

The Convention on the Rights of Persons with Disabilities

Dima Yared
Regional Office for Europe
Strasbourg, October 2012



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Outline

- What is the Convention?
- What is the purpose of the Convention?
- Whom does it protect?
- What are the principles set out in the Convention?
- Obligations of States
- Right to Work
- Related Rights
- Who else is responsible?
- Enforcement
- Participation of Persons with Disabilities



What is a convention?

An internationally agreed document that:

- Recognizes universal human rights standards
- Identifies obligations on States to promote and protect human rights
- Sets out national and international monitoring and implementation mechanisms



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

What is the purpose of the Convention on the Rights of Persons with Disabilities?

To promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for their inherent dignity



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Whom does it protect?

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others

Consider:

- Diversity of disabilities – physical, mental, intellectual, sensory
- Women with disabilities
- Children with disabilities
- Older persons with disabilities
- Others?



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

What are the principles set out in the Convention?

- Respect for dignity and individual autonomy
- Non-discrimination
- Participation and inclusion
- Respect for difference and diversity
- Accessibility
- Equality of opportunity
- Equality between men and women
- Respect for the evolving capacities of children with disabilities



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Why is the Convention important?

- Clarifies the rights of persons with disabilities
- Sets out responsibilities to respect those rights
- Requires a rights-based approach to disability
- Promotes inclusive and accessible development
- Ensures national and international monitoring of rights



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Obligations of States

- General Obligations (article 4)
 - Modify or abolish existing laws, regulations, customs and practices that constitute discrimination
 - Promote and protect human rights in all policies and programmes
 - Refrain from any practice that is inconsistent with the Convention
 - R&D of universally designed goods & services
 - Consultation and active involvement

Right to work

Article 27 – Equal basis with others

- right to the opportunity to gain a living
- work freely chosen or accepted in a labour market
- open, inclusive and accessible work environment



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Elements of the Right to Work and Employment

- Prohibit discrimination – all matters concerning all forms of employment
- Equal basis with others
- Labour and union rights
- Technical and vocational training
- Opportunities and career advancement
- Opportunities for entrepreneurship
- Employment in the public and the private sector
- Reasonable accomodation
- Open labour market
- Professional rehabilitation
- Protection from forced or compulsory labour

Related rights

- Equal recognition before the law
- Access to justice
- Liberty of movement and nationality
- Living independently and being included in the community
- Personal mobility
- Respect for privacy
- Adequate standard of living and social protection

Reasonable accomodation

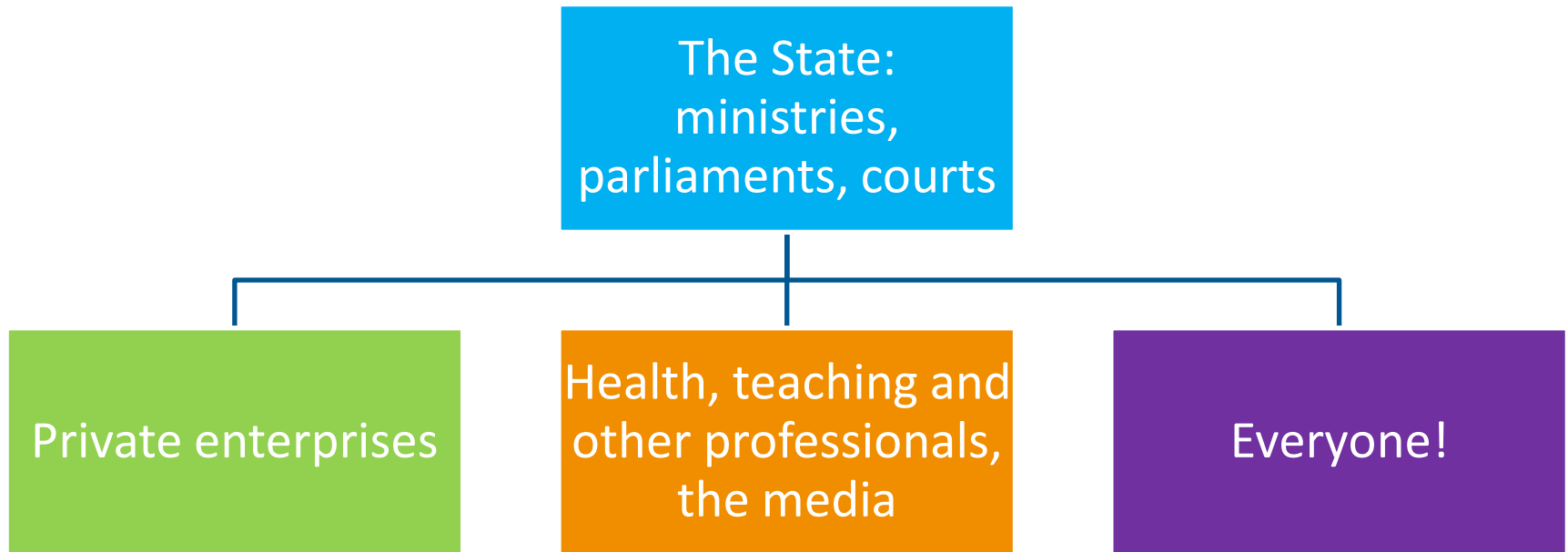
*« Necessary and appropriate modification and adjustments **not imposing a disproportionate or undue burden**, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms »*

**Unjustified denial of reasonable accomodation amounts to discrimination (article 5)



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Who is responsible?



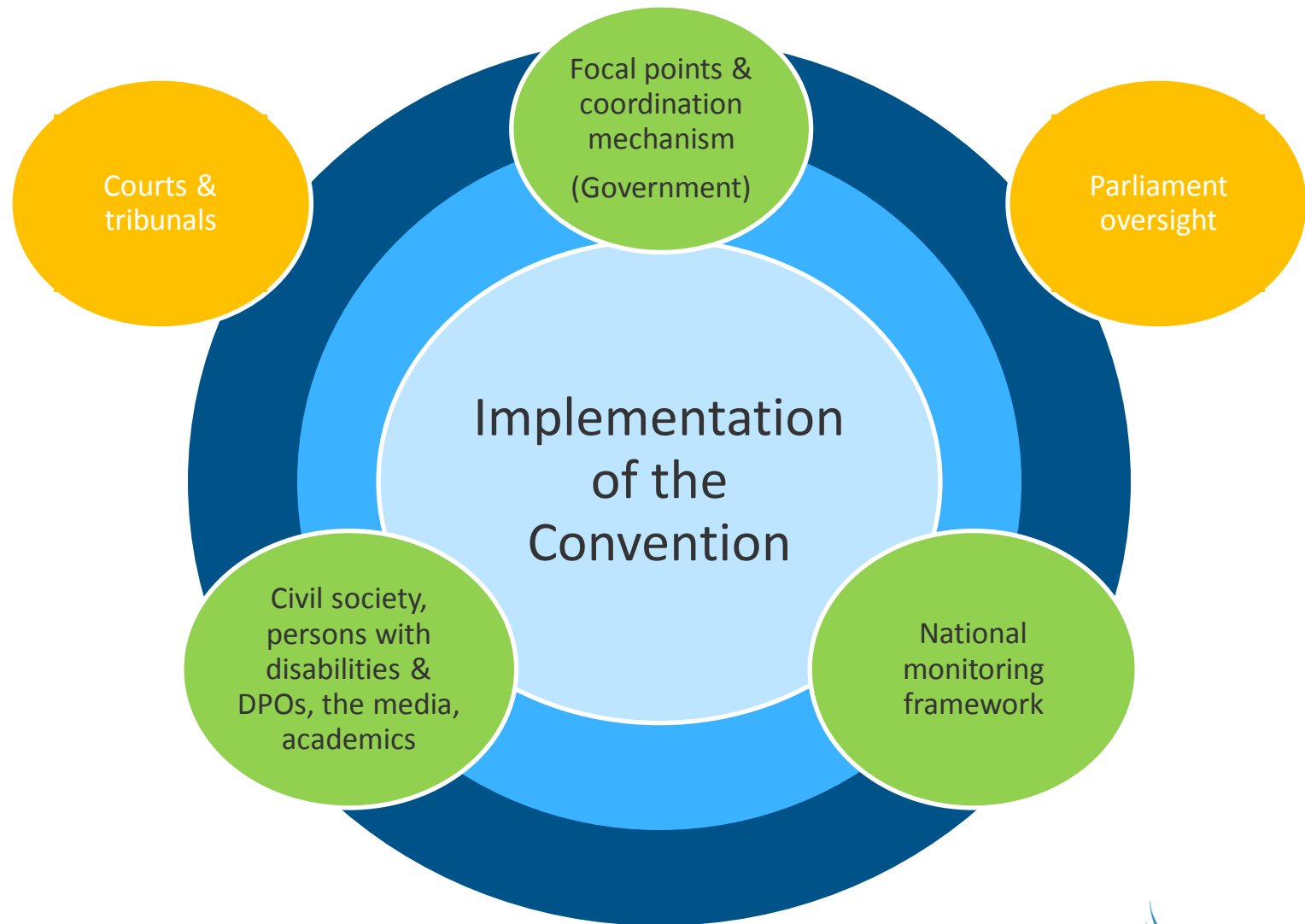
What has to be done?

- ✓ Change laws and policies
- ✓ Provide funding
- ✓ Make goods and services accessible
- ✓ Raise awareness and rights
- ✓ Train professionals and others
- ✓ Undertake research
- ✓ Collect data
- ✓ Monitor
- ✓ Build and strengthen ministries, courts, national human rights institutions
- ✓ Build State capacity to implement
- ✓ Build capacity of persons with disabilities to claim their rights



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Who is involved in implementation?

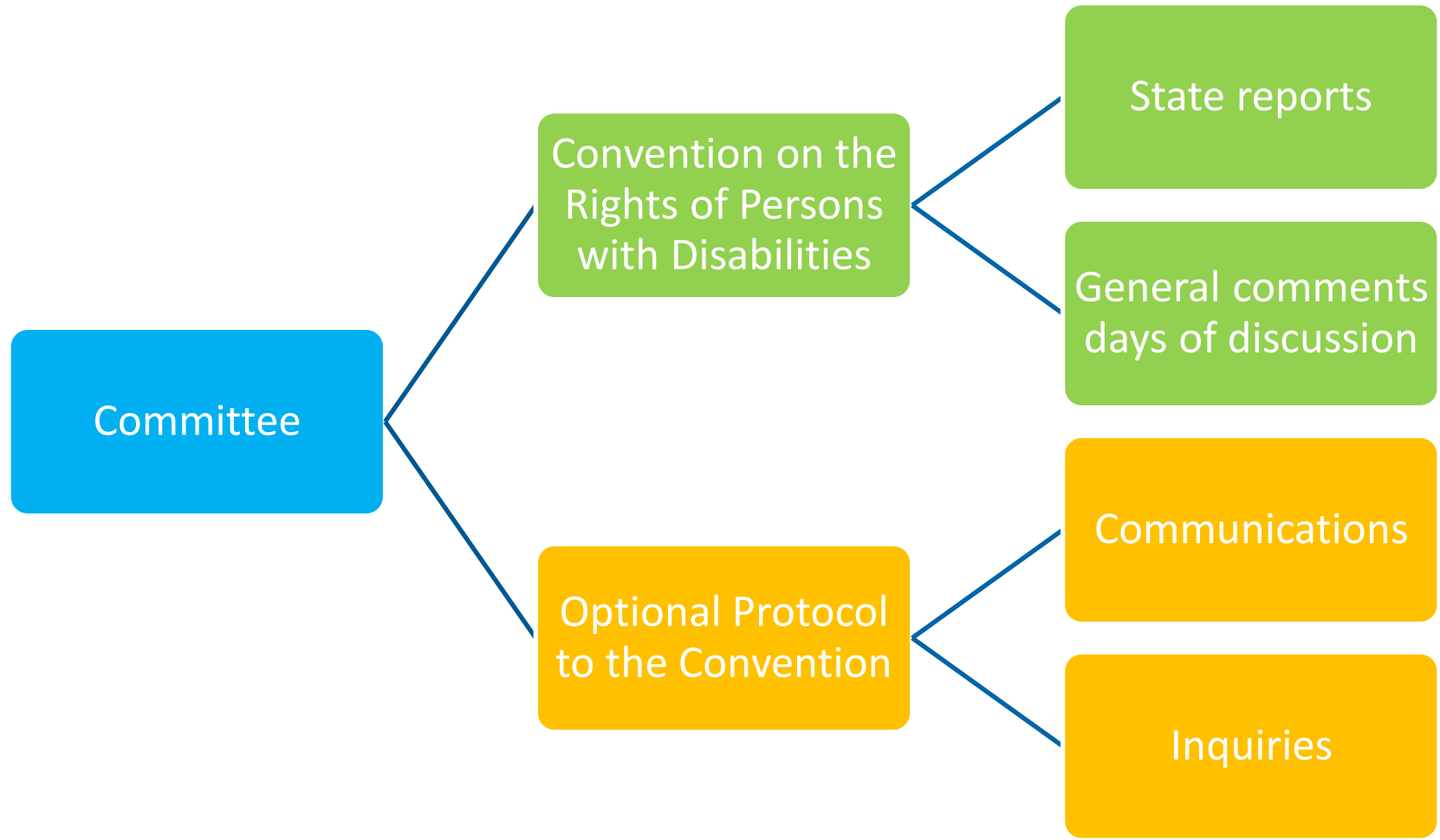


How is it enforced?

Consider the roles of:

- Courts
- National monitoring frameworks
- Civil society monitoring
- The Committee on the Rights of Persons with Disabilities

Committee on the Rights of Persons with Disabilities



Participation of persons with disabilities

Nothing about us without us!



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

The Optional Protocol



UNITED NATIONS



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

The communications procedure

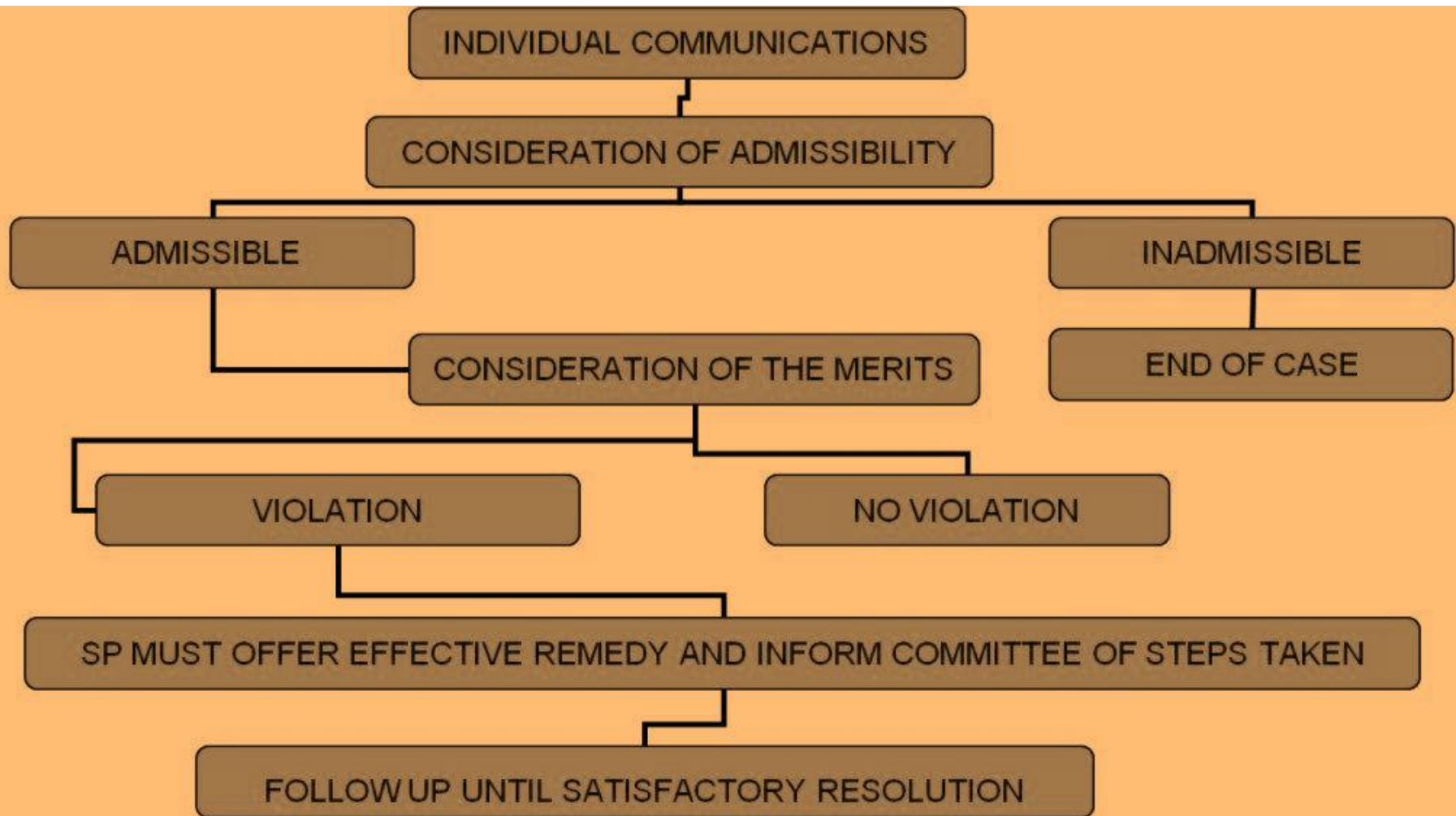
Some facts about the communications procedure

- A quasi-judicial procedure
- A written procedure
- Most communications do not satisfy the preliminary criteria for registration by the Committee (pre-admissibility stage)
- The Committee provides its views and recommendations
- Views are authoritative statements about the Convention's provisions
- Remedies rely on the political will of the State party

What the communications procedure is not

- The Committee is not a court
- There is no oral hearing
- There are no lawyers
- The result is not legally enforceable

From complaint to resolution



ADMISSIBILITY CRITERIA

Is the communication from or on behalf of individuals or groups of individuals ?	Yes	
Does this individual or group claims to be a victim of a violation of the Convention	Yes	
Is the claimant subject to the State's jurisdiction?	Yes	
Has the State ratified the Optional Protocol?	Yes	
Is the alleged victim anonymous?		No
Is the communication an abuse of the Optional Protocol?		No
Has the communication come before another international procedure of investigation or settlement?		No
Are domestic remedies exhausted?	Yes	
Is the complaint manifestly unfounded or unsubstantiated?		No
Did the alleged conduct occur after the Optional Protocol's entry into force for the State?	Yes	

Interim measures

At any time after the receipt of a communication and before a determination of the merits has been reached, the Committee may transmit to the State Party concerned for its urgent consideration a request that the State Party take such interim measures as may be necessary to avoid possible irreparable damage to the victim or victims of the alleged violation.

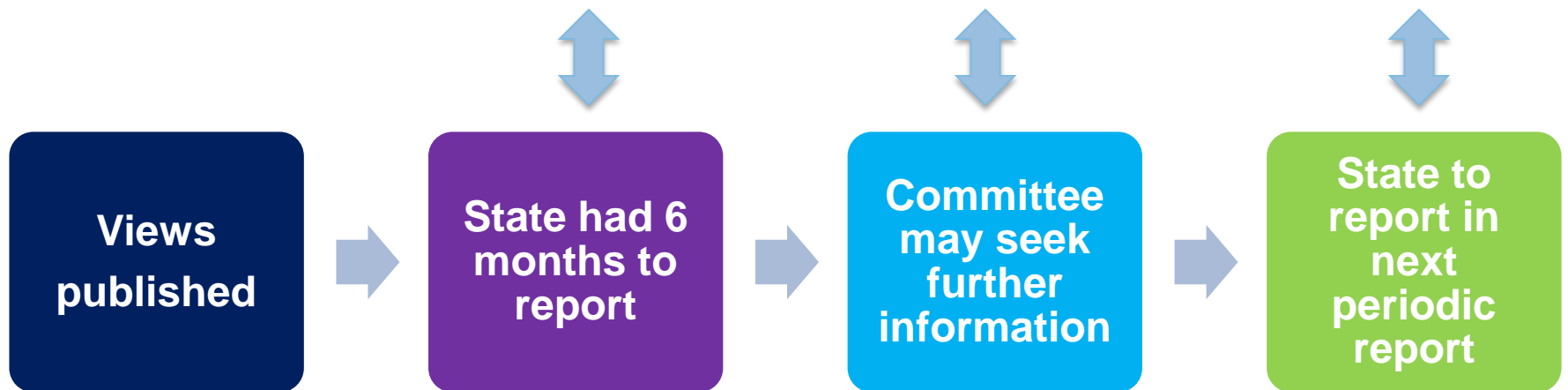
Optional Protocol, art. 4 (1)



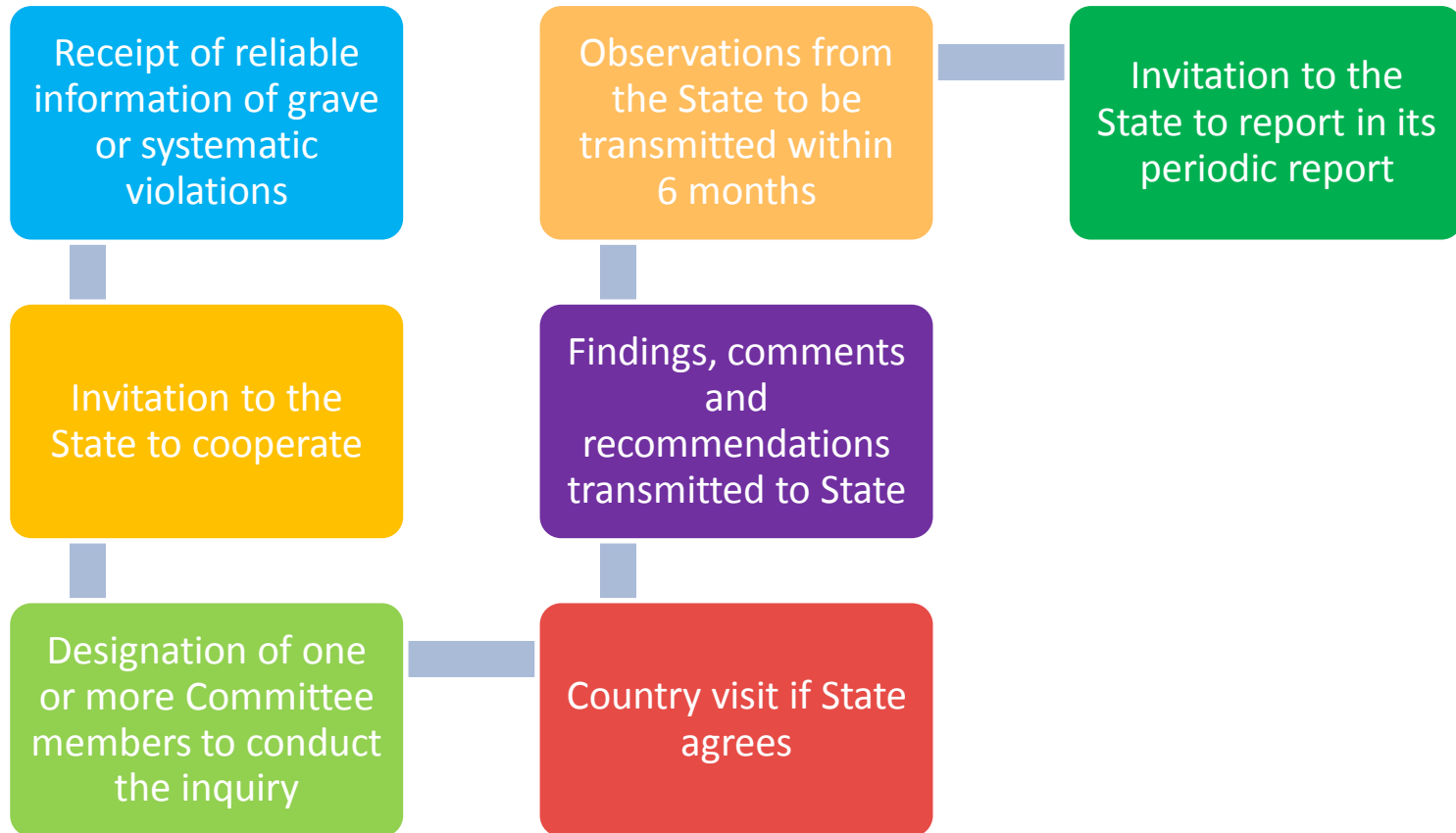
UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Views and follow-up

Committee working group or special rapporteur on follow-up



The inquiry procedure



Benefits of the Optional Protocol

- ✓ Can strengthen national protection mechanisms such as courts
- ✓ Can validate laws and policies
- ✓ Can validate or query national court decisions
- ✓ Helps the Government bring about domestic change
- ✓ Provides an opportunity to States to benefit from the advice of international experts
- ✓ Clarifies how to implement the Convention by reference to specific situations
- ✓ Helps to incorporate the Convention into domestic law
- ✓ Provides a mechanism for strategic litigation by civil society organizations to support key changes
- ✓ Can provide protection to victims
- ✓ Relatively easy for victims to use



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

Roles for stakeholders to support the Optional Protocol

States	Civil society	United Nations country teams
Ratify the Optional Protocol	Promote ratification	Promote ratification
Strengthen implementation	Assist authors with complaints	Collect and disseminate jurisprudence
Strengthen domestic remedies	Draft communications on behalf of victims	Raise awareness and train stakeholders such as judges and CSOs
Provide timely information to the Committee	Provide reliable information for inquiries	Provide reliable information for inquiries
Follow up on recommendations	Monitor compliance	Assist with follow-up
Disseminate the Committee's views	Disseminate the Committee's views	Disseminate the Committee's views
Report on follow-up	Report on follow-up	Report on follow-up



Sources

- Convention on the Rights of Persons with Disabilities and its Optional Protocol
- A/HRC/4/75
- A/HRC/10/48



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

www.ohchr.org
europe.ohchr.org



UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER