

**ICMC 2023****The 3<sup>rd</sup> International Conference on Management and Communication****ADMISSIBILITY DEBATE OF INDIVIDUAL COMMUNICATIONS  
BEFORE THE HUMAN RIGHTS COMMITTEE**

Jaafar Rikan Muair Almashaal (a)\*, Aminurraasyid Yatiban (b),  
Noor Fariah Binit Mohd Noor (c)

\*Corresponding author

- (a) University Utara Malaysia, Basrah, Iraq, jrekan@gmail.com  
(b) University Utara Malaysia Kuala Lumpur, Malaysia, fariah@uum.edu.my  
(c) University Utara Malaysia Kuala Lumpur, Malaysia, aminurraasyid@gmail.com

**Abstract**

This research focuses on one of the most important legal issues: the admissibility of personal communications under the jurisdiction of the Human Rights Committee (HRC), in addition to the causes of inadmissibility. There are numerous legal problems argued, such as non-retroactivity ("ratione temporis") of treaty law, expanding interpretation of the exceptions, and the principle of state membership in the International Covenant on Civil and Political Rights (ICCPR). In addition, some states reject joining the First Optional Protocol (FOP) despite ratifying the ICCPR to deny the human rights committee authority to review individual complaints. This paper can help researchers and lawyers analyze international problems, paying particular attention to the principles, exceptions, and techniques to avoid falling into the legal trap of the inadmissibility of individual communications. The objectives of this research are mainly to advance the effectiveness and credibility of the international protection system by further developing legal protection ideas, making individual communications admissible, and increasing protection coverage for the victims.

2357-1330 © 2023 Published by European Publisher.

*Keywords:* Backdate, Communications, Human rights Committee, International Reservations, Non-acceptability

## 1. Introduction

Regardless of a person's social or economic standing, human rights are crucial for their preservation. No matter what their religion, gender, sexual orientation, ethnicity, or level of money, they serve as the foundation for everyone's fundamental needs and sense of dignity. It is important to note that ICCPR is an international treaty established to safeguard Civil and Political Rights essentially. Covenant's 53 articles emphasize Civil and Political Rights and recognize that each person has a responsibility to work for the advancement and observance of those rights as well as obligations to others and to the community to which they belong. The Human Rights Committee was founded as the primary body responsible for carrying out the Covenant. It has the power to consider complaints from the state party and from those who claim to have been harmed by the state. The First Optional Protocol (FOP) to the covenant specifies the grievance procedure for alleged violations of certain articles. The state that is a member in the FOP acknowledges the committee's jurisdiction authority in accepting grievances from residents of their territory claiming infringement of Covenant rights. For the committee to assess a complaint on its merits and content, the formal requirements of admission must be met. If the Committee finds that the facts and justification supporting a Covenant breach have not been satisfactorily supplied in the complaint, it dismisses the complaint as inadequately substantiated and, as a result, inadmissible. The Committee first examines the complaint's grounds before analyzing the complaint's merits to determine whether the right is covered by the Covenant or not.

## 2. Problem Statement

Major obstacles to securing the defense and advancement of human rights are inadmissibility of individual communications before the Human Rights Committee. Before communication is taken into consideration, every home remedy should be tried first. These requirements are stated in the FOP and ICCPR. This requirement, however, presents an issue to the majority of victims who have trouble getting justice in their native nations. In order to address this problem, the Committee has broadened the parameters of what it considers to be the exhaustion of domestic remedies and created a process for "exceptional cases" in which strict adherence to the exhaustion criterion would lead to a plainly unfair conclusion. However, there are still difficulties in determining when such exceptional circumstances apply and how to balance state sovereignty's respect compared to effective protection through individual communications. In this research, the author identifies a few conditions and the gap that exception cases may have clarified. However, the gap is still outstanding regarding the abstention of some states from joining the ICCPR's first optional protocol through new legal techniques. I call it "hidden international reservations," in which states abstain from entering the FOP. Consequently, under ICCPR, "Article" 1, individual complaints against the violation of human rights by the state will be inadmissible, because the state has not signed or joined the first optional protocol. Non-member states of the ICCPR and any state that did not join the first optional protocol and their citizens are banned from lodging individual complaints before the Committee. In fact, the Hidden States' reservations or abstention from entering FOP, in addition to ICCPR can decrease human rights, reduce justice, and establish a dangerous indication of injustice. It is important to advance the cause of human rights by ensuring countries are held

accountable for their actions and by enhancing the effectiveness and legitimacy of the global system for promoting human rights protection. It highlights the necessity of defending peoples' rights regardless of their nationality, race, or other characteristics and underlines the significance of supporting human rights as a global principle. The victims, specifically those who are denied the protection of human rights standards due to technical and procedural issues, would benefit from this paper.

### **3. Research Question**

Individual communications' admissibility before the Committee of Human Rights is a complicated and sensitive subject that necessitates in-depth investigation and study. The primary research question related to this issue is whether or not individual communications submitted to the Committee hold any legal weight or influence over human rights decisions. There are various factors that impact the admissibility of these communications, including their relevance, reliability, and the procedural requirements for submitting them. While some argue that individual communications provide vital insight into human rights violations and can shape policy changes, others contend that they lack evidentiary value and should be viewed with caution. To adequately address this research question, a rigorous analysis of problems, norms, jurisprudence, and moreover policies regarding submission and consideration of individual communications will be necessary. The paper focused on exceptional conditions, inadmissibility, and evasive methods of the state to not enable individuals to reach international justice if they attempt to lodge individual communications with the committee. Moreover, the paper focused on drawing the attention of the NGOs, and international experts to those states that use hidden legal reservations to human rights by abstaining from joining the FOP of the ICCPR. This abstention is the state's abuse of international law and international human rights law. These states intentionally abstained from entering the First Optional Protocol in the ICCPR to abort any attempt by individuals to file individual complaints on the state 'violations with human rights committee because states knew already that individual communications have been inadmissible unless the state was a member state of the ICCPR and the First Optional Protocol. No Individual communications shall be received by the committee unless they concerns the member state in the Covenant and FOP. Under First Optional Protocol Article 1 to the ICCPR, member state of the covenant that becomes a member state of the FOP accepts the competence of the committee to receive and consider communications from individuals subject to the member state's jurisdiction who claim that their rights set forth in the covenant have been violated by the member state.

### **4. The Purpose of the Study**

The main purpose of the research is to examine the admissibility debate over individual communications before the Human Rights Committee. It aims to analyze the various arguments and factors considered by the Committee in determining the admissibility of individual complaints. The research also seeks to understand the criteria, principles, and procedures that guide the Committee's decision-making process. Furthermore, it aims to evaluate the effectiveness and transparency of the admissibility debate in ensuring access to justice for victims of human rights violations and reveal the state's methods to reject or express reservations about joining the first optional protocol of the ICCP,

which is the first legal step to lodge a complaint; moreover, it aims to explore the state's art in depriving individuals of ensuring access for the victims of human rights violations to justice or remedy, which states consider additional obligations to it. Ultimately, the research aims to contribute to the existing literature and knowledge in the field of human rights law and practice.

## **5. Research Methodology**

The study methodology is a legally descriptive method for the admissibility of complaints; the study depends on qualitative methods and deductive legal criteria and addresses the problems that can lead to the inadmissibility of individual communications before human rights if these cases do not comply with the conditions of admissibility. Starting with formulating research questions and addressing the gap, designing a research methodology to answer the research questions, collecting and analyzing data, legal texts and case law related to individual complaints, and conducting a comprehensive literature review focusing on human rights and the admissibility of the complaints. Furthermore, discussing the purpose of the study and the findings in light of the existing literature.

## **6. Findings**

The research found that there is an ongoing debate regarding the admissibility of individual communications before the Human Rights Committee (HRC). This debate revolves around the criteria and processes for accepting or rejecting individual complaints and the potential impact they have on ensuring accountability for human rights violations. The study identified that one significant finding of this admissibility debate is the tension between the need to safeguard the rights of victims and the rights of states. Balancing these interests becomes crucial in determining the admissibility of individual communications. Another key finding highlights the need for a consistent and transparent admissibility process to ensure fair and impartial decision-making by the HRC. This will enhance the credibility and effectiveness of the Committee in addressing and redressing individual complaints. The research also revealed the importance of considering the principle of subsidiarity within the admissibility debate. Subsidiarity refers to the principle that issues should be addressed at the most local or individual level possible before seeking international remedies. The study found that balancing subsidiarity with the need for international oversight is crucial in determining admissibility.

Finally, the study found that the admissibility debate has implications not only for individual communication cases but also for the broader human rights system. Admissibility of individual complaints before the HRs committee depends on the membership of their state in the First Protocol of the ICCPR. The research suggests that additional investigation into the factors influencing international human rights debates is necessary for a more effective approach, especially when states intentionally abstain or express reservations or doubts about joining the first optional protocol of the ICCPR.

### **6.1. Part one: conditions for the admissibility of individual communications at the human rights committee**

Human rights was the first treaty body to have the competence of reviewing particular communications. Different registration requirements must be met in order for the treaty bodies to assess specific communications. Prior to considering the merits, the committee considers the admissibility in the initial stage or early processes. The term "admissibility" pertains to the necessity of criteria that a complaint must meet before the relevant committee can assess the merits. The primary requirements for the admissibility of individual communications by the Committee will be covered in part 1.

### **6.2. Violation of human rights must not have taken place prior to the treat's entry into force**

International Covenant on Civil and Political Rights (ICCPR), and relevant agreements, have been adopted by the United Nations since 1966. ICCPR protects fundamental rights of all individuals, including the rights to life, liberty, and security of person, due process, a fair trial, freedom to express themselves, right to peacefully gather and associate, right to move freely, and right to non-discrimination (The Office of the High Commissioner for Human Rights (The Office of UN High Commissioner for Human Rights, 2020a). ICCPR Article (3) states that there will be no exceptional circumstances whatever, whether a state of war or a threat of war, internal political instability, or any other public emergency, that may be invoked as justifications for torture or other cruel, inhuman, or degrading treatment or punishment (Reyes, 2007). Since 2001, The Special Reporter of the UN on Torture and other Cruel, Inhuman, or Degrading treatment or Punishment has publish various reports detailing the consistent sever violations of the international covenant on civil and political rights (ICCPR) that have occurred in the United States (Reyes, 2007). These reports have provided evidence that detainees have been subjected to sleep deprivation, isolation from human contact, shackling during transportation, interrogations involving the use of aggressive techniques such as waterboarding, and the use of restraints on the wrists, legs, and ankles for extended periods of time (Sifris, 2013). These methods breach Article 7 of the ICCPR, which prohibits torture and inhuman or degrading treatment or punishment (Sourcebook on Solitary Confinement, n.d.). It is well known that there are a number of requirements for any individual communication to be considered admissible, including the use of all available domestic remedies (Shany, 2007). The latter requirement cannot be satisfied unless consideration is given to a human rights violation or incident that occurred in the state in issue prior to the treaty's entry into force (Hossain Mollah, 2019). There is, however, a very important relevant reference pertaining to the treaty's entrance into effect in the pertinent nation, known in Latin as (*ratione temporis*) which means that events must have occurred after the complaint procedure went into effect for the state party in question. Events might have happened before to the adoption of the complaint procedure and continued thereafter. Therefore, it is necessary taking into consideration facts and their continuous implications from the earlier time of entrance into force and after the treaty's ratification and entry into force in this state. Otherwise, the human rights committee will not accept it (Home - the Geneva Academy of International Humanitarian Law and Human Rights, n.d.). In actuality, it is a practical implementation of the rule in international law that says that once a treaty enters into effect, it becomes law, which is so-called "non-

retroactivity,” It was stated on May 23, 1969, Vienna Convention of the Law of Treaties' Article 4 (Lo, 2017). Based on our analysis, we can conclude that the Vienna Convention (entered into force on January 27, 1980) served as the international legal foundation for the ICCPR. Legal scholars agree that Roman law, which dates back many centuries, is where the notion of international treaties' non-retroactivity first appeared. The rules of the treaty don't apply retroactively, it's crucial to highlight, as stated in article 40/a-ICCPR, is "that Human Rights Committee shall receive and examine reports from that state on the measures that it has taken to give effect to the rights recognized in the Covenant (Optional Protocol to the International Covenant on Civil and Political Rights, n.d.). However, if there is a possibility to dig deeper and look for the foundation of that concept (non-retroactivity), Article 28 of the 1969 Vienna Convention of the Law of Treaties (VCLT) lays the groundwork for this principle, which declares that a state party is not bound by the stipulation of an agreement pertaining to any occurrence or scenario that transpired before the effective date of the treaty concerning that member state, unless a different intention is made clear in the treaty or is established in another way. All legal legislation must abide by the idea of non-retroactivity outlined in VCLT Article 28 with regard to the temporal application of optional provisions. A strict application of this criteria, nevertheless, might allow member states to evade responsibility for human rights violation owing to temporary inadmissibility in situations where an infringement happened after the treaty went into force, but before the optional articles were ratified. This cannot be the case, according to this study's justification, as in the case of the Serrano-Cruz Sisters. (Affected by the disappearance of two kids during the civil conflict in El Salvador (United Nations Treaty Collection, n.d.). The (*ratione temporis*) rule calls for a more intentional, evolutionary approach. Articles 31–33 of the VCLT must be clarified in the light of Article 28 of the Vienna Convention, and further interpretation or clarification must consider goals and purposes of the treaties. The international norms should be effective, retroactivity should be encouraged rather than restricted. On the other hand, the ECtHR said the (*ratione temporis*) qualification was excellent since it is based on two pillars of qualifications: Committee established by the covenant will have the authority to investigate incidents that transpired before the FOP came into effect, provided stipulations of the Covenant even after the protocol has been ratified, such as “Sarma v Sri Lanka” (Superville, n.d.). Second, if the circumstances that gave rise to the complaint have a long-term effect that breaches the Covenant, the committee's jurisdiction will not be restricted (*ratione temporis*). The enforced disappearance has caused severe suffering and uncertainty and has profoundly impacted the affected individual's physical and psychological integrity, a refusal to acknowledge the deprivation of liberty or concealment of the fate and whereabouts of the disappeared person may constitute treatment of the missing person's family in violation of article 7 of the Covenant: Mexico v. Padilla.

### **6.3. Asserting individual rights in the international law: an analysis of complaints by victims**

Article 1 of the First Optional Protocol (FOP) to the international covenant on civil and political rights (ICCPR) stated that the author of individual complaint must be a victim of a violation of any of the rights set forth in the covenant. Unless the state becomes a member state of the covenant, further, the FOP recognizes the power of the committee to review individual complaints. Any of the rights that have been breached, must be covered by at least one of the Articles of the ICCPR. For instance, the complainant

cannot assert that the right to property was violated if the A complaint was filed using the Optional Protocol to the International Covenant on Civil and Political Rights due to excluding the right in question from the Covenant (The Office of UN High Commissioner for Human Rights, 2020b). As Part III represents the core of the Covenant (ICCPR), the claim would be inadmissible *ratione materiae* in such a scenario. It is considered one of the substantive rights and basic liberties that the treaty guarantees. Although Part I clauses may also be claimed and may support their interpretation, these are the articles that are frequently cited by those individuals who claim that their rights in the Covenant have been infringed. Article 26, as mentioned above, is a basic element of the Covenant, along with paragraphs 2 and 14. The document delineates the entitlement to uniform safeguarding under legal provisions and impartiality in front of the law, together with a broad guarantee against discrimination. The Committee has adopted broad interpretation for this provision, extending its application to encompass all legal regulations rather than confining it solely to the articles of the Covenant (Lee, 2010). As a result, every benefit of any type that a state party bestows onto an individual or group of individuals must be done so without discrimination. The Committee may evaluate these standards to ensure that they are consistent with this clause, which means that distinctions made by legislation must be supported by justifiable and objective grounds. Article 27 of the Covenant, which completes Part III, grants ethnic, religious, or linguistic minorities the freedom to exercise their own cultural, religious rights or language alongside other group members. Despite being formally articulated as an individual right, this clause is actually better understood as a collective right that defends a group of people. A few of the rights outlined in Part III are clearly stated to be subject to limitations or restrictions that are frequently outlined by law and required for the objectives that are particularly listed. Certain types of restrictions or limitations are specifically permitted under Articles 17, 18, 19, 21, 22, and 25. It is acceptable and does not constitute a breach of the right in issue if a state party decides to limit or restrict one of these rights within the boundaries set out. Certain lawful actions committed by the state are implicitly recognized as acceptable by other rights, most notably those guarding against "arbitrary" governmental action. It should be underlined, nevertheless, that in any instance, the acceptable restrictions are neither broad nor liberal, and they most definitely do not allow a state party to effectively nullify a specific right with real-world application. In such a situation, it is the member state's responsibility to demonstrate, including to the committee, that a particular restriction fulfills the requirements of legality, necessity, reasonableness, and legitimate purpose. The purpose of some criterion is to prevent the Committee from dismissing such claims as inadmissible on the grounds that they are frivolous, vexatious, or otherwise improper uses of the complaint system. Additionally, this reason is comparable to the rejection of a lawsuit by other courts, both domestic and international, as "manifestly baseless" in order to prevent cases of adducing "rights" that do not exist (South Africa High Court, 2014). It's pertinent to note that in order for an individual to have a locus standi at the committee, there must be a violation of his or her rights. This criterion has strict application (substantive procedure) with no exceptions. If a state has signed the Covenant with the FOP, the individuals assert that their rights and freedoms have been violated are entitled to hold that state accountable. The committee has the authority to make a non-compliance recommendation. For example, when it issue an interim measure request to a country such as Canada in order to ban irreparable harm. These requests are intended to prevent any irreparable harm. Whereas other countries, such as Belarus,

have sanctioned the author (Government of Canada, 2007). A particularly intriguing legal question—indeed, a crucial legal question—is how the HRs committee's decision is not binding on treaty parties despite having the treaty as its legal foundation. The Vienna Convention (VCLT), however, specifies in article 26 that "any treaty in effect is binding upon the parties to it and must be executed by them in good faith." Both have treaty-like legal effects. One of the holes that have to be filled in the future is this one. There would be no factual or legal validity to the committee's conclusions or to the entire treaty if the HRs committee's decision had no duty to the state party. One of the trends that must be adhered to in the future is the mandatory compliance of HR's decisions with international law. Obligatory decisions of the HRs committee are for safeguarding, implementing, and respecting human rights, particularly individual communications. These decisions are not just views.

### **6.3.1. Exhaustion all domestic remedies by victim**

The phrase "exhaustion of local remedies" refers to the general principle that victims must first pursue their claims via the judicial and administrative channels provided by national law before taking such claims before the international court system. This provision allows the nation that committed the human rights violation to administer justice on its own. Most international human rights organizations require it before submitting any complaints, so if the victim cannot demonstrate that they have already sought out local remedies, such organizations will reject the complaint. Basically, instead of first taking their complaint to an international committee, court, or tribunal, an individual's rights have been violated should employ the majority of local remedies to correct a wrong. As a final option contacting international organizations is allowable only if other avenues have been exhausted. Utilizing domestic remedies for seeking justice is often speedier, cost-effective, and an efficient alternative to international remedies. However, there are a few exclusions from this rule as well as a disclaimer to it. In general, the victim is not compelled to seek for or exhaust domestic remedies where, for instance, none exist, the procedure is unjust or unfair, and it is delayed for an extended length of time. If the lawsuit is still pending in the state, local remedies are not regarded as having been exhausted. This does not apply if the case has been unnecessarily delayed, which is typically the situation when the state court is reviewing the matter. We must take note of the fact that various international bodies have developed the rule of exhaustion's criteria in various ways. It is important for us to understand how this rule might be used in different situations. For example, if the victim had access to them at the time the complaint was made, European court on human rights has dismissed requests to not exhaust remedies when brought up after a violation occurred, only remedies that were accessible at the time of any given offense must be exhausted, according to I /A Court H.R. The Brewer-Carias *v. Venezuela* case is one illustration. Regarding requirements for admissibility, The petitioner argued that he should not be compelled to pursue all possible remedies within the country as per Article 46.2 of the American Convention on Human Right due to: a) he is not entitled to a fair trial under domestic law, which would safeguard his rights, because Venezuelan justice system's structural flaws give prosecutors and judges provisory status; and b) he was unjustly blocked from completing the annulment request by requiring the defendant to appear in court before processing it, despite the fact that he would be imprisoned for doing so; c) Since more than 3 years had passed, there had been an unjustifiable lag in the processing of his annulment request (Silva, 2016).



Since it was filed without it being decided; and d) He had been denied access to remedies under domestic law.

### **6.3.2. Part two: the significance of the criterion of non-anonymity and non-abuse**

The UN human rights committee evaluates individual communications based on two primary criteria; non anonymity and prevention abuse. This criteria are broken down into two: one portion links a person to a specific violation of their rights, and the other half deals with preventing misuse of those rights by a person. It seems sensible to go through each part of this criterion separately in this situation. Non-anonymity makes up the first portion of the criteria in question. It is protected by Article 3 of the international covenant's optional protocol. The Covenant states that a complaint made in an anonymous manner may be deemed inadmissible. In other words, a complaint cannot be submitted without a specific person's name and last name. However, this rule has an exemption for the preservation of individual privacy. The person's name could be withheld in this situation (Joseph et al., n.d.). The scientific concept, on the other hand, maintains that the exemption to anonymity in the general media cannot go beyond what is essential; in other words, the identity of the person making the complaint must be known to public authorities. If the individual's name is unknown, there may not have been adequate diligence on all the key aspects of the dispute, and no pertinent arguments may have been made against that person (Wouter Vandenhoe, 2004). But by assigning a specific individual a shortened form of their last name, such a nickname or a pseudonym, such a complaint might be depersonalized. *A v Australia* (communication No. 560/93), *C v Australia* (communication No. 900/99), *A v New Zealand* (communication No. 753/97), and many other cases that come up nowadays, such as those described above, are just a few examples of situations where the complainants' initials are included in the case names. As we can note, the rule on anonymity may be excused, but that does not necessarily imply that it may be applied to everyone, not even in light of the most recent practice. In order for national and international organizations to fully examine each case, it is essential to protect their right to know the name of a specific perspective victim. The misuse of the right to submit is another aspect of this in question criteria. Although the Committee seldom employs this ban of misuse, it does have two parts. One of them relates to the false information the complaint gave the Committee. Such information should be made up of plainly and expressively falsified facts, or falsified facts may be left out entirely. The length of time that has passed after the alleged infringement of a person's rights is another factor (Joseph et al., n.d.). It should be highlighted that the amount of time that has passed must be unusually long and has been unjustifiably extended due to the complainant's own fault. Thus, the norm of reasonable expectations and the principle of prompt protection of the protected right are both guaranteed. For instance, the Rules of Procedure adopted by the Committee suggest that launching an action after exhaustion of the domestic remedies for five years or after the commencement of another infringement process for a period of three years may render the action inadmissible and therefore, are not recommended. A protective system of this kind is thought to enable the establishment of deadlines after which a complaint may be deemed inadmissible (United Nations Treaty Collection, n.d.). A protective system of this kind is thought to enable the establishment of deadlines after which a complaint may be deemed inadmissible. Additionally, it ensures adherence to the legal certainty principle in relation to other sincere complainants defending their rights. The *Gobin v.*

*Mauritius* case (communication No. 787/1997), in which the complainant filed an appeal with the Committee, and he claimed that his right to become elected to highest legislative body had been infringed because of prejudice, also brought this to light. The Committee agreed that a complaint of this nature should be rejected since there was no compelling evidence in the complaint as to why he had applied just five years later (World Courts, 2001). This indicates once more how strongly the Committee feels about abuse. It should be highlighted that the concept of abuse, which is a fundamental component of the criterion in issue, is essential to the human rights system's defensive mechanism since legality does not arise out of lawlessness. Given the preceding, it must be concluded that the need against anonymity and abuse of submission is not only a formality but rather a guarantee of the connection between a specific person and the violation and defence of his rights.

### **6.3.3. No simultaneous use allowed: the inadmissibility of alternative international investigation or settlement procedures**

The Committee must not accept any communication from an individual unless it has determined that the identical subject is not being investigated or settled according to another mechanism of international inquiry or settlement, as provided for in Optional Protocol Article 5(2) (a). Any such complaints will not be acknowledged by the Committee (United Nations Treaty Collection, n.d.). This regulation is not usually followed by the committee. For instance, it's plausible that both the European Court of Human Rights and the Committee to Eliminate Racial Discrimination are simultaneously investigating the identical issues. Therefore, a comparable individual complaint process, for example those offered by several international human rights treaties have been established to safeguard the fundamental rights and freedoms of individuals across the world. Included among these are the European Convention on Human Rights, the American Convention on Human Rights, the African Charter, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Covenant on Civil and Political Rights, and the Convention on the Elimination of All Forms of Racial Discrimination. Each of these treaties outlines specific protections and entitlements related to issues such as freedom of expression, the prohibition of torture, and the elimination of racial discrimination. These agreements are legally binding and aim to ensure that nations are held accountable for their adherence to international human rights standards. However, it should be observed that Article 5(2) (a) conveys the idea of (*una via electa*) rather than the principle that proceedings at the Committee must be delayed (*pendente lite*); (Latin for "awaiting the litigation") (from Latin, "who has chosen one cannot have recourse to another"). The procedure under the European Convention of Human Right (ECHR) differs from this, for instance, in that The ECtHR will not entertain an application that has been previously presented to another international investigation or dispute resolution process, and the current submission lacks any significant supplementary information. The human rights committee has had to decide on a number of challenging ambiguities in the phrasing of Article 5(2) (a) in the FOP. For instance, the Committee could notice a linguistic inconsistency in the content of an article when it is reviewing communications. According to this clause of the Optional Protocol, the same issue "is not being investigated" under another method in the Arabic, Chinese, English, French, and Russian translations, however the Spanish edition has the meaning "has not been examined." The Committee

opted to base its work on the Arabic, Chinese, English, French, and Russian versions of this article after determining that the disparity was caused by the Spanish text (Spolsky, 2004). Another instance where interpreting Article 5(2) (a) might be challenging is when the Committee has considered individual communications after another international dispute-resolution body has already received the case from a separate third party about the same victim. As it was declared by the Committee in *Estrella v. Uruguay* that the provisions of Article 5(2) (a) of the FOP, cannot be interpreted as to imply that an unrelated third party acting without the knowledge and consent of the alleged victim can preclude the latter from having access to the Human Rights Committee." It comes to the conclusion that the submission by an unrelated third party is allowable to review the complaint that has been made by the victim himself IACHR (The Inter-American Commission on Human Rights). According to Article 5 (2), such a submission did not amount to the "same topic" (a) (World Courts, 1983). The Committee informs the author that they cannot consider the matter due to Article 5, Paragraph 2 (a) which states that if the matter is presented at a time that does not meet the Committee's criteria, it cannot be discussed, it has already been brought before another international investigation or resolving body under the FOP. However, the human rights committee may continue to issue a declaration of admission if the author has withdrawn his submission to another international organization. According to Article 5 (2) (a) of the FOP, only the process is carried out via state or intergovernmental agreement, as per the committee's decision. Procedures established by non-governmental organizations cannot stop the Committee from reviewing communications submitted to it under the Optional Protocol. The Committee held that "the general investigation, by regional and intergovernmental human rights organizations, of situations affecting a number of individuals, including the author of a communication under the Optional Protocol, does not constitute the "same matter" within the meaning of article 5, paragraph 2(a)" in *Bianco v. Nicaragua* (Jurisprudence - CCPR - Blanco v. Nicaragua, n.d.). In conclusion, the rigorous application of the Committee's guiding principles is consistent with the provisions of the Optional Protocol itself and provides people the greatest amount of access to the Committee. Contrarily, the concept of *pendente lite* (awaiting the litigation") (Malviya, 2023) requires the Committee to rule any communication inadmissible if a comparable dispute is already under consideration by another international body for inquiry or resolution.

#### **6.4. Part three: literature review**

Regarding (*Ratione Temporis*), that is non-retroactivity (law from time of treaty entrance into effect). Events might have happened before the adoption of the complaint procedure, but taking into consideration facts and continuity from the earlier time of entrance into force and after ratification of the treaty and coming into effect in this state. Noted that most researchers mention only "the forced disappearance" as a continuing violation of human rights from earlier to after the treaty's entrance into effect. Sometimes, the state party escapes responsibility for a human rights violation owing to temporal inadmissibility in situations where the infringement happened before the treaty went into force. The author thinks that one of the most useful legal principles is non-retroactivity, because this general principle is a practical guide for humanitarian law, which prevents law from being applied to events occurring before legislating a law. It is worth mentioning that after ratification of the treaty, it becomes a law. Despite the event occurring prior to the treaty's enforcement, the state is usually unable to deny its

duty. ECtHR is based on two reasons. The committee will not be restricted for two reasons: If the actions leading to the grievance persistently disregard the Covenant subsequent to the Protocol ratification such as "*Sarma v Sri Lanka*". If the circumstances that gave rise to the complaint have a long-term effect that breaches the Covenant, the committee's jurisdiction will not be restricted (*ratione temporis*). However, rarely do researchers confirm that continuity includes long-term effects and that continuity and interconnection are those two reasons taken into account together or might they be separated? As for the state's individuals, the state must be a member of the FOP and the Covenant as well as acknowledge the human rights committee's authority in reviewing individual complaints in order for the aforementioned to be enforceable. Purportedly infringed upon right must be one that that the treaty genuinely safeguards. The thematic problem is about the reservations of the member states to specific articles in the treaty pertaining to individual communication. What is the committee's legal attitude? Should not the committee review individual complaints? Most reservations were based on religious or cultural justifications. For example, in Egypt, Iraq, Saudi Arabia, Iran, etc. (Almashaal, 2022).

In discrimination. As per Article 26 of the ICCPR, every human being possesses the same legal status and is eligible for the same legal entitlement. This provision enshrines the principle of non-discrimination by prohibiting all forms of prejudicial differentiation and guarantees an equitable safeguarding of all individuals, irrespective of their backgrounds.

It is stated that all persons are equal before the law and entitled to equal rights the law prohibits all types of discrimination and provides equal protection to all people against any basis, including race, sex, religion, nationality or (social origins), gender, language, color, birth, or other status.

There is no research that can reach "others status." That is why the researcher thinks that the committee broadens the interpretation of the word "other status" to include other rights which have no specific so far and no research to add them officially to the treaty. However, a particular restriction fulfills the requirements of legality, necessity, reasonableness, and legitimate purpose. The author noted states achieve some of these requirements, whereas these states should practically implement all these requirements together. For example, in reservations to human rights on specific treaty articles, states only have the legality. The absence of necessity, reasonability, and consistency contradicts the purpose and object of the treaty. However, in terms exhaustion remedies which should have existed at the moment of the violation of human rights, there should be time to finish the case. The researcher thinks no one talks about the right should be available and there should be enough time to enable the author to lodge his case. Rights did not end by that time. Taking into consideration the personal circumstances and country's situation regarding civil life and access to justice institutions, which are not available in uncivil countries. Although the rule on anonymity may be excused, that does not necessarily imply that it may be applied to everyone, not even in light of the most recent practice. The author reserved the right to use a pseudonym for the complainant because it is illegal. After exhausting all domestic remedies or starting another infringement process, a long period of either five or three years must elapse before taking further action, it depends on the state's regime and the legal system which do not allow an individual to lodge a case nationally. How can it become internationally protected under the UN's institutions? The researcher did not see any research referring to the type of legal system of the state. The author means, if there is no qualified legal system for lodging a case for human rights justice, then the five years or three years

should be reviewed and under study. For example, if the state is under sectarian war, conflicts, or a military regime or dictator, such as North Korea, which does not respect human rights at all. One of the most important issues is that the simultaneous use of other international investigation or settlement procedures are inadmissible accordingly, it differs, for example, As per the FOP delineated in the European Convention on Human Rights (ECHR), Any application that does not fall within the ECtHR's jurisdiction shall not be deemed for consideration. If it contains no new pertinent material and is essentially identical to a subject that has already been submitted to another method of international inquiry or resolution. For example, when evaluating communications, the committee may find a linguistic discrepancy in the text of an article. This communication pertains to the committee that has been tasked with resolving several problematic disparities in the phrasing of Article 5(2) (a) of the First Optional Protocol. Linguistic ambiguity is very important. Personally, noticed critical mistakes in the translation of the documents translated from Arabic into English, which could impact the interpretation of the documents of the UN. Access to the UN- generated digital content and bibliographic records of printed UN documents dating back to 1979 are provided by the platform. For example, documentation for meeting and voting records, resolutions, and refining research by the UN's body or agency. This research is the only one that differentiates between two types of reasons for non-admissibility. The first reason relates to the personality of the complainant himself, such as it is essential that the individual who experiences a violation of human right is the author themselves, rather than a third party. The other categories of inadmissibility conditions pertain to the complaint itself, namely, if the complaint is being scrutinized under a separate international inquiry or settlement. This debate can add new knowledge for researchers and lawyers because the reasons related to the personality of the author might be accepted. Submitting a communication to IACHR by an unrelated third party does not preclude the evaluation of the communication made directly by the alleged victim. According to Article 5 (2), this is a challenging and controversial issue. Finally, here is a really interesting legal issue; in fact, it is a pivotal legal matter: how does the decision of HR's committee not be obligatory to treaty parties, although the legal basis is the treaty? The Vienna convention requires that all existing treaties are obligatory for those who entered into them and should be executed in a trustworthy and forthright manner. Both have a force of treaties. This is one of the gaps that should be filled in the future. If the decision of the HRs committee has no obligation to the state party, there would be no factual legal value to the committee's decisions or to the whole treaty. This is one of the trends that needs to be followed for the future of the decisions of the HRs committee. Obligatory decisions are for safeguarding, implementing, and respecting human rights, particularly individual communications.

## **7. Methodology**

The author collected this data in this research with a qualitative method about the hypotheses, theories, and conceptions of human rights and used an inductive way to reach the ideas that promote admissibility and avoid non-admissibility. While descriptive and qualitative methods are available, deductive methods are severely limited. For the identification and formulation analysis of research problems, the researcher purposefully employs inductive and deductive techniques. However, analyses of the case studies, interpretations, and techniques were necessary to reach the goals of this research.

Moreover usage comparative methods and legal impact analysis. One of the methodologies is the reflective method. The author followed the methodology of researching and investigating books, journals, and relevant legal and social research. The researcher will use this research to achieve goals by disseminating the best legal techniques and case analysis in the most widespread specialized publishing journal and providing electronic libraries with development ideas for human rights and the acceptability of individual complaints that include human rights.

## 8. Conclusion

When discussing the UNHRC's ability to handle individual communications, it is important to keep in mind that the criteria for admissibility are not only formal considerations; rather, they are actual, there are several crucial factors that can influence an individual's ability to exercise their rights. Any international researcher, lawyer or victim of violation of human rights. The most important question that was concluded in this research is that sometimes the complaint of the individual or his representative commits a mistake in his claim through the wrong date for the continuous state's human rights violation against that individual which led to seeing implications on treaty's affective date. An inquiry that can be posed concerns the entitlement to modify a claim subsequent to its disapproval on the grounds mentioned above. And another example of that, the complainant incorrectly mentions a date that exceeds five or three years since he exhausted all national legal avenues to recover his violated rights and that after the Human Rights Committee refused based on the mentioned date, an official evidence appeared confirming that he did not exceed the five or three years required by the Human Rights Committee's terms. However, here, the researchers did not reach such an assumption, theoretically and practically, and what is the legal position of the committee regarding that error or any other unintended error of any kind by the complainant? The suggestion is that the committee accept the correction of such errors, whether before or after the committee's refusal, because the most important thing is the origin of the truth or the rights. Aside from formal questions of validity in time and place, criteria such as the start of the violation prior to the Treaty's entrance into effect, the requirement of anonymity, and the investigation of the identical scenario in another institution also serve to avoid frivolous lawsuits. This protects the principle of the protection of legitimate expectations and the right to an immediate remedy. This in and of itself ensures improved communication management and decision-making. A genuine and successful human rights procedure must meet the requirements for the prohibition of abuse, the violation of the right to be a victim, and the use up of all permitted legal resources. Only the defense of a particular right is legal, as demonstrated by years of international practice. The extent of legal discourse only encompasses rights that are not safeguarded by the state, even if it ought to be. These connected principles guarantee the effective and genuine defense of potentially violated human rights. Whatever the Committee's final conclusion, only adherence to all of these conditions in their entirety can guarantee a thorough look into any potential legal violations? These safeguards act as the cornerstone for trustworthy and well-founded behavior in human rights situations that are based on the highest legal requirements. Additionally, the submission made to IACHR by an unaffiliated third party did not prevent it from reviewing the communication made by the potential victim to it. Finally, a particularly intriguing legal question—indeed, a crucial legal question—is how the HRs committee's decision is not binding on treaty parties

despite having the treaty as its legal foundation. The Vienna Convention (VCLT), however, specifies in article 26 that "any treaty in effect is binding upon the parties to it and must be executed by them in good faith." Both have treaty-like legal effects. One of the holes that have to be filled in the future is this one. There would be no factual or legal validity to the committee's conclusions or to the entire treaty if the HRs committee's decision had no duty to the state party. One of the trends that must be adhered to in the future is the mandatory compliance of HR's decisions with international law. Obligatory decisions of the HRs committee are for safeguarding, implementing, and respecting human rights, particularly individual communications. These decisions are not just views. The author believes that having a reliable international procedure on the right route of legal individual communication is the first and most important successful legal step before moving on to the second stage of the individual complaint, which is the communication's merits. Because sometimes, although the individual complaints have real legal causes and can be a legal basis for the complaint, this complaint might lack one of the above-mentioned conditions of admissibility, and this will prevent the committee of HRs from examining or receiving it. The main objectives of this paper are to enhance the legitimacy and effectiveness of the international framework for safeguarding human rights. In the end, the discussion over admissibility highlights the significance of protecting and developing human rights and holding governments responsible for their transgressions. This research work would be helpful to the victims, especially those who are not covered by human rights protection for procedural and irrelevant reasons.

## Acknowledgments

We acknowledge that we did not receive any funds for this research.

## References

- Almashaal, J. (2022). Some Reservations by the Islamic States on Major Human Rights Treaties. *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.4078175>
- Government of Canada. (2007). *Interim Report in follow-up to the review of Canada's Fifth Report on the Convention on the Rights of the Child*. [https://open.canada.ca/data/dataset/50a1f207-ef60-4f9a-9d97-9b2bfa45a17a/resource/a42c253e-4085-4c60-ab52-28b915f5bac0/download/01\\_canada\\_crc\\_5-6\\_report\\_-\\_final\\_final-combined-updated-final.pdf](https://open.canada.ca/data/dataset/50a1f207-ef60-4f9a-9d97-9b2bfa45a17a/resource/a42c253e-4085-4c60-ab52-28b915f5bac0/download/01_canada_crc_5-6_report_-_final_final-combined-updated-final.pdf)
- Home - The Geneva Academy of International Humanitarian Law and Human Rights. (n.d.). [www.geneva-academy.ch](http://www.geneva-academy.ch). <https://www.geneva-academy.ch/joomlatools-files/docman>
- Hossain Mollah, M. A. (2019). Crossfire and Violation of Human Rights in Bangladesh: A Critical Review. *Scholars International Journal of Law, Crime and Justice*, 02(11), 385-397. <https://doi.org/10.36348/sijlcj.2019.v02i11.007>
- Joseph, S., Mitchell, K., Gyorki, L., Martín, H., & Benninger-Budel, C. (n.d.). *A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies SEEKING REMEDIES FOR TORTURE VICTIMS 2 nd edition OMCT Handbook Series Vol. 4*. Retrieved November 1, 2023, from [https://www.omct.org/files/2014/11/22956/v4\\_web\\_onusien\\_en\\_omc14.pdf](https://www.omct.org/files/2014/11/22956/v4_web_onusien_en_omc14.pdf)
- Jurisprudence - CCPR - Blanco v. Nicaragua. (n.d.). *The United Nations Human Rights Treaties*. Retrieved on November 1, 2023, from [http://www.bayefsky.com/docs.php/area/jurisprudence/node/4/filename/100\\_nicaraguavws328](http://www.bayefsky.com/docs.php/area/jurisprudence/node/4/filename/100_nicaraguavws328)
- Lee, Y. (2010). Communications procedure under the Convention on the Rights of the Child: 3rd Optional Protocol. *The International Journal of Children's Rights*, 18(4), 567-583. <https://doi.org/10.1163/157181810x527239>

- Lo, C. (2017). *Treaty Interpretation Under the Vienna Convention on the Law of Treaties*. Springer Singapore. <https://doi.org/10.1007/978-981-10-6866-9>
- Malviya, M. K. (2023). Maintenance rights of women in different laws. *GLS KALP–Journal of Multidisciplinary Studies*, 3(1), 40-49.
- Optional Protocol to the International Covenant on Civil and Political Rights. (n.d.). OHCHR. <https://www.ohchr.org/en/instruments-mechanisms/instruments/optional-protocol-international-covenant-civil-and-political>
- Reyes, H. (2007). The worst scars are in the mind: psychological torture. *International Review of the Red Cross*, 89(867), 591-617. <https://doi.org/10.1017/s1816383107001300>
- Shany, Y. (2007). The Prohibition against Torture and Cruel, Inhuman and Degrading Treatment and Punishment: Can the Absolute be relativized under Existing International Law? *SSRN Electronic Journal*. <https://doi.org/10.2139/ssrn.856905>
- Sifris, R. (2013). *Reproductive Freedom, Torture and International Human Rights*. <https://doi.org/10.4324/9780203074749>
- Silva, A. G. C. (2016). The exhaustion of domestic remedies and the notion of an early stage in the case of Brewer Carías. Is the inter-American human rights system at risk? *Mexican law review*, 8(2), 151-168.
- Sourcebook on Solitary Confinement. (n.d.). Sharonshalev. <https://www.solitaryconfinement.org/sourcebook>
- South Africa High Court. (2014). *FAM v. Minister of Home Affairs et al*. [https://www.refworld.org/cases,ZAF\\_HC,53fc39fc4.html](https://www.refworld.org/cases,ZAF_HC,53fc39fc4.html)
- Spolsky, B. (2004). *Language policy*. Cambridge University Press.
- Superville, M. (n.d.). *The problem with interpreting the ratione temporis rule through atemporal, short-sighted lens*. Retrieved on November 1, 2023, from [https://www.academia.edu/44918721/The\\_problem\\_with\\_interpreting\\_the\\_ratione\\_temporis\\_rule\\_through\\_atemporal\\_short\\_sighted\\_lens](https://www.academia.edu/44918721/The_problem_with_interpreting_the_ratione_temporis_rule_through_atemporal_short_sighted_lens)
- The Office of UN High Commissioner for Human Rights. (2020a, August 2). *Ratification of the 18 international human rights treaties*. [https://indicators.ohchr.org/Stock/Documents/MetadataRatificationTotal\\_Dashboard.pdf](https://indicators.ohchr.org/Stock/Documents/MetadataRatificationTotal_Dashboard.pdf)
- The Office of UN High Commissioner for Human Rights. (2020b, May 15). *Acceptance of Nine (9) Individual Complaints Procedures*. <https://www.ohchr.org/Documents/Issues/HRIndicators/MetadataIndividualCommunications.pdf>
- United Nations Treaty Collection. (n.d.). *Treaties.un.org*. [https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=\\_en](https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXIII-1&chapter=23&Temp=mtdsg3&clang=_en)
- Vandenhoe, W. (2004). *The procedures before the UN human rights treaty bodies: divergence or convergence?* Intersentia.
- World Courts. (1983, March 29). *International Case Law Database, Human Rights Committee, Miguel Angel Estrella*. [www.worldcourts.com](http://www.worldcourts.com)
- World Courts. (2001, July 16). *International Case Law Database*. [http://www.worldcourts.com/hrc/eng/decisions/2001.07.16\\_Gobin\\_v\\_Mauritius.htm](http://www.worldcourts.com/hrc/eng/decisions/2001.07.16_Gobin_v_Mauritius.htm)