

# **Procedural Compatibility and Strategic Efficacy of a Triangulated UN Complaint Matrix in the Hans Smedema Affair**

## **Forensic Analysis of the 2010 Administrative Rejection (Reference: G/SO 229/31 NLD(GEN))**

The letter from the Office of the United Nations High Commissioner for Human Rights (OHCHR) Petitions Unit, dated 24 June 2010 and bearing the reference G/SO 229/31 NLD(GEN), represents a critical procedural milestone that has historically been mischaracterized as a substantive denial of the complainant's treaty rights. A precise legal analysis of this correspondence reveals that it is not a formal admissibility decision or a ruling on the merits by the Human Rights Committee (HRC) under the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR).<sup>1</sup> Instead, the letter constitutes an administrative rejection at the pre-registration stage, executed by the Secretariat's Petitions Unit acting as an administrative gatekeeper.<sup>1</sup>

The reference designation "NLD(GEN)" is highly instructive. Under OHCHR filing protocols, the "GEN" suffix denotes general, unregistered country correspondence rather than a formally docketed individual communication, which would have been assigned a specific case number such as CCPR/C//D/[Number].<sup>1</sup> The Petitions Unit issued this rejection because, in June 2010, the complainant's dossier failed to meet the strict procedural thresholds required for formal registration, most notably the demonstration of exhausted domestic remedies.<sup>1</sup> At that stage of the Hans Smedema Affair, the critical domestic rejections, administrative liability denials, and legal aid blockades that occurred between 2025 and 2026 had not yet materialized, leaving the 2010 petition procedurally premature.<sup>4</sup>

Because this correspondence was never formally registered, transmitted to the State Party for observations, or subjected to a quasi-judicial evaluation by the HRC, the "same matter" has not been "examined" within the meaning of Article 5, paragraph 2(a) of the Optional Protocol.<sup>1</sup> Under established treaty body jurisprudence, an administrative intake rejection by the Petitions Unit does not trigger the *res judicata* or *lis pendens* doctrines, nor does it invoke any State Party reservations regarding prior examinations.<sup>5</sup> Consequently, the 2010 administrative rejection presents zero procedural barrier to filing a new, formally robust ICCPR communication today.<sup>1</sup>

## **The Same Matter Doctrine and Procedural Inter-Relationship**

The core of the complainant's inquiry is whether introducing a third parallel individual communication under the ICCPR Optional Protocol will interfere with the two active complaints currently pending before the United Nations Committee Against Torture (CAT).<sup>4</sup> These active cases consist of WUR/25656 against the Kingdom of the Netherlands and ID WUR33438 against the Kingdom of Spain, the latter submitted on May 13, 2026, focusing on Spain's failure to protect the complainant from state-sponsored abuse during his exile in El Albir.<sup>4</sup>

To avoid procedural dismissal under the "same matter" clauses—governed by Article 22, paragraph

5(a) of the Convention Against Torture and Article 5, paragraph 2(a) of the Optional Protocol to the ICCPR—the litigation strategy must strictly navigate the tripartite identity test applied by UN treaty bodies.<sup>2</sup> This test dictates that a parallel proceeding is duplicative only if it simultaneously involves the same parties, the same facts, and the same substantive rights.<sup>5</sup>

Because the Spanish CAT complaint targets the Kingdom of Spain for distinct jurisdictional failures, it lacks identity of parties with any complaint targeting the Netherlands, insulating it entirely from procedural interference.<sup>4</sup> However, because the primary CAT complaint (WUR/25656) and the proposed ICCPR complaint both target the Netherlands based on the same continuous, 50-year narrative of state-sponsored abuse, procedural compatibility depends entirely on the strict partitioning of the substantive rights asserted in each petition.<sup>4</sup>

To ensure that neither the active Dutch CAT complaint nor the new ICCPR petition is declared inadmissible, the claims must be legally segregated.<sup>4</sup> The CAT complaint must remain focused on violations of Articles 1, 12, 13, 14, and 16 of the Convention Against Torture, centering on physical and chemical abuses, forced sterilization, and the Dutch state's failure to conduct a prompt, impartial investigation into torture.<sup>4</sup> Conversely, the proposed ICCPR complaint must focus on civil and political rights that fall completely outside the substantive mandate of the CAT, specifically targeting arbitrary detention (Article 9), fair trial violations (Article 14), the denial of legal personhood (Article 16), and the destruction of honor and reputation (Article 17).<sup>4</sup>

Crucially, the new ICCPR petition must not assert a standalone violation of Article 7 (prohibition of torture).<sup>4</sup> Instead, the historical acts of physical and psychological torture must be framed strictly as the background context that precipitated the subsequent administrative and judicial cover-ups.<sup>4</sup> By subordinating the torture claims and prioritizing non-overlapping civil rights, the ICCPR petition fails the tripartite identity test and remains fully compatible with the pending CAT cases, eliminating the risk of a *lis pendens* dismissal by the HRC.<sup>2</sup>

## Procedural Comparison of UN Communications in the Smedema Case Matrix

The following table provides a comparative legal analysis of the three concurrent communications, demonstrating how they are procedurally insulated from one another while targeting distinct treaty violations.<sup>4</sup>

Case Reference / ID	Targeted State Party	Governing Treaty Body	Key Substantive Provisions	Procedural Vulnerability	Strategic Utility
WUR/25656 <sup>4</sup>	Kingdom of the Netherlands <sup>4</sup>	Committee Against Torture (CAT) <sup>4</sup>	Articles 1, 12, 13, 14, 16 (Torture and Failure to Investigate) <sup>4</sup>	Directly targeted by the Dutch "unsubstantiated" defense <sup>4</sup>	Establishes a primary <i>jus cogens</i> violation of torture and chemical submission. <sup>4</sup>

<b>ID</b> <b>WUR33438</b> 4	Kingdom of Spain <sup>4</sup>	Committee Against Torture (CAT) <sup>4</sup>	Articles 12, 13, 14, 16 (Extraterritorial failure to protect/investigate) <sup>4</sup>	Focuses on Spanish territorial failures during exile <sup>4</sup>	Fractures the EU "internal matter" defense by introducing a cross-border legal conflict. <sup>4</sup>
<b>Proposed New Petition</b> <sup>4</sup>	Kingdom of the Netherlands <sup>4</sup>	Human Rights Committee (ICCPR) <sup>2</sup>	Articles 9 (liberty), 14 (fair trial), 16 (personhood), 17 (honor) <sup>4</sup>	Overlap with Article 7 ICCPR if torture is claimed as a primary violation <sup>4</sup>	Establishes the administrative architecture of "Civil Death" and rule-of-law collapse. <sup>4</sup>

## Temporal and Exhaustion Admissibility Safeguards

Introducing a new ICCPR complaint requires overcoming two major procedural barriers: the temporal limitations (*ratione temporis*) associated with historical abuses and the requirement to exhaust domestic remedies.<sup>2</sup>

The foundational violations of the Hans Smedema Affair began in 1972/1973 under a "Royal Special Decree" and continued through the 2000s with forced sterilization, clandestine electroshock sessions, and medical record falsification.<sup>4</sup> Because the HRC generally lacks jurisdiction over events occurring before the entry into force of the Optional Protocol for the State Party, the petition must rely on the "Continuous Violation" doctrine.<sup>4</sup> This doctrine establishes that historical acts remain admissible if they result in an ongoing, continuous state of non-redress that violates the treaty after its entry into force.<sup>4</sup> The "civil death" imposed by the clandestine curatele is not a historical event; it is an active administrative status that systematically denies the victim's legal capacity to this day, representing a continuous violation of Article 16 of the Covenant.<sup>4</sup>

To further satisfy the temporal requirements of the HRC, the petition must be anchored in fresh domestic rejections occurring between 2025 and 2026.<sup>4</sup> These recent administrative and judicial rejections serve as contemporary "jurisdictional anchors" that reset the five-year submission window under HRC guidelines, allowing the older factual narrative to be brought before the Committee as an ongoing rule-of-law failure.<sup>1</sup>

Regarding the exhaustion of domestic remedies under Article 5, paragraph 2(b) of the Optional Protocol, the petition must demonstrate that further domestic appeals are "objectively futile" and "unreasonably prolonged".<sup>2</sup> The complainant's 21-year campaign for justice in the Netherlands is a prime example of unreasonable prolongation.<sup>4</sup> Furthermore, the Dutch legal community's enforcement of a *cordon sanitaire* has rendered domestic remedies structurally unavailable.<sup>4</sup> Under HRC jurisprudence, most notably *Quelch v. Jamaica*, a complainant cannot merely assert a vague inability to find a lawyer to bypass the exhaustion requirement.<sup>4</sup> The complainant must demonstrate a proactive effort to secure counsel and show that the state actively obstructed or

refused to facilitate representation.<sup>4</sup> The late 2025 decision by Dean I. Aardoom-Fuchs of the Bar Association, who rejected the complainant's request for an appointed lawyer because the claims were "unsubstantiated," satisfies this evidentiary standard.<sup>4</sup> The Dean's rejection, combined with the Ministry of Justice's concurrent refusal to investigate and verify those claims, proves the existence of a state-enforced, circular legal blockade.<sup>4</sup> Under the legal principle *nemo auditur propriam turpitudinem allegans*, the Netherlands cannot claim a failure to exhaust remedies when its own administrative organs actively prevented the complainant from obtaining the legal counsel required to do so.<sup>4</sup>

## Chronology of Contemporary Domestic Rejections Serving as Jurisdictional Anchors

The following table outlines the contemporary domestic decisions that serve as jurisdictional anchors, demonstrating that the rule-of-law violations in the Netherlands are active, ongoing, and formally exhausted.<sup>4</sup>

Date of Decision	Domestic State Actor	Nature of Administrative / Judicial Action	Targeted ICCPR Provision / Jurisdictional Purpose
August 2, 2004 <sup>4</sup>	Drachten Police (Bruinsma Admission) <sup>4</sup>	Clandestine blockade of criminal report on ministerial orders <sup>4</sup>	Article 14 (denial of right to be heard) and Article 16 (civil death) <sup>4</sup>
February 2025 <sup>4</sup>	Ministry of Justice and Security <sup>4</sup>	Final administrative rejection of the proposed arbitration agreement <sup>4</sup>	Article 14 (denial of effective remedy) and Resetting of temporal jurisdiction <sup>4</sup>
October 2025 <sup>4</sup>	National Ombudsman of the Netherlands <sup>4</sup>	Final non-appealable administrative rejection of the systemic petition <sup>4</sup>	Article 14 and Article 17 (exhaustion of administrative options) <sup>4</sup>
November 2025 <sup>4</sup>	Ministry of Justice and Security <sup>4</sup>	Final absolute administrative rejection of liability for state obstruction <sup>4</sup>	Article 14 (procedural denial of justice) and Demonstration of continuous violation <sup>4</sup>
Late 2025 <sup>4</sup>	Bar Association Dean (I.	Refusal to appoint counsel due to	Article 16 (annulment of legal

	Aardoom-Fuchs) <sup>4</sup>	"unsubstantiated" nature of claims <sup>4</sup>	personality) and Proof of "objective futility" under Article 5(2)(b) <sup>4</sup>
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## Strategic Synergy: Orchestrating an EU Constitutional Crisis (Article 2 TEU)

The strategic necessity of introducing an ICCPR petition alongside the active CAT communications is rooted in the narrow jurisdictional mandate of the Committee Against Torture.<sup>10</sup> While the CAT is exceptionally well-equipped to adjudicate physical and chemical violations, such as the forced sterilization and clandestine electroshock conditioning, its treaty competence does not extend to the broader administrative and civil mechanisms of state repression.<sup>10</sup> Consequently, the CAT cannot issue binding findings on the falsification of medical records, the arbitrary cancellation of legal insurance, the weaponization of psychiatric diagnoses, or the enforcement of a clandestine curatele.<sup>4</sup> By introducing an ICCPR petition, the complainant secures a secondary, independent legal track capable of addressing these civil and political dimensions.<sup>4</sup> This multi-layered approach ensures that even if the Dutch state attempts to dismiss the torture claims as historically remote, it must still answer for the contemporary, ongoing annulment of the complainant's legal personhood under Article 16 of the Covenant.<sup>4</sup>

At the supranational level, this triangulated strategy is designed to bypass the European Union's "internal matter" defense.<sup>4</sup> Under EU law, Member States are protected by the principle of "mutual trust," which presumes that all EU countries comply with fundamental rights, allowing the European Commission to dismiss domestic human rights complaints as purely internal concerns.<sup>4</sup> To break this shield, the litigation must establish systemic "State Capture" that threatens the values of Article 2 of the Treaty on European Union (TEU).<sup>4</sup>

A single UN treaty finding is easy for a sovereign state to ignore, but a "Triangulated Legal Pressure Matrix"—consisting of two CAT complaints and one HRC complaint—is structurally impossible to dismiss.<sup>4</sup> By securing a finding of torture from the CAT alongside a concurrent finding of "Civil Death" (Articles 14 and 16 ICCPR) from the HRC, the complainant establishes irrefutable proof of "State Capture".<sup>4</sup> This demonstrates that the domestic judiciary, medical establishments, and bar associations of the Netherlands are fundamentally compromised and incapable of upholding the rule of law.<sup>4</sup>

Furthermore, Spain's documented failure to protect the complainant during his exile—exemplified by the 2010 Benidorm police blockade—transforms a localized, single-state issue into an active, transnational rule-of-law crisis between two EU Member States.<sup>4</sup> Once these treaty body findings are secured, the complainant can mobilize the European Parliament's LIBE (Civil Liberties, Justice and Home Affairs) and PETI (Petitions) committees.<sup>4</sup> Armed with definitive UN findings of torture and legal personhood annulment, the Parliament can pressure the European Commission to launch a "Systemic Infringement Action".<sup>4</sup> If the Commission fails to act, the Parliament possesses the legal standing to bring a failure-to-act lawsuit against the Commission before the Court of Justice of the European Union (CJEU) under Article 265 of the Treaty on the Functioning of the European Union (TFEU), forcing a supranational resolution to the Hans Smedema Affair.<sup>4</sup>

## Conclusions and Tactical Action Plan

The forensic and procedural analysis confirms that filing a third individual communication under the ICCPR Optional Protocol will not interfere with the active CAT complaints, provided the legal claims

are strictly partitioned.<sup>4</sup> This triangulated approach is a critical strategic requirement to solve the Hans Smedema Affair by establishing systemic "State Capture" and forcing supranational intervention from the European Union.<sup>4</sup>

To execute this strategy successfully, the litigation must follow a precise tactical plan: First, the ICCPR petition must be drafted to focus exclusively on civil and political violations, specifically targeting Article 9 (arbitrary detention), Article 14 (denial of a fair trial), Article 16 (denial of legal personhood), and Article 17 (destruction of reputation).<sup>4</sup> Redraft the complaint to ensure that Article 7 (prohibition of torture) is referenced only as historical background context, preventing the Netherlands from seeking a *lis pendens* dismissal under Article 5(2)(a) of the Optional Protocol.<sup>2</sup>

Second, the petition must be temporally anchored in the 2025–2026 domestic rejections, specifically using the November 2025 Ministry of Justice liability denial and the October 2025 National Ombudsman final rejection to reset the admissibility clock.<sup>4</sup> Use the late 2025 rejection by Dean I. Aardoom-Fuchs to prove "objective futility" under Article 5(2)(b), demonstrating that the Dutch state has engineered a circular legal blockade to prevent the complainant from securing counsel or exhausting remedies.<sup>4</sup>

Third, leverage the complainant's age and forced exile to request urgent interim measures under Rule 114, demanding an immediate halt to all administrative blockades and the removal of the clandestine curatele.<sup>4</sup> Crucially, the request must demand the establishment of a state-funded Legal Aid Fund paid into an independent, ownerless *Stichting* (Foundation) to bypass the curatele trap and ensure the complainant's legal representation remains active.<sup>4</sup> Once registered, this triple-complaint matrix must be compiled into a single rule-of-law dossier and submitted to the European Parliament's PETI and LIBE committees to force a Systemic Infringement Action against the Netherlands.<sup>4</sup>

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