prohibits discrimination and provides for the right to an effective remedy. Via Art 53, the ECHR must also be interpreted in light of human rights treaties to which Plutocracia is a party. In addition, there is some caselaw indicating that the ECtHR will consider the right to a nationality as being included within the right to private life, including, for example *Karashev v. Finland*, *Slivenko and Others v. Latvia*, and *Genovese v. Malta* (see [ECHR Guide to Article 8](#) and Volume 2 of this Litigation Toolkit on Statelessness). Importantly, Ana and Jex think that decisions of the ECtHR are more likely to be implemented in Plutocratia than a decision of a UN treaty body, which the Government frequently ignores. They are also concerned about timing – Theva will be 18 in three years and wants to go to university, but it will be hard or impossible for her to do so if she remains stateless.

Jex agrees to start work on an application to the ECtHR next week after completing some other urgent work. They have four months from the date of the Supreme Court's decision, but Jex knows it is unwise to leave things to the last minute. Jex prepares the application, carefully following all the requirements of Rule 47 of the Rules of the Court. The application includes a request that the case is given priority as it concerns a significant number of children and the lack of nationality has a serious impact on their lives. Jex then goes over the application in detail with Zeta and Theta and, with their approval, submits it by post as required, well within the 4-month deadline. The application is assessed as being compliant with Rule 47 and goes to a chamber for a decision on admissibility.

Once the ECtHR communicates the case to Plutocracia and publishes the communication on its website, UNHCR and several international NGOs become aware of the case. Recognising that the issues at stake are systemic and affect a wider group of people, they apply to submit third party interventions in the case.

Shortly after the application is declared admissible, the Plutocrat Government offers a 'friendly settlement'. They offer to grant nationality to Theva on an exceptional basis, but they will not amend the nationality law. Zeta is very tempted to accept this offer; she is tired of all the proceedings and concerned for Theva. Theva, however, has been campaigning with stateless children in Plutocratia for two years now, and she is adamant that she wants to continue with the case as she wants to help others who are in similar positions. They reject the friendly settlement.

Theva, Zeta, and Jex speak to a journalist, explaining the issues addressed in the case, and continue organising campaigns and raising awareness before the Parliament and other stakeholders while they await the decision from the ECtHR, saying they won't give up until the law changes and no children remain stateless in Plutocracia.

3.2. Court of Justice of the European Union

The [Court of Justice of the European Union](#) (CJEU) is based in Luxembourg and operates as a judicial mechanism to ensure the uniform interpretation and application of European Union law. The Court reviews the legality of acts of the institutions of the EU; ensures that Member States comply with their obligations under EU treaties; and interprets EU law at the request (referral) of national courts and tribunals. The Court of Justice of the European Union therefore ensures the uniform application and interpretation of EU law.

The statute of the CJEU can be found [here](#) and relevant provisions are cited below. Cases of the Court of Justice of the European Union can be found on the [CURIA website](#). Further information about this database can be found in the [CURIA user guide](#).

Statelessness in European Union law

The EU and its Member States have made commitments to protecting the rights of stateless persons and preventing and reducing statelessness, which limits how EU Member States may regulate access to nationality.¹⁵ In addition, case law of the CJEU has provided limits to the sovereignty of Member States to regulate nationality, including by requiring due regard to EU law and the principle of proportionality in acquisition and withdrawal of nationality, and respect for the principle of non-discrimination with regards to the right to birth registration and the right to acquire a nationality.¹⁶ As the CJEU emphasised in [Rottmann](#), "Member States must, when exercising their powers in the sphere of nationality, have due regard to European Union law"¹⁷, which includes upholding the EU's values and the rights enshrined in the EU Charter of Fundamental Rights. Article 20 TFEU also "precludes national measures which have the effect of depriving citizens of the Union of the genuine enjoyment of the substance of the rights conferred by virtue of their status as citizens of the Union".¹⁸

The nationality laws of all Member States must be therefore applied with due regard to EU law, in a non-discriminatory manner and with respect for the rights of the Charter, especially when they have a direct impact on the enjoyment of EU citizenship. For example, under international law children born on the territory of a Member State who would otherwise be stateless are entitled to the nationality of that Member State, and thus to EU citizenship. As such, if Member States do not implement sufficient safeguards to ensure that children acquire a nationality as soon as possible after birth, with their best interests taken as primary consideration, this should come within the scope of EU

¹⁵ The Charter of Fundamental Rights of the EU (Charter) explicitly prohibits discrimination based on nationality and the rights it provides apply to all without discrimination. The 2015 Council Conclusions on Statelessness also highlight the importance of strengthening protection for stateless persons to facilitate access to fundamental rights and reduce the risk of discrimination.

¹⁶ CJEU, *Micheletti and Others v Delegación del Gobierno en Cantabria*, Case C-369/90, 7 July 1992; *Rottmann*, Case C-135/08, 2 March 2010; *JY v Wiener Landesregierung*, Case C-118/20, 18 January 2022; *V.M.A v Stolichna obshtina*, Case C-490/20, 14 December 2021. See Volume II of this toolkit.

¹⁷ CJEU, *Rottmann*, Case C-135/08, 2 March 2010, para 45.

¹⁸ CJEU, *Zambrano*, Case C-34/09, 8 March 2011, para 42.

law.¹⁹ In the case of children born to EU citizens, this means that lack of birth registration or the refusal of the authorities to issue a birth certificate will impede on their ability to exercise their rights as EU citizens, including free movement rights. This would also automatically impact on the child's [access to EU citizenship](#) and on the enjoyment of the rights derived from it.

As statelessness is often linked with forced migration, it also comes within the scope of EU law in the field of asylum and migration. Article 67(2) of the Treaty on the Functioning of the European Union (TFEU) provides that, in the area of freedom, security and justice, "stateless persons shall be treated as third-country nationals". Read in conjunction with other provisions in the EU Treaties, this brings stateless persons within the scope of EU law and enables the EU to lay down the conditions for their entry and residence. In addition, secondary legislation in the area of asylum and migration must respect the EU's values (Articles 2 and 3 of the Treaty on European Union) and the rights set out in the Charter (including the right to human dignity, to education, to work, the principle of non-discrimination and the rights of the child).²⁰ There are other instruments of EU law which are also particularly relevant for stateless persons in the field of asylum and migration, including (i) the [Qualification Directive](#),²¹ in particular the provisions that bring stateless persons within the scope of protection and those that establish grounds for exclusion for Palestinians receiving protection from UNRWA; (ii) the [Asylum Procedures Directive](#),²² which outlines the protection and guarantees afforded to applicants in respect of access to asylum procedures; and (iii) the [Reception Conditions Directive](#), which lays down the standards for the reception of applicants for international protection in EU Member States.²³ Some provisions of the [Returns Directive](#)²⁴ are also especially relevant for stateless persons or persons at risk of statelessness, as it sets important limits on detention for the purpose of removal and

¹⁹ Caselaw from the CJEU in other matters may also be relevant to understand how actions of the Member States may come within the scope of EU law. In the *Fransson* case, the CJEU established that "in a situation where action of the Member States is not entirely determined by European Union law [...], national authorities and courts remain free to apply national standards of protection of fundamental rights, provided that the level of protection provided for by the Charter, as interpreted by the Court, and the primacy, unity and effectiveness of European Union law are not thereby compromised" [emphasis added]. See CJEU, *Åklagaren v. Hans Åkerberg Fransson*, C-617/10, 26 February 2013, paras 24-29. For an explanation of the application of this principle in relation to stateless children, see ECRE, *The right to a nationality of refugee children born in the EU and the relevance of the EU charter of fundamental rights* (February 2017), p. 8.

²⁰ For more information on the relevance of statelessness to EU law, see Katja Swider, 'Time to put statelessness on the EU agenda', ENS Blog (16 December 2013): <https://www.statelessness.eu/updates/blog/time-put-statelessness-eu-agenda>; and European Network on Statelessness, *Statelessness and the EU Pact on Asylum and Migration: Analysis and Recommendations* (2021): https://www.statelessness.eu/sites/default/files/2021-01/ENS-Statelessness_and_the_EU_Pact_on_Asylum_and_Migration-Jan_2021_1.pdf.

²¹ Directive 2011/95/EU of the European Parliament and of the Council on the standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), 13 December 2011.

²² Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection (recast), 26 June 2013.

²³ Directive 2013/33/EU of the European Parliament and of the Council laying down the standards for the reception of applicants for international protection (recast), 26 June 2013.

²⁴ Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals, 16 December 2008.

requires Member States to immediately release a detainee when there is no reasonable prospect of removal (Article 15).

Under **Article 53** of the Charter, the level of protection granted by the provisions of the Charter is at least equivalent to the protection granted by the ECHR and international law, including for example the UN Convention on the Rights of the Child. It is therefore essential for the CJEU to draw from international jurisprudence on key international standards on nationality and statelessness, e.g. the right to respect for private and family life, the right to a nationality, the principle of non-discrimination and the best interests of the child.

Composition of the Court of Justice of the European Union

The CJEU is made up of the Court of Justice and the General Court. The Court of Justice is comprised of 1 judge from each EU State together with 11 Advocates General. The General Court is made up of 2 judges from each EU State. The Court of Justice panel of judges elect a President and Vice-President for a period of 3 years (renewable).

Advocates General (AG) are members of the Court and are responsible for presenting independent opinions on the cases assigned to them and an overview of the Court's existing case law on the issue to assist the judges determining the case. The Advocate General's opinions are not binding, they are delivered after the hearing but prior to a judgment and often provide an indication of how the Court may approach a case. They may also be seen as authoritative commentary on the issues in question. The Opinions often provide a more detailed analysis of the case and the case law than the judgments themselves which are often very succinct. It is important to study the AG's Opinion in any case on which you need to rely.

Types of proceedings

There are different types of proceedings that may be brought before the CJEU:

- **References for preliminary rulings:** National courts in EU Member States may refer a case to the Court of Justice to seek clarification of points concerning the interpretation or validity of EU law. A national court against whose decisions there is no further appeal **must** refer unless the point of EU law is *acte clair* – that is obvious or has already been clarified by the Court. The Court of Justice will then rule on the content of the relevant provisions of EU law and indicate whether national legislation complies with the relevant EU Law. The national court is bound by the interpretation of the Court of Justice which similarly binds other national courts where the same problem is raised. The CJEU does not determine the outcome of the case but sends its ruling back to the national court for that court to apply it to the case before it (see below for more details).
- **Actions for failure to fulfil obligations:** The Court of Justice may determine whether an EU Member State has fulfilled its obligations under EU law. Prior to a case before the CJEU, the European Commission will conduct a preliminary procedure in which the Member State concerned is afforded the opportunity to reply to complaints. Where the State doesn't rectify the issue, an action for

infringement may be brought by the European Commission or a Member State. The State is bound by the ruling of the Court of Justice and continued failure may result in a financial penalty.

- **Actions for annulment:** An individual may seek to annul a measure such as a regulation, directive or decision adopted by a body, office, or agency of the EU.
- **Actions for failure to act:** The EU Member States and the other EU institutions may bring an action before the Court of Justice to review the lawfulness of a failure to act by the EU institutions, bodies, offices or agencies. The institution must have been called on to act and have failed to do so in an unlawful manner. Jurisdiction for actions for failure to act is shared by the Court of Justice and the General Court. Any individual or organisation may complain to the Court of Justice that an EU institution, body, office or agency has failed to address to that person any act (other than a recommendation or an opinion).
- **Appeals:** Appeals against judgments and orders of the General Court may be brought before the Court of Justice by any party which has been unsuccessful, in whole or in part, in its submissions. However, interveners other than the Member States and the institutions of the Union may bring such an appeal only where the decision of the General Court directly affects them. The Court of Justice may set aside the judgment of the General Court.

Preliminary reference mechanism

The list of texts governing the procedure to make a reference for a preliminary ruling can be found [here](#). A national court submits questions to the CJEU on the interpretation or validity of EU law. The request will be translated into all European languages, the Court registry notifies the case to the parties in the national proceedings and to all EU Member States and EU institutions. The parties have two-months to submit written observations.

National courts remain competent to decide questions of fact and national law, however they will be bound to apply EU law as interpreted by the CJEU. This is intended to result in the uniform interpretation and application of EU law. Questions referred to the CJEU may relate to the interpretation of EU law or the validity of acts of institutions, bodies, offices or agencies of the EU.

Referring a question to the CJEU is done at the initiative of national courts, whether or not the parties to the main proceedings have requested a question be referred. It is the national courts that will therefore determine the need for a preliminary ruling and the relevant questions to be answered (although these may be reformulated by the CJEU). In most cases, the national court has discretion to decide whether to refer a question to the CJEU, but there are situations where it is obliged to do so under EU law:

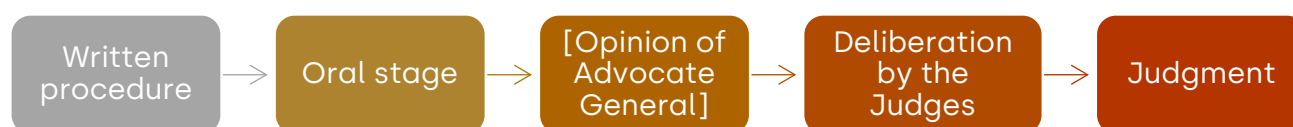
- Discretionary procedure under Article 267(2): a national court may refer a question to the CJEU in cases where it considers that a decision by the CJEU on the question is necessary to give judgment. Where the necessity requirement is not established, the CJEU will declare the case inadmissible.

- **Mandatory procedure under Article 267(3):** A national court must refer questions to the CJEU where a question of EU law is raised in a case pending before it and there is no judicial remedy against such court's decision. Where a court fails in its obligation to refer a question to the CJEU, there may be action against the State for damages²⁵ or an infringement procedure.²⁶ A national court must give a minimum reasoning for not referring the question.²⁷

When a question is referred by the national court, the proceedings are stayed until the CJEU delivers its ruling or the national court withdraws the question.

A preliminary ruling request must contain a summary of the subject matter of the dispute and the relevant findings of fact. There should also be a statement of the reasons which prompted the referring judge to inquire about the interpretation or validity of EU law. There must also be precise references to the national provisions applicable to the facts of the dispute and the accurate identification of the provisions of EU law, as well as a summary of the parties' arguments as well as the referring judge's view on the answer to be given to the questions.

Judgments delivered by the CJEU are binding on national courts and higher instances intervening in the proceedings. If national law is incompatible with EU law as interpreted by the CJEU, the national court must disapply national law. Member States must take necessary measures to comply with the judgment. A simplified flowchart of the procedure is seen below, and a complete version is [available online](#).



Optional steps in the procedure are indicated in brackets.

Third party interventions before the Court of Justice of the European Union

The rules and procedure for submitting third-party interventions in cases before the Court of Justice of the European Union are set out in the [Treaty on the Functioning of the European Union](#).

There are strict rules for the submission of third-party interventions before the CJEU which should be adequately assessed and considered, even before the case is brought before the CJEU. The submission of third-party interventions before the CJEU requires a thorough knowledge of both EU law and procedure before the CJEU

²⁵ CJEU, Köbler, Case C-224/01, 30 September 2003; Traghetti del Mediterraneo, C-173/03, 13 June 2006.

²⁶ CJEU, Commission v France, Case C-416/17, 4 October 2018.

²⁷ ECtHR, Ullens De Schooten and Rezabeck v Belgium (applications no 3989/07 and 38353/07), 20 September 2011; Dhahbi v Italy (application no. 17120/09), 8 April 2014; Schipani and Others v Italy (application no 38369/09), 21 July 2015.

and the brief information contained in this toolkit should be without prejudice to a full reading and/or training on how to litigate before the CJEU or assist the court.

In order for a third-party intervention to be possible before the CJEU, a person or an organisation must first become a party to the case before the referring domestic court. Article 97 of the Rules of Procedures states that the referring court should inform the CJEU when it has admitted a new party to the main domestic proceedings in proceedings already pending before the CJEU. The case law of the CJEU is, however, not entirely consistent and seems to have become slightly more accommodating for such interventions in recent years.²⁸ At the time of writing, Article 130 of the Rules of Procedure stipulates that "an application to intervene must be submitted within six weeks of the publication of the notice referred to in Article 21(4)" and lists the required contents of the application.

Further information on third-party interventions can be found in the CJEU [Statute of the Court](#).

²⁸ For further information see Jasper Krommendijk & Kris van der Pas, 'To intervene or not to intervene: intervention before the Court of Justice of the European Union in environmental and migration law', *The International Journal of Human Rights* (2022): <https://www.tandfonline.com/doi/full/10.1080/13642987.2022.2027762>.

3.3. United Nations Treaty Mechanisms

There is a wide range of mechanisms for monitoring compliance with United Nations (UN) treaties, conventions and other instruments that are legally binding upon the States that have acceded to them. There are two types of human rights monitoring mechanisms within the UN system which assess violations of human rights law: charter-based bodies (including the Human Rights Council, Special Procedures, the Universal Periodic Review and Independent Investigations), and [treaty-based bodies](#) (UN Treaty Bodies, which are committees of independent experts that monitor the implementation of a specific international human rights treaty). Further information on reporting violations to UN treaty bodies can be found [here](#).

Statelessness in UN Treaties

Article 15 of [the 1948 Universal Declaration of Human Rights](#) (UDHR) provides for the right to a nationality and prohibits arbitrary deprivation of nationality. There is consensus that the right to nationality is a fundamental principle of international law.

There are several UN Treaties that specifically address the right to a nationality or related rights, which are outlined below. In addition to the provisions of UN Treaties, **General Comments and General Recommendations of UN Treaty bodies** serve as authoritative interpretative tools and provide additional insight into the duties and obligations of Contracting States. Some of the UN instruments that are particularly relevant for stateless persons or persons at risk of statelessness include, but are not limited to:

- [International Covenant on Civil and Political Rights](#) (ICCPR): explicitly refers to the right of children to be registered immediately after birth (Article 24(2)) and to acquire nationality (Article 24(3)).²⁹
- [Convention on the Rights of the Child](#) (CRC): outlines the right to acquire a nationality as soon as possible after birth, the right to birth registration, the principle of the best interests of the child, and other key provisions for children affected by statelessness, also as developed by the relevant General Comments of the Committee on the Rights of the Child.³⁰ These rights should be

²⁹ General Comments of the ICCPR also refer to nationality and statelessness, such as in the context of the right to life, the right to access to courts, the equality of rights between men and women and arbitrary deprivation of nationality. See, e.g., CCPR General Comment No. 27: Article 12 freedom of movement (1999); CCPR General Comment No. 28: Article 3 the equality of rights between men and women (2000); CCPR General Comment No. 32: Article 14 right to equality before courts and tribunals and to a fair trial (2007); CCPR General Comment No. 36: Article 6 on the right to life (2018).

³⁰ See, e.g., Articles 2, 3, 6, 7, 8, 12. See also UNCRC, General Comment No. 6 (2005) treatment of unaccompanied and separated children outside their country of origin; UNCRC, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (article 3 § 1); UNCRC, General Comment No. 12 (2009) the right of the child to be heard; Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration; Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (CMW) and No. 23 (2017) of the CRC on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination, and return.

implemented in accordance with national law and obligations under the relevant international instruments in the field particularly where the child would otherwise be stateless.

- [Convention on the Elimination of All Forms of Discrimination against Women](#) (CEDAW): provides that women shall be granted equal rights with men to acquire, change or retain their nationality, and that marriage or changes of nationality by a husband do not automatically change the nationality of the wife or render her stateless (Article 9).³¹
- [Convention on the Elimination of All forms of Racial Discrimination](#) (CERD): requires that States Parties undertake to prohibit and to eliminate racial discrimination in all its forms, and to guarantee the right to equality before the law including in the enjoyment of the right to nationality, without distinction as to race, colour, or national or ethnic origin (Article 5(d)(iii)). It also provides that national norms concerning nationality, citizenship or naturalisation must not discriminate against any particular nationality (Article 1(3)).
- [Convention Against Torture](#) (CAT): provides for protection and guarantees to prevent torture and inhumane or degrading treatment, and has been interpreted widely by the Committee Against Torture, including in relation to the prohibition to expel, return, or extradite a person to another State where there are substantial grounds for believing that they would be in danger of being subjected to torture (Article 3), and the lawfulness and conditions of detention.³²
- [Convention on the Protection of the Rights of All Migrant Workers and Members of their Families](#) (CMW): provides the right of each child of a migrant worker to a name, to registration of birth and to a nationality (Article 29), which has been further interpreted by several General Comments especially related with children in migration.³³
- [Convention on the Rights of Persons with Disabilities](#) (CRPD): specifically recognises the rights of persons with disabilities to a nationality; and requires States Parties to ensure that persons with disabilities have the right to acquire and change a nationality, are not arbitrarily deprived of nationality on the basis of disability, of their ability to obtain, possess and use identity documents, or of the right to enter their own country. It also provides that children with disabilities shall be registered immediately after birth and shall have the right from birth to a name and the right to acquire a nationality (Article 18).

³¹ See also General Recommendation No. 28 on the core obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women (2010); General Recommendation No. 32 on the gender-related dimensions of refugee status, asylum, nationality and statelessness of women (2014); General Recommendation No. 36 on the right of girls and women to education (2017); General Recommendation No. 38 on trafficking in women and girls in the context of global migration (2020).

³² See also Articles 2, 6(3), and 11; General Comment No. 2 implementation of Article 2 by States Parties (2008); and General Comment No. 4 on the implementation of article 3 of the Convention in the context of article 22 (2018).

³³ See Joint general comment No. 4 (2017) of the CMW and No. 23 (2017) of the CRC on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination, and return; and Joint general comment No. 3 (2017) of the CMW and No. 22 (2017) of the CRC on the general principles regarding the human rights of children in the context of international migration.

Treaty Bodies and Mechanisms

Individuals or groups of individuals may submit complaints to treaty bodies alleging a violation of their rights and the rights of others contained within the relevant treaties, but only if the State in question has consented to being subject to this procedure. As is the case before the European Court of Human Rights and the Court of Justice of the European Union, persons bringing complaints must have exhausted domestic remedies before communicating complaints to UN treaty bodies.

Complaints can be made against any State which is party to a treaty recognising the rights which are alleged to have been violated (and the State has not made reservations to relevant provisions); and that State that has accepted the Committee's competence to examine individual complaints, either through the ratification or accession to an Optional Protocol or by making a declaration to that effect under a specific article of the Convention.

Not all treaty body-based complaint mechanisms have entered into force. Currently, eight of the human rights treaty bodies ([CCPR](#), [CERD](#), [CAT](#), [CEDAW](#), [CRPD](#), [CED](#), [CESCR](#) and [CRC](#)) may, under certain conditions, receive and consider individual complaints or communications from individuals. Third parties may also bring complaints to UN treaty bodies on behalf of individuals with their written consent. The procedure to submit complaints to some of these mechanisms is outlined below, and the procedural guidelines for any other mechanism can be found on [OHCHR's website](#).

Further information on the United Nations legal instruments and mechanisms can be found [here](#). **The following resources are useful and relevant to litigation before United Nations Treaty Mechanisms.**

- The United Nations Human Rights Treaty System factsheet can be found [here](#).
- The United Nations jurisprudence database and document search can be found [here](#).
- The United Nations Human Rights Office of the High Commissioner guide providing search tips for UN databases can be found [here](#).
- The United Nations Treaty Body General Comments can be found [here](#).

There is no individual complaint procedure specific to the two UN statelessness conventions, although they have been taken into consideration in the jurisprudence of some Treaty Bodies and statelessness issues may be addressed through litigation to UN Treaty Bodies. While they are not specific to statelessness and nationality determination, UN Treaty Bodies and conventions may offer more protection for certain applicants and certain issues, for whom protection may not be explicitly available through other mechanisms. For example, children's right to nationality or the denial of nationality, or other statelessness-related issues concerning children, may be addressed through the Committee on the Rights of the Child. Statelessness relating to women and girls and discrimination based on gender may be more appropriately addressed through the Committee on the Elimination of Discrimination against Women. Equally, the Committee against Torture may be more appropriate for addressing cases concerning the inhuman and degrading treatment, for example in the context of the

detention of stateless persons. Individual UN treaty mechanisms may therefore be more appropriate or relevant to an applicant depending on the factual circumstances of a case.

For an overview of which recommendations have been made to States by UN Treaty bodies on statelessness or nationality through review mechanisms, please refer to the Institute on Statelessness and Inclusion's [Database on Statelessness and Human Rights](#).

Guidance on submitting individual complaints

The UN has published a [complaint form and guidance for individual communications](#) to treaty bodies, a [fact sheet on individual complaints procedures](#), and [further online information](#) about the UN treaty bodies complaints procedures.

When submitting a complaint, people are encouraged to use the model [complaint form](#). Complaints should be made in writing, typed (preferably) and signed, and completed in one of the official UN languages (Arabic, Chinese, English, French, Russian, or Spanish).

If the author (the person making the complaint) wishes to remain anonymous, they must notify the Committee at the earliest possible stage. The relevant Committee may also decide at its own discretion not to disclose the identity of the author.

A complaint must set out all the facts on which the complaint is based with all relevant information to the case. The complaint should also make clear why the facts constitute a violation of the relevant treaty and specify the relevant provisions.

A complaint should make it clear that the author has taken steps to exhaust all of the domestic remedies available in the relevant State party to which the complaint is directed. The exhaustion of domestic remedies requires that claims have been brought to the attention of the relevant national authorities and brought to the highest available instance in the State. Where remedies have not been exhausted, the reasons for it should be clearly stated.

The complaint should not exceed 50 pages (excluding annexes). When a complaint exceeds 20 pages, it should include a short summary of up to five pages.

A complaint should be made as soon as possible after exhausting domestic remedies. The timeframes are individually determined by the relevant Committee overseeing the specific treaty body (outlined below).

Third parties may sometimes intervene before the UN Treaty Bodies.³⁴

Human Rights Committee

[The Human Rights Committee](#) is the body of independent experts that oversees and monitors the implementation of the [International Covenant on Civil and Political Rights](#).

³⁴ For more information, see the Rules of Procedure of the different UN Treaty Bodies. See also International Service for Human Rights, Guide for Third-Party Interventions before UN Human Rights Treaty Bodies (March 2022), at <https://ishr.ch/defenders-toolbox/resources/guide-for-tpis-before-untbs/>

Practitioners should consult the most updated Rules of Procedure available online, which at the time of writing are the [Human Rights Committee Rules of Procedure 2021](#). For example, the admissibility criteria for individual complaints can be found under Rule 97, and under Rule 99(c) they should be submitted within five years after the exhaustion of domestic remedies by the author of the communication, or, where applicable, three years from the conclusion of another procedure of international investigation or settlement, unless there are reasons justifying the delay, taking into account all the circumstances of the communication.

Rule 96 of the [Rules of Procedure](#) provides that third parties may make intervening submissions to the Human Rights Committee.

Committee on the Rights of the Child

The [Committee on the Rights of the Child](#) oversees the [Convention on the Rights of the Child](#).

Further information about the individual communications procedure can be found in the [Optional Protocol to the Convention on the Rights of the Child on a communications procedure \(OPIC\)](#). For example, Article 7 (h) of the Optional Protocol on a communications procedure states that: "The Committee shall declare a communication inadmissible when: (a) It is *not submitted within 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".

The NGO Child Rights Connect's website on OPIC (<https://opic.childrightsconnect.org/>), has further guidance on how to submit complaints to the Committee, jurisprudence, and information on pending cases to support the use of the procedure by children's rights defenders. The website also includes a [child-friendly version](#).

The Rules of Procedure under the Optional Protocol to the CRC on a Communications Procedure can be found [here](#). Rule 23(1) refers to third-party interventions. For further information, refer to the [Guidelines on third-party interventions under the OPIC](#).

Committee on the Elimination of Discrimination against Women

The [Committee on the Elimination of Discrimination against Women](#) (CEDAW Committee) is the body of independent experts overseeing the [Convention on the Elimination of All Forms of Discrimination against Women](#).

The CEDAW Committee Rules of Procedure can be found [here](#). Rules 45, 46 and 47 refer to third-party interventions.

Further information of the CEDAW communications procedure, which allows individuals or groups of individuals to submit complaints to the Committee can be found in the [Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women](#).

Committee on the Elimination of Racial Discrimination

The [Committee on the Elimination of Racial Discrimination](#) is the body of experts overseeing the implementation of the [Convention on the Elimination of All forms of Racial Discrimination](#).

Further information about the individual complaints procedure before the Committee on the Elimination of Racial Discrimination can be found [here](#). The individual complaints procedure has also been summarised in a factsheet, which can be found [here](#).

The time limit for communicating a complaint to the Committee is detailed under Article 14(5) of the Convention on the Elimination of All forms of Racial Discrimination: In the event of failure to obtain satisfaction from the body established or indicated in accordance with paragraph 2 of this article, the petitioner shall have the right to communicate the matter to the Committee *within six months*.

The Rules of Procedure of the Committee on the Elimination of Racial Discrimination can be found [here](#). There is no explicit legal basis for submitting a third-party intervention.

Committee Against Torture

The [Committee Against Torture](#) (CAT) is made up of 10 experts who monitor the implementation of States Parties' obligations under the [UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#).

CAT can receive and consider individual communications, also known as complaints, from or on behalf of a person or group of persons claiming to be victims of a violation of the Convention by a State party, provided the State party concerned has [recognised the Committee's competence](#) by accepting the individual complaints procedure (Article 22).

The CAT is supported by the [World Organisation Against Torture](#) (OMCT, *Organisation Mondiale Contre la Torture*), a civil society organisation which works closely with the CAT to coordinate the participation of civil society in CAT's sessions. OMCT has also published a [handbook on individual complaints procedures](#).

The CAT's Rules of Procedure can be found [here](#). Although there is no explicit legal basis, Rule 118(2) appears to provide for the possibility to submit third-party interventions.

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 All Migrant Workers and Members of their Families](#) (CMW) is the body of experts overseeing the implementation of the [International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families](#).

For the Committee on Migrant Workers, neither the inter-State communications procedure nor the individual complaint mechanism have yet entered into force. The

individual complaint mechanism will become operative when 10 States Parties have made the necessary declaration under article 77 of the Convention.

More information on the CMW's communications procedure can be found [here](#). The CMW's Rules of Procedure can be found [here](#). Rule 30 appears to provide for the submission of third-party interventions.

Committee on the Rights of Persons with Disabilities

The [Committee on the Rights of Persons with Disabilities](#) (CRPD) is the body of independent experts which monitors implementation of the [Convention on the Rights of Persons with Disabilities](#).

For the CRPD to be able to receive individual complaints, the State party concerned must have recognised its competence by ratifying the [Optional protocol](#) to the Convention on the Rights of Persons with Disabilities. More information on the CRPD's communications procedure, pending cases and past jurisprudence is [available online](#).

RESOLUTION AND IMPLEMENTATION

This section addresses implementation of judgments and decisions and discusses friendly settlements, execution of judgments of the ECtHR, follow-up to preliminary rulings of the CJEU, and review mechanisms by UN Treaty Bodies.

4.1. Friendly settlements

It is a requirement in certain litigation processes for the applicant to consider (at the very least) settling the case if the State offers a satisfactory resolution for the client. While the best interest of the client is ultimately what should be at the heart of every legal representative's actions, in cases where the issue is systemic, rarely do friendly settlements fully address the underlying issue. Friendly settlements should be considered and possibly sought when they are in the client's best interest, but in the absence of a court's judgment, the case may no longer be able to strategically and systemically address an issue. Before any impact litigation effort and any rejection of offered friendly settlement, a complete and thorough assessment of the applicant's situation should be conducted considering, among others, their financial situation, vulnerability and personal/ professional support networks.

4.2. Implementation and measuring impact: the judgment is only the beginning

When it comes to strategic thinking and impact litigation, monitoring the execution of a judgment or a decision of a UN Treaty Body and ensuring the State has complied with what the court or committee has adjudicated is just as important as the litigation itself. Maximising the impact of litigation should be considered a key stage of any impact litigation. Even when a judgment with a positive outcome or setting a positive precedent has been issued, impact litigation alone may be insufficient when it comes to effecting change and judgments or decisions must be properly implemented to achieve their full effect, as a successful case may be followed by the absence of implementation measures. It is therefore important to be aware of the limitations of impact litigation and the importance of other advocacy and lobbying efforts in conjunction with litigation.

Part of these other efforts include the need to pay particular attention to the implementation/execution of judgments and decisions and whether States are taking the appropriate action to implement changes in light of favourable judgments. The implementation efforts may vary depending on the relevant mechanism.

Depending on the forum selected, following a judgment's execution varies in complexity and difficulty. For some fora, for instance the ECtHR, an organisation does not have to be a direct litigant to show interest and participate in the execution and monitoring process. Other fora, like the UN mechanisms and the CJEU, have less structured supervision mechanisms which are more domestically focused. The present section

presents an overview of different execution and supervision mechanisms, but is in no way exhaustive.

Execution of judgments of the European Court of Human Rights

The Committee of Ministers of the Council of Europe, the CoE's statutory decision-making body, is composed of the Ministers for Foreign Affairs of member States. It ensures continuous supervision of the execution of judgments and decisions of the ECtHR. It also provides support to Member States to achieve full, effective, and prompt execution of judgments, with the assistance of the [Department for the Execution of Judgments](#). Its role and functions are defined in Chapter IV of the [Statute of the Council of Europe](#).

Once judgments and decisions become final, States indicate to the Committee of Ministers as soon as possible the measures planned and/or taken in an "**action plan**". Where necessary, the Committee of Ministers may assist execution in different ways, notably through recommendations set out in decisions and interim resolutions. Cases remain under supervision until all the required measures have been taken, after which an "**action report**" is submitted and the supervision is closed by a final resolution.

During the supervision process, applicants, NGOs and National Institutions for the promotion and protection of Human Rights can submit communications in writing (known as a "Rule 9.2 submission").³⁵ The purpose of a Rule 9.2 submission can be to convey recommendations for strengthening the supervision process; new factual information; or, more rarely, to make procedural proposals. The European Implementation Network (EIN), a specialist umbrella organisation mandated to deal specifically with execution of judgments by the ECtHR, has compiled a guide that includes templates and detailed information in order to assist organisations in putting through their submissions.³⁶ All submissions and relevant documentation are published in [HUDOC Exec website](#).³⁷

The supervision of the adoption and implementation of action plans has followed a new twin-track procedure since January 2011. Most cases follow the **standard procedure**. An **enhanced procedure** is used for cases requiring urgent individual measures or revealing important structural problems (in particular pilot-judgments) and for inter-State cases.³⁸

³⁵ See info on the Council of Europe Supervision Process, available at: <https://www.coe.int/en/web/execution/the-supervision-process>. The process is regulated by Rule 9.2 of the Committee of Ministers' Rules of Procedure.

³⁶ A full list of supporting documentation can be found here: <https://www.einnetwork.org/rule-9-submission-guide>

³⁷ HUDOC EXEC, Department of the execution of judgments: <https://hudoc.exec.coe.int/eng#%7B%22EXECDocumentTypeCollection%22:%5B%22CEC%22%5D%7D>

³⁸ See info on the Council of Europe Supervision Process, available at: <https://www.coe.int/en/web/execution/the-supervision-process>

For help regarding supervision of judgments and assistance with submissions, practitioners are encouraged to contact the EIN.³⁹

Follow-up to preliminary reference rulings by the Court of Justice of the European Union

Once the CJEU issues a preliminary reference ruling, the national court to which it is addressed is bound by the interpretation given by the Court. The Court's judgment also binds other national courts before which the same issue has been raised. The referring domestic court should issue a judgment complying with the ruling of the CJEU in the matter, and it is then a matter of domestic law to ensure the execution of the domestic judgment. If issues persist, either with domestic courts or a systematic practice of not following the CJEU judgment, other avenues should be explored. This includes, at European level, contacting the European Commission to request the commencement of infringement proceedings, reporting the issue to the European Parliament, or, at domestic level, seeking redress in individual complaint mechanisms (such as the Ombudsperson) or submitting complaints against the failure of the administrative authorities to act which could be investigated by a national prosecutor.

Review mechanisms by UN Treaty Bodies

There is no appeal against UN Treaty Bodies' decisions. As a rule, decisions are final. Where the Committee decides that there has been no violation of the treaty or that the complaint is inadmissible, the case is closed.

Where the Committee decides that the facts in the complaint show a violation by the State Party of the complainant's rights under the treaty, it invites the State Party to provide information within 180 days on the steps it has taken to give effect to its findings and recommendations. The State's response is then shared with the complainant for comments.

The Committees' decisions represent an authoritative interpretation of the treaty in question and they include recommendations to the State Party. By accepting the procedure, States Parties have also accepted to respect the Committee's decisions. All Committees have therefore developed procedures to monitor whether States Parties have implemented their recommendations ('follow-up procedures').

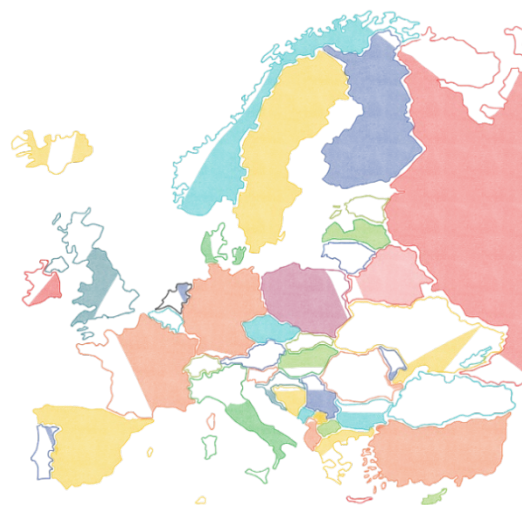
If the State Party does not take appropriate action, the case is kept under consideration by the Committee under the follow-up procedure. A dialogue is thus pursued with the State Party and the case remains open until satisfactory measures are taken. Information related to follow-up to the Committees' Views and recommendations is not confidential and the meetings during which this information is discussed are public.

OHCHR's website has further information on [what happens once a Committee decides a case](#) and on [follow-up procedures](#).

³⁹ European Implementation Network, at <https://www.einnetwork.org>

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The Statelessness Case Law Database is a free online resource containing national and regional case law covering Europe, as well as international jurisprudence addressing statelessness. The database covers jurisprudence from any jurisdiction in Europe, the European Court of Human Rights, the Court of Justice of the European Union and UN human rights treaty bodies. It is managed by the [European Network on Statelessness](#) (ENS) with contributions and support from [ENS members](#) and [partners](#).



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