

The Torture Reporting Handbook

How to document and respond to allegations of torture within the international system for the protection of human rights



**THE
TORTURE REPORTING
HANDBOOK**

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system for the protection of human rights

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SELECTED ABBREVIATIONS

AU	African Union
ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
AComHR	African Commission on Human and Peoples' Rights
ACtHR	African Court on Human and Peoples' Rights
CAT	UN Committee Against Torture
UNCAT	UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
HRC	UN Human Rights Committee
CEDAW	UN Committee on the Elimination of Discrimination Against Women
CERD	UN Committee on the Elimination of Racial Discrimination
CPT	European Committee for the Prevention of Torture
CRC	Committee on the Rights of the Child
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
IAComHR	Inter-American Commission on Human Rights
IACtHR	Inter-American Court of Human Rights
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICRC	International Committee of the Red Cross
IDPs	Internally-displaced persons
IHL	International humanitarian law
NGO	Non-governmental organisation
NHRI	National Human Rights Institution
NPM	National Preventive Mechanism
OAS	Organisation of American States
OHCHR	Office of the UN High Commissioner for Human Rights
OSCE	Organisation on Security and Co-operation in Europe
SRP	Special Rapporteur on Prisons and Conditions of Detention in Africa
SPT	UN Subcommittee for Prevention of Torture
SRT	UN Special Rapporteur on Torture
UN	United Nations
UNHCR	UN High Commissioner for Refugees
UPR	Universal Periodic Review

INTRODUCTION

International law prohibits torture in absolute terms; there can be no exception under any circumstance. Violation of this prohibition is considered so serious that no legal justification may ever be found, even in times of emergency or conflict. Yet, torture and other cruel, inhuman or degrading treatment or punishment ('other ill-treatment') continue to be committed. A glance at any of the reports of the United Nations ('UN') Special Rapporteur on Torture or Committee against Torture and the number of cases that continue to be submitted to regional and international human rights bodies make it clear that torture and other ill-treatment are not practices of the past. Compliance with States' obligations under international law remains a challenge.

Torture and other ill-treatment are often committed behind closed doors far from public knowledge and scrutiny and victims can be afraid to expose such practices. High-quality documentation and reporting of incidents and patterns of torture and other ill-treatment are therefore essential in the efforts to eliminate torture, ensure accountability and provide justice to victims. This Handbook is aimed at non-governmental organisations (NGOs), lawyers and human rights defenders with limited experience of documenting and reporting allegations of torture and other ill-treatment. The Handbook provides a guide on how to document allegations of torture and other ill-treatment, focusing on the quality of documentation in order to maximise the reliability of the information submitted to national, regional and international bodies. It also sets out the options available for reporting allegations of torture and other ill-treatment at the national, regional and international level in order to assist NGOs in their selection of the most appropriate procedure(s) to which to submit the information. While the focus of the Handbook is on torture and other ill-treatment, much of the guidance is relevant to the documentation of human rights violations generally.

The Handbook aims to be as practical as possible and therefore avoids exploring and referencing the academic or theoretical nature of concepts in too much detail. A selection of further materials and contacts has been provided in

Appendices 2 and 3 for those organisations or individuals who wish to seek further information or assistance.

Part A of the Handbook first discusses the different aims and objectives of documenting allegations of torture and other ill-treatment. It then sets out the definitions of torture and other ill-treatment under international law. Finally, it engages with the question of who can be the perpetrator (including non-state actors) and who are likely to be the victims of torture and other ill-treatment noting that although no one is safe from torture, there are certain groups of people that are at an increased risk of torture and other ill-treatment. It also identifies places and situations in which torture and other ill-treatment is most likely to take place, and highlights the circumstances in which allegations are most likely to be received.

Part B of the Handbook focuses on how to document torture. It provides guidance on how to collect information about incidents of torture and other ill-treatment, emphasising the ethical and security considerations every person documenting allegations need to be conscious of and respect. It highlights information that is essential to include in any complaint; provides guidance on interviewing a victim or witness; and identifies the type of supporting evidence which should be collected, most notably medical reports, in order to strengthen an allegation or support a prosecution.

Part C introduces the mechanisms available for reporting allegations of torture and other ill-treatment at the national, regional and international level focusing on both litigation and wider advocacy strategies. It provides guidance on how to select the process(es) best suited to the NGO or human rights defender's aims and how to prepare and tailor a submission to the particular type of mechanism selected. It also makes suggestions on where to turn for further help when additional support is needed.

The first version of this Handbook was published in 2000 and there have been important developments concerning reporting and preventing torture and other

ill-treatment since then. There have been many changes in the institutional framework of key regional and international bodies such as the UN while national human rights institutions have gained prominence, and both regional and international jurisprudence has developed significantly. Knowledge and experience on interviewing and documentation of torture and other ill-treatment has also greatly increased. As a result of these developments, an update of the Handbook was needed and the revised edition takes into account a number of changes including:

- National mechanisms for torture and other ill-treatment reporting, including national human rights institutions, are gaining prominence and regional and international human rights bodies encourage their further strengthening. The Handbook therefore dedicates more time to national mechanisms, not least because a strong national protective legal framework can offer best guarantees and safeguards against torture.
- The UN Human Rights Council replaced the Commission on Human Rights. This brought changes to the complaints procedure and introduced the new monitoring procedure called the Universal Periodic Review. New special procedures have also been established and the UN bodies increasingly rely on fact-finding missions and investigations, which may, over time, result in remedies for victims.
- The Optional Protocol to the Convention against Torture came into force in 2006 and introduced three important institutional elements designed to prevent torture: (1) the creation of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the SPT); (2) the obligation to establish national preventive mechanisms (NPMs); and (3) the setting up of a Special Fund. The SPT and NPMs are tasked with visiting places of detention and interviewing persons of their choosing. The Special Fund helps States finance the implementation of the SPT's recommendations and education programmes of the NPMs.
- The individual complaint procedures have come into force under the Convention on the Elimination of all Forms of Discrimination against Women,

the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities.

- The African Court of Human and Peoples' Rights was established and then merged with the Court of Justice of the African Union (non-operational) into one single court, the African Court of Justice and Human Rights.
- There have been important developments in the international jurisprudence, most notably with regard to States' obligations of due diligence to prevent and protect individuals from harm by third parties under the prohibition of torture and other ill-treatment (especially regarding domestic violence, rape, mob violence against minorities and vulnerable groups, and trafficking in human beings).

The new institutions and treaties, in combination with the well-established ones that provided for a wealth of foundational jurisprudence, enhance the protection of individuals and form the backbone of the struggle against torture. This Handbook aims to provide useful and practical advice on how to use the international tools to advance the goal of providing individual justice and eradicating torture.

TERMINOLOGY

Victim / Survivor

The term 'survivor' is often preferred as it highlights the resilience and empowerment of individuals and not their helplessness. In keeping with the terminology used in international instruments and by regional and international human rights bodies, this Handbook uses the term 'victim' without prejudice to other terms and without implying their powerlessness. The term 'victim' is explained by the Committee against Torture as "persons who have individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute violations" of the prohibition of torture and other ill-treatment. Furthermore, victims may also be "immediate family or

dependants of the victim as well as persons who have suffered harm in intervening to assist victims or to prevent victimization”.¹

Torture and Other Ill-Treatment

‘Torture’ has a specific meaning in international human rights law. The UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT) defines torture as the infliction of severe mental or physical pain or suffering by or with the consent or acquiescence of the State authorities for a specific purpose, such as gaining information, punishment or intimidation, discrimination. There are two other treaties that also include a definition of torture: the Inter-American Convention to Prevent and Punish Torture and the Rome Statute of the International Criminal Court. However, the majority of other international treaties only set out the prohibition of torture and other ill-treatment while defining the term is left to the regional and international bodies that were set up for interpreting and applying these treaties. The UNCAT definition influenced the understanding of torture in international human rights law (especially the ‘purposive element’ needed for an act to be qualified as torture), although different bodies may emphasise other elements or do not attempt to define torture and other ill-treatment at all. This Handbook will not follow a specific definition of torture and a specific distinction between torture and other ill-treatment. It will, however, highlight differences when necessary.

Specialised Terms in National Law

Certain terms may have specialised or legal meanings in their country, but may mean something different in another national system. The terminology used throughout this Handbook is not intended to have any legal implications, and should be interpreted in a general sense - for example, the use of the word ‘arrest’ is not intended to signify a formal arrest, which might require charging the individual with an offence, but merely the deprivation of liberty or holding of an individual by the police or other agency, including for informal questioning.

¹ Committee against Torture, General Comment No. 3, Implementation of Article 14 by States parties, 2012, para. 3.

Similarly, the names used for certain types of custodial institutions, such as prisons, may refer to a very distinct type of institution in one country, but may be used in a more general way in another.

PART A. THE NATURE OF TORTURE AND OTHER ILL-TREATMENT

1. WHAT IS TORTURE AND OTHER ILL-TREATMENT?

There are certain types of treatment which most people will instinctively recognise as being torture. There are others, however, which are less clear-cut, where an NGO will need to study the case-law (hereinafter referred to as 'case-law' or 'jurisprudence') of the regional or international mechanism that will receive the allegations. It is important to remember that when submitting an allegation to a human rights mechanism, an NGO is seeking to show that the facts constitute torture or other ill-treatment in a legal sense, not merely in its opinion. Knowing what the legal definition of torture is and how this definition emerged and evolved and is reflected in the jurisprudence of a particular mechanism, will be important in order to prove the essential elements of the definition of torture. It is important to bear in mind, however, that even if an act does not meet the definition of torture, it may still constitute other prohibited ill-treatment, which also amounts to a violation of a State's duties under international human rights law.

The UNCAT is one of the few international treaties that set out a definition of torture. The majority of human rights treaties such as the International Covenant on Civil and Political Rights (ICCPR), the European Convention on Human Rights (ECHR), the American Convention on Human Rights (ACHR) and the African Charter on Human and Peoples' Rights (ACHPR) include a prohibition but do not contain a definition of torture and other ill-treatment. The regional and international bodies vested with the responsibility of interpreting and assessing compliance with the treaty in question have, however, developed definitions of torture and other ill-treatment in their jurisprudence. Although human rights bodies may take slightly different approaches to defining torture and other ill-treatment, they are all broadly similar to the definition adopted by UNCAT. Some regional and international human rights bodies distinguish between torture and other ill-treatment while others only find a violation of the article that prohibits such treatment and do not proclaim whether they considered the treatment to be torture or other ill-treatment. One of the most important definitional questions is

how torture is distinguished from other ill-treatment. The approaches of different regional and international bodies to this question will be analysed below.

The following subchapters briefly outline the definitions of torture as a legal concept as found in UNCAT and international human rights bodies' jurisprudence and its relation to other ill-treatment.

1.1. Definition of Torture under International Law

Treaties with a Definition

The **UNCAT** defines torture in Article 1(1) as:

“any act by which **severe pain or suffering**, whether **physical or mental**, is **intentionally** inflicted on a person for such **purposes** as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted **by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity**. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

Article 2 of the **Inter-American Convention to Prevent and Punish Torture** states:

“For the purposes of this Convention, torture shall be understood to be any act **intentionally performed** whereby **physical or mental pain or suffering** is inflicted on a person **for purposes** of criminal investigation, as a means of intimidation, as personal punishment, as a preventive measure, as a penalty, or for any other purpose. Torture shall also be understood to be the use of methods upon a person intended to

obliterate the personality of the victim or to diminish his physical or mental capacities, even if they do not cause physical pain or mental anguish. The concept of torture shall not include physical or mental pain or suffering that is inherent in or solely the consequence of lawful measures, provided that they do not include the performance of the acts or use of the methods referred to in this article.”

The **Rome Statute of the International Criminal Court** (ICC) also provides a definition of torture as:

”the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”²

This definition of torture only applies to acts that reach the level of a **crime against humanity** meaning that the torture was committed as “part of a widespread or systematic attack directed against a civilian population” and that “[t]he perpetrator knew that the conduct was part of or intended the conduct to be part of” this wider attack against civilians.³ The Rome Statute also lists torture as a war crime under Article 8(2)(a)(ii). The Elements of Crime for the Rome Statute elaborate on the meaning of torture as a war crime. The Elements distinguish the war crime of torture and the war crime of inhuman or cruel treatment based on the purposive element (see below). The purposes for which torture is committed are substantially the same as the ones in UNCAT (gaining information, punishment, intimidation, coercion or discrimination).

² Rome Statute of the International Criminal Court, 17 July 1998, Article 7(2)(e).

³ International Criminal Court, Elements of Crimes, 2011, Article 7(1)(f).

1.2. The Essential Elements of Torture

From the UNCAT definition and the jurisprudence that has developed in regional and international bodies, it is broadly possible to extract four elements that must be satisfied in order to define an act as torture:

1) ***Pain or suffering***: An act is characterised as torture if severe physical or mental pain or suffering has been inflicted. Some mechanisms distinguish between torture and other ill-treatment based on the relative severity of treatment and some do not.

The severity of the act is not an objective determination but one dependent on the facts and circumstances of the case. In general, it can be said that pain and suffering are inevitably relative, subjective categories. How much a person suffers will depend on factors such as their sex, age, religious or cultural beliefs and health. For example, treatment inflicted on a child might not be considered torture if inflicted on an adult; cutting someone's hair might be more humiliating in a specific cultural context. It should be noted that the majority of the human rights treaty bodies combine objective (certain acts are considered so severe that they always amount to torture) and subjective approaches when determining severity. Often a distinction is made between physical (aimed at the body) and psychological (aimed at the mind) torture. However, this distinction can be misleading as all torture and other forms of ill-treatment encompass psychological forms of ill-treatment and some involve physical ill-treatment as well. Very often, psychological ill-treatment can have the most long-lasting consequences for victims, who may recover from physical injuries yet continue to suffer from deep psychological scarring.

2) ***Purpose***: The suffering was inflicted for a specific purpose, such as gaining information, punishment, intimidation, coercion or discrimination.

- 3) *Intention:*** pain and suffering must have been caused intentionally for the act to amount to torture. If no intent can be proved or in cases of negligence, the conduct might constitute other ill-treatment if it causes pain and suffering (for example abhorrent conditions in prison).
- 4) *State involvement:*** The State authorities inflicted this suffering themselves or directed others to commit it, or else knew or ought to have known about it but did not try to prevent it. In case of non-state actors, the State may be held accountable if it failed in its due diligence obligations to prevent torture and protect individuals from it.

1.3. Distinction between Torture and Other Ill-Treatment

Not all bodies will distinguish between torture and other ill-treatment. For example, the UN Human Rights Committee most often only finds a violation of Article 7 of the ICCPR and does not categorise an act as torture or other ill-treatment. The Committee has noted that it does not consider it necessary to draw up a list of prohibited acts or to establish sharp distinctions between the different types of punishment or treatment; the distinctions depend on the nature, purpose and severity of the treatment applied.⁴ The Committee also considers that an assessment of whether particular treatment constitutes a violation of Article 7 depends on all circumstances of the case, such as the duration and manner of the treatment, its physical or mental effects as well as the sex, age and state of health of the victim.⁵ Some examples of violations of Article 7 that the Human Rights Committee found include: beatings, rape, forcing a person to lie in urine, faeces and blood;⁶ prolonged incommunicado detention with solitary confinement, chained to a bedspring and severe food rations;⁷ and re-victimisation of the victim of rape by police with discriminatory statements

⁴ Human Rights Committee, General Comment No. 20, Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 1992.

⁵ For example: Human Rights Committee, *A. Vuolanne v. Finland*, Communication No. 265/1987 (7 April 1989).

⁶ Human Rights Committee, *McCallum v. South Africa*, Communication No. 1818/2008 (25 October 2010). See more: OMCT, *Seeking Remedies for Torture Victims: A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies*, OMCT Handbook Series Vol. 4 (2014), 2nd edition, http://www.omct.org/files/2014/11/22956/v4_web_onusien_en_omc14.pdf, p. 167.

⁷ Human Rights Committee, *White v Madagascar* (1985). See Joseph Sarah and Castan Melissa, *The International Covenant on Civil and Political Rights: Cases, materials, and commentary*, Oxford University Press (2013), p. 241.

causing mental suffering.⁸ There is no fixed rule on when the Committee will categorise an act as torture or other ill-treatment and when it will only declare violation of Article 7 without categorisation. However, when the facts of the case warrant that the Committee identifies treatment as torture, the Committee noted that it is guided by the definition of torture found in Article 1 of the UNCAT.⁹

Severity For an act to fall under Article 3 of the Convention, it must first attain a “minimum level of severity”.¹⁰ Historically, the European Court for Human Rights originally distinguished torture from other ill-treatment based on the relative severity of the act. In *Ireland v UK*¹¹, the Court drew a distinction between torture on the one hand and inhuman and degrading treatment on the other based on a “special stigma” that is attached to torture, finding that an act must cause ‘serious and cruel suffering’ to constitute torture as an ‘aggravated’ form of inhuman treatment.

Evolving Definition The European Court of Human Rights has emphasised the role of time and evolving human rights standards in classifying an act as either torture or other ill-treatment. In *Selmouni v France*, the Court applied the “living instrument” doctrine and noted that “certain acts which were classified in the past as ‘inhuman and degrading treatment’ as opposed to ‘torture’ could be classified differently in future.”¹² Because of the increasingly high standard in the area of the protection of human rights, the Court noted that greater firmness is needed “in assessing breaches of the fundamental values of democratic societies.”¹³ Similar to the European Court, the Inter-American Court has also noted that the acts that might have been classified as inhuman or degrading treatment in the past might be considered as torture in the future.¹⁴

Purpose Most regional and international courts and human rights bodies now broadly follow the approach of UNCAT by focusing on the purposive element as

⁸ Human Rights Committee, *L.N.P. v. Argentina*, Communication No. 1610/2007 (18 July 2011).

⁹ Human Rights Committee, *Giri v Nepal*, Communication No. 1761/2008 (24 March 2011).

¹⁰ European Court of Human Rights (ECtHR), *Ireland v UK*, Judgment of 18 January 1978, A 25, App. No. 5310/71, para. 162.

¹¹ *Ireland v. UK*, above, para. 167.

¹² European Court of Human Rights, *Selmouni v. France*, Application No. 25803/94 (28 July 1999), para. 101.

¹³ *Selmouni v. France*, above, para. 101.

¹⁴ Inter-American Court of Human Rights, Case of *Cantoral-Benavides v. Peru*, Judgment of 18 August 2000, para. 99.

the distinguishing characteristic between torture and other ill-treatment rather than the relative severity of the act. For example, the African Commission has explicitly noted that it has adopted the definition of torture contained in Article 1 of the UNCAT.¹⁵ This includes the European Court which increasingly relies on the definition of torture stemming from Article 1 of UNCAT and the purposive element.¹⁶ While it has not abandoned the “severity threshold,” this element of distinction is not fixed, but dependent on the “present-day conditions.”¹⁷

Cruel, inhuman or degrading treatment or punishment therefore refers to ill-treatment that does not have to be inflicted for a specific purpose. Exposing a person to conditions reasonably believed to constitute ill-treatment will entail responsibility for its infliction. Degrading treatment may involve pain or suffering less severe than for torture or cruel or inhuman treatment and will usually involve humiliation and debasement of the victim.¹⁸ The essential elements which constitute ill-treatment not amounting to torture would therefore be reduced to:

- Exposure to significant mental or physical pain or suffering;
- By or with the consent or acquiescence of the State authorities.

Certain types of treatment have been found to amount to torture by different human rights bodies either alone or in combination with other forms of treatment because of their nature or due to the circumstances in which treatment was performed. For example, electric shocks, pulling out of fingernails, *falaka/falanga* (beatings on the soles of the feet), suspension by the arms while these are tied behind the back, severe forms of beatings, rape, mock executions, including water boarding, being buried alive, mock amputations, severe sleep deprivation, disappearances (including their effect on the close relatives of the disappeared person) and similar treatment. It should be noted again that not only severity, but

¹⁵ African Commission on Human and Peoples’ Rights (AComHR), *Abdel Hadi, Ali Radi & Others v Republic of Sudan*, Communication No. 368/09, para. 70 and AComHR, *The Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines)*, 2008, <http://www.achpr.org/instruments/robben-island-guidelines-2008/>.

¹⁶ APT, *Guide to Jurisprudence on Torture and Ill-treatment: Article 3 of the European Convention for the Protection of Human Rights*, http://www.apr.ch/content/files_res/Article3_en.pdf, p. 16.

¹⁷ European Court of Human Rights, *Selmouni v. France*, Application No. 25803/94 (28 July 1999), para. 101.

¹⁸ Foley Conor, *Combating Torture: A Manual for Judges and Prosecutors*, Human Rights Centre, University of Essex, 2006, p. 12.

also the purposes for which these acts have been committed is relevant when assessing whether the action amounts to torture or other ill-treatment.

Examples of other ill-treatment include: corporal punishment, such as flogging, imposed as a judicial penalty, some forms of capital punishment and the death-row phenomenon (i.e. the harmful effects of death row conditions, in particular mental anguish); prolonged solitary confinement which could also amount to torture; certain aspects of poor prison conditions, particularly if combined with other instances of ill-treatment; deprivation of food and water, which could also amount to torture depending on the circumstances.

1.4. The Meaning of Torture in Practical Terms

The above illustrates that it is difficult to be sure whether a regional or international (quasi-)judicial body will find that the facts of a particular case at hand constitute torture or other ill-treatment. The interpretation of what constitutes torture and other ill-treatment is constantly evolving; courts have emphasised that an act that was not considered torture in the 1970s might constitute torture now. Such an approach allows regional and international bodies to be relatively open-minded when assessing forms of ill-treatment which have not previously been found to amount to torture.

The responsibility of the applicant/petitioner/complainant/litigant (hereinafter referred to as 'applicant') in litigation is to persuasively argue that a particular act constitutes torture or other ill-treatment and to provide evidence that all essential definitional elements of torture and other ill-treatment are met. The applicant will need to study and work with the definition and jurisprudence of the particular human rights body (and other bodies as a reference) to determine which aspects of the legal definition must be substantiated by evidence of particular facts of the case.

The responsibility of the regional and international bodies is to determine whether or not the facts alleged are proven and amount to torture or other ill-treatment. In

this regard it is important to know who carries the burden of proof, i.e. is the responsibility of the applicant or the State to prove certain facts. In addition, the standard of proof (such as suspicion, reasonable suspicion, beyond reasonable doubt) varies depending on the stage of the process (might be lower when filing a complaint) and the jurisdiction.

In order to make sure that specific contexts of torture and other ill-treatment are taken into account when submitting an allegation of torture and other ill-treatment (such as cultural and religious specificities, gender considerations and similar), one should:

- Explain the significance of the underlying context in your allegations and reports, as this may affect the regional or international body's assessment of the degree of suffering. Make sure not to omit any details of the treatment to which a person has been subjected, because facts that one may not consider as important may actually be very relevant to the allegation.
- Remember that victims may leave out details which they do not think are important; they should be encouraged to be as complete as possible about what has happened to them.

Further reading

- Human Rights Committee, General Comment No. 20, Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment (1992), <http://www1.umn.edu/humanrts/gencomm/hrcom20.htm>
- UN Voluntary Fund for Victims of Torture, Interpretation of torture in the light of the practice and jurisprudence of international bodies (2011), http://www.ohchr.org/Documents/Issues/Torture/UNVFVT/Interpretation_torture_2011_EN.pdf
- APT and CEJIL, Torture in International Law. A guide to jurisprudence (2008), http://www.apr.ch/content/files_res/jurisprudenceguide.pdf
- APT, Guide to Jurisprudence on Torture and Ill-treatment: Article 3 of the European Convention for the Protection of Human Rights (2002), http://www.apr.ch/content/files_res/Article3_en.pdf

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2. HOW DOES TORTURE AND OTHER ILL-TREATMENT HAPPEN?

2.1. The Perpetrators of Torture and Other Ill-Treatment

When considering responsibility for torture and other ill-treatment, it is important to understand against whom complaints can be brought. International human rights law only deals with State responsibility, meaning that a complaint can only be brought against the State for its responsibility for the acts of its officials or actors acting under its direction or control or for failing to prevent or protect individuals from the acts of third parties. Regional and international (quasi-)judicial bodies such as the UN Human Rights Committee or the Inter-American Court of Human Rights cannot find individuals responsible, prosecute them, or put them in prison. However, States are required by international human rights law to investigate allegations of torture and other ill-treatment and identify and punish those responsible, meaning that the responsible individuals should be held to account in criminal and civil proceedings at the national level. The International Criminal Court (ICC) can prosecute individuals for torture where it is considered to be a crime against humanity or a war crime. However, the Court can only prosecute individuals when they are part of a wider 'situation' before the Court. The Prosecutor of the ICC can initiate an investigation on the basis of a referral from any State party to the Rome Statute or the UN Security Council, or upon its own motion.

2.1.1. Public Officials or Other Person Acting in an Official Capacity

The UNCAT and regional and international human rights bodies that interpret treaties prohibiting torture and other ill-treatment emphasise that torture and other ill-treatment needs to be carried out by, or with the approval of, a representative of the authority in power.

This means that those most likely to be involved in torture and other ill-treatment will be:

- The police;

- *Gendarmerie* (in countries where this institution exists);
- Security services;
- Military;
- Paramilitary forces acting in connection with official forces;
- Death squads (torture following disappearance and preceding killing);
- Prison officers and health professionals - doctors, psychiatrists or nurses may participate in torture either by act or by omission (falsifying medical reports or failure to give appropriate treatment);
- Private detention facilities staff;
- Co-detainees acting with the approval or on the orders of public officials.

2.1.2. The Acts of Non-State Actors as Other Ill-Treatment under International Human Rights Law

In addition to direct responsibility for a violation of the prohibition of torture and other ill-treatment, States can also be held responsible under international human rights law for a failure to prevent or protect individuals from acts by a non-state actor that would meet the severity threshold of torture or other ill-treatment. The standard for such State responsibility is particularly high and requires that the State knew or should have known of the risk and failed to act. The test for finding a State responsible differs slightly between regional and international human rights bodies. The Committee against Torture has stated that this can be considered as a form of encouragement and/or *de facto* permission (consenting to or acquiescing, in the language of UNCAT).¹⁹ The Human Rights Committee has found that States must afford everyone protection against ill-treatment, whether inflicted by persons acting in their official capacity, outside their official capacity or in a private capacity.²⁰ States are obliged to take positive measures to ensure that private persons or entities do not inflict ill-treatment on others within their power.²¹

¹⁹ Committee against Torture, General Comment No. 2, Implementation of Article 2 by States Parties, 2008, para. 18.

²⁰ Human Rights Committee, General Comment No. 20, Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment), 1992.

²¹ Human Rights Committee, General Comment No. 31, The nature of the general legal obligation imposed on States Parties to the Covenant, 2004.

Examples of ill-treatment committed by non-state actors in case the necessary level of severity is reached may include: domestic violence, violence against women, trafficking in human beings, lynching or mob violence, abductions, violence perpetrated by armed groups not acting under colour of law, prisoner violence. Landmark cases such as the *Cotton Field* case before the Inter-American Court²² and the *Opuz* case before the European Court²³ have changed the perception of State responsibility to combat gender-based and family violence committed by private actors. Both cases concerned the failure of the police to respond adequately and effectively to complaints of violence against women and domestic violence respectively by private parties.

For the act or omission to be classified as torture (in contrast to other ill-treatment), it will usually need to be committed for a specific purpose. As explained above, some of the possible purposes are gaining information, punishment, intimidation, coercion or discrimination. Purpose is typically understood as a State purpose rather than the purpose of the non-state actor, meaning that the failure of the State to prevent or protect an individual from harm by the third party must have been for a specific purpose. As it is unlikely that there will be a “State policy” of purposeful failure to prevent or protect from ill-treatment by non-state actors, such as a discriminatory purpose not to investigate domestic violence. In such a situation, even if the physical or psychological acts are extremely severe the failure to prevent or protect, the State’s failure to prevent or protect is most likely to be classified as other ill-treatment rather than torture under international human rights law.²⁴

In practical terms, the following issues should be considered before deciding to take action in response to allegations of ill-treatment by non-state actors:

- Regional and international bodies responsible for monitoring compliance with international human rights law cannot examine the responsibility of a non-

²² IACtHR, *Case of Gonzalez et al. (“Cotton Field”) vs. Mexico*, Judgement of 16 November 2009.

²³ ECtHR, *Opuz v. Turkey*, Application No. 33401/02, 9 June 2009.

²⁴ For an overview of sources discussing the issue of state purpose see: McGregor Lorna, Applying the Definition of Torture to the Acts of Non-State Actors: The Case of Trafficking in Human Beings, 36(1) *Human Rights Quarterly* 2014, p. 220.

state actor for ill-treatment. This is the task of the State which should investigate and prosecute such actors under domestic criminal law. Consequently, it is necessary to first pursue domestic remedies. If the State fails to take effective measures to prevent ill-treatment, punish those responsible and redress the victim of violations, regional and international human rights bodies can examine the possible responsibility of the State.

- Regional and international human rights bodies can also examine the possible responsibility of a State wishing to expel a person to a country where they are at risk of ill-treatment, including at the hands of non-state actors. While the jurisprudence of the Human Rights Committee and the ECtHR is settled in terms of recognising that the risk of torture may come from non-state actors, the Committee against Torture has adopted a more restrictive approach and generally does not recognise the risks of torture or other ill-treatment from non-state actors unless they can be considered as exercising certain prerogatives that are normally exercised by legitimate governments.²⁵ You should therefore check the current jurisprudence of a particular human rights body you intend to send an individual communication to.
- The basis of an argument involving non-state actors should be that the State failed to exercise due diligence to prevent, investigate, prosecute and punish acts committed by the non-state actors.
- It will usually only be possible to argue that the failure of the State to prevent or protect the individual from harm by a non-state actor constitutes a violation of the prohibition of other ill-treatment, not torture. It will only be possible to argue a violation of the prohibition of torture if it can be demonstrated that the failure to prevent or protect was for a State purpose, such as discrimination.

As with individual cases, regional and international bodies examining a State's general human rights situation will not examine the responsibility of non-state actors, but the compliance of the State with its obligation to practice its due diligence. As for improving the general situation in a country, protective legislation that offers material and procedural safeguards needs to be in place.

²⁵ Committee against Torture, *Elmi v. Australia*, Communication No. 120/98. Gillard Emanuela-Chiara, There's no place like home: States' obligations in relation to transfers of persons, 90(871) *International Review of Red Cross* 2008, <https://www.icrc.org/eng/assets/files/other/irrc-871-gillard.pdf>.

For example, States are under an obligation to adopt a legislative framework that protects women against domestic violence. It is thus particularly important to show the regional and international reporting mechanisms whether there is a general lack of action on the part of the State to address ill-treatment by non-state actors, such as in cases of family and gender-based violence, trafficking in human beings, violence against sexual or other minorities. Analysing the deficiencies of criminal legislation and procedures may be one of the most important ways to achieve that.

In case of an armed conflict, Governments will very often try to argue that any abuses which occur are perpetrated by opposition forces or that a particular territory is not under their control. If you can provide accurate information about what those forces do and do not do, the regional and international body will be better equipped to respond to such arguments.

Non-state actors and international law of armed conflict / humanitarian law

In an armed conflict setting, State and non-state actors may carry out acts that would meet the severity threshold of torture or other ill-treatment. Torture or other ill-treatment committed during armed conflict may constitute a war crime or, if perpetrated on a widespread or systematic basis, a crime against humanity.²⁶ In such settings, the prohibition of torture or other ill-treatment continues to be absolute. Therefore, the State may never advance a justification for using torture or other ill-treatment and will be responsible under both international human rights law and international humanitarian law if it employs such means.

While international human rights law does not directly bind non-state actors, international humanitarian law (IHL) does directly bind non-State actors party to an armed conflict. IHL is a body of law which applies only in situations of armed conflict, both international (where the conflict involves two or more States) and

²⁶ Rome Statute of the International Criminal Court Article 8(2)(c)(i) (war crimes); Article 7(1)(f) (crimes against humanity).

non-international armed conflict (which may be between State and opposition forces or only between non-state forces or factions).²⁷

IHL prohibits torture and other ill-treatment of any person in the power of a party to the conflict including, in the case of non-international armed conflict, where that party is a non-state armed group (Common Article 3 of the Geneva Conventions of 1949 and customary international law). This is notable because it extends the obligation not to torture to non-state actors.

However, this obligation is difficult to enforce. IHL mainly relies on domestic criminal law for its enforcement (although the ICC and/or other international(ised) tribunals may have jurisdiction as well), which means that the alleged perpetrators have to be captured and tried by the State and/or transferred to an international court or tribunal. Alternatively, as a grave breach of the Geneva Conventions, non-state actors could be tried by another State party to the Geneva Conventions in accordance with the principle of universal jurisdiction.

2.2. The Victims of Torture and Other Ill-Treatment

Anybody can be a victim of torture and other ill-treatment regardless of his or her sex, age, nationality, beliefs or socio-economic status. Very often the determining factor may be membership of a particular political, religious, or ethnic group or minority, although discrimination is not the only reason individuals are targeted.

There used to be a tendency among those who reported allegations of torture or other ill-treatment to concentrate on information relating to “political prisoners”, those involved in politics and usually in opposition to the authorities in power. However, “common criminals,” particularly those accused of serious crimes, are very typically the victims of torture and other ill-treatment, perhaps for the purpose of obtaining information or a confession, or simply for the purpose of extortion or intimidation. It is very important not to give the impression that only

²⁷ International Criminal Tribunal for the former Yugoslavia (ICTY), *The Prosecutor v. Duško Tadić*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (2 October 1995), para 70.

“political prisoners” are at risk, by focusing on them to the exclusion of other victims, who are also at risk.

The identity of the victim is important because:

- Specific groups, such as children, women, the elderly, religious persons, or gender and sexuality minorities (e.g. lesbian, gay, bisexual, transgender, and intersex - LGBTI persons) may be subjected to specific forms of ill-treatment because of their identity or their vulnerability could influence the consideration of suffering.
- It helps to identify patterns of abuse being directed at a particular group of victims.
- Additional international or regional mechanisms which are specific to particular groups can be used - e.g., the Committee on the Elimination of Discrimination against Women, UN Special Rapporteur on Violence Against Women, Committee on the Rights of the Child, Committee on the Rights of Persons with Disabilities, Committee on Migrant Workers.

Specific examples where types of treatment may depend upon the identity of the victim include:

Gender-specific forms of torture and other ill-treatment

Rape as a method of torture is not exclusive to female victims, but it is nonetheless commonly used in a gender-specific form as a means of emphasising feelings of weakness and subordination in the victim or in the community. Cases of male rape are under-reported for many reasons, among which is the lack of awareness of the interviewer. Examples of where the gender of the victim may be relevant include the case of pregnant women, who are especially vulnerable and may suffer particular harms if tortured, and women of child-bearing age who may become pregnant as an aggravated effect of rape. An argument that rape conducted for the purpose of sexual gratification does not meet the purposive element of torture has been rejected, where other relevant purposes including that of discrimination have been present.²⁸

²⁸ For example, ICTY, case of Kunarac et al. (IT-96-23 & 23/1), para. 153 – 156.

Children

Children are considered a group in a particular position of vulnerability. It should be emphasised that the effects of certain types of ill-treatment on a child may be different from the effects that would be suffered by an adult undergoing the same treatment, although no universal generalisation can be made about the experience and effects of torture and other ill-treatment on an adult or a child.²⁹ One form of ill-treatment that may have very far-reaching effects on a child is being made to witness the torture and other ill-treatment of a parent or close relative. Similarly, threatening or forcing parents to witness the torture and other ill-treatment of their child may have severe psychological effects on the parents.

Persons with Disabilities

Violent and discriminatory practices against persons with disabilities in prison and medical settings have been documented, such as the use of restraints, enforced administration of treatments, and forced sterilisation. The lack of informed consent or the abuse of substitute decision-making for medical treatment has also been documented as a pressing problem.³⁰

Religious Belief

There are examples where ill-treatment aimed at the belief system of the victim has been found to amount to torture or other ill-treatment, such as devout persons subjected to religious taunts, shaving of beards, heads and eyebrows of Muslim detainees, mistreatment of religious objects.³¹ Discrimination on the grounds of religion is a relevant purpose for the definition of torture.

There are also examples when the victim's identity may put victims at a heightened risk of torture and other ill-treatment:

On the Basis of a Person's Profession

²⁹ Save the Children, *Children, Torture and Power: The torture of children by states and armed opposition groups*, 2010, <http://www.savethechildren.org.uk/sites/default/files/docs/Children-Torture-Power.pdf>, p. 34.

³⁰ Report of the Special Rapporteur on torture, Manfred Nowak, A/63/175, 28 July 2008.

³¹ For example, UN Commission on Human Rights, Joint report of five special procedures on the Situation of detainees at Guantánamo Bay, E/CN.4/2006/120, 27 February 2006, paras. 60-65, 93.

Journalists and human rights defenders are at a heightened risk of being subjected to ill-treatment simply for doing their work. People in other professions might be targeted as well, or a person's professional background might be used to inflict psychological torture and other ill-treatment, such as a threat or a simulated amputation of a pianist's hands.³²

Terrorism Suspects

Justifying torture and other ill-treatment of individuals suspected of terrorism, either officially or as a matter of practice, is a reality in many countries and changing public perception is often challenging. The absolute prohibition of torture has been tested in relation to the torture of terrorism suspects, but there should be no doubt – torture is not justified under any circumstances, not even in public emergency or in similar extraordinary situations.

Other Groups

LGBTI, rural population, marginalized and disadvantaged groups or castes, refugees, military personnel may also be under risk of being tortured, harassed, arbitrarily detained and subjected to violent attacks.

2.3. The Most Common Locations for Torture and Other Ill-Treatment

Torture and other ill-treatment may take place anywhere, especially in countries where there is a widespread climate of violence. High-risk locations are those where interrogation is likely to take place, such as police and gendarme stations, and any other place of detention, especially pre-trial detention.

While the majority of such places will be official places of detention, it is fairly common for unacknowledged places of detention to exist also. These could range from installations which are regularly used for such purposes (e.g., a disused factory or Government buildings) to those which are used in a particular case because they are convenient on that occasion (e.g., a school building used as a holding area, or even open land).

³² Human Rights Committee, *Estrella v. Uruguay*, A/38/40 (25 March 1982).

Remember that torture does not have to be confined to a place of detention and may occur in the victim's own home, during transportation to a detention centre, at checkpoints, immigration centres, psychiatric facilities etc.

2.4. The Most Common Situations for Torture and Other Ill-Treatment

Rather than focusing too firmly on locations, it is probably more useful to think in terms of the stage of the process of arrest and detention at which detainees are most at risk.

Arrest and Detention

The greatest risk of torture and other ill-treatment to individuals is typically in the first phase of arrest and detention, before they have access to a lawyer or court. This risk persists as long as the investigation lasts (if it is being conducted at all) or until the suspect is held, irrespective of where he or she might be held.

Incommunicado Detention

Incommunicado detention (i.e., detaining somebody either without acknowledgement or without allowing him or her access to anyone, such as a lawyer or family) is probably the single highest risk factor for torture and other ill-treatment because it means that there is no external monitoring of the interrogation process, legality of detention and the nature of the treatment in detention. Incommunicado detention entails particular risk in cases of detention by security forces, and sometimes the security forces only officially register the individual once they have completed the initial interrogation.

Remand

Torture and other ill-treatment is usually less common in regular prisons for convicted prisoners as the investigation process has been completed, but it should be noted that many prisons hold remand prisoners who are pending trial, as well as sentenced prisoners. A risk for remand prisoners should not be ruled out, especially if the security forces themselves run the prison or are known to be

closely associated with it. The risk to remand prisoners may not necessarily exist within the institution itself, but instead with the possibility that they may be transferred back into the custody of the investigating authorities.

Conditions of Detention

In both the initial detention phase and also after transfer to a prison, it should be remembered that the conditions of detention themselves may amount to inhuman or degrading treatment, and thus should also be documented (See Chapter B.4.1 on Model Information).

Abductions and Disappearances

Torture and other ill-treatment may also occur following abductions. In temporary abductions, the victim is released several hours or days later. A 'disappearance' is characterised by the victim being held by or with the acquiescence of the authorities, yet this is not acknowledged by the authorities. The victim may not be found, or may be found dead. Both forms of abduction frequently involve torture and other ill-treatment and are used as a means of instilling fear or intimidation in the community. While cases of disappearance involve violations other than torture and other ill-treatment (e.g., the right to life, right to liberty and security of person) any evidence that torture and other ill-treatment occurred during the disappearance should be documented. The disappearance could also itself be found to amount to torture, either for the victim or for the relatives of the victim.³³ See also Chapter B.4.4.13 on Abductions, Disappearances and Extra-judicial Executions.

Demonstrations

Demonstrations may be accompanied by excessive use of force by law enforcement officers (police officers, riot police and members of special forces) when maintaining law and order at demonstrations or even before and after demonstrations. Excessive use of force used for policing demonstrations can

³³ For example, IACtHR, *Velasquez Rodriguez Case*, Judgment of July 29, 1988, (Ser. C), No. 4 (1988), para. 156. Human Rights Committee, *Mojica v. Dominican Republic*, Communication No. 449/1991 (15 July 1994), para. 5.7.

amount to torture or other ill-treatment, and the same is true for enforced disappearances which may occur in the events surrounding demonstrations.

3. CONTEXTS AND PLACES WHERE COMPLAINTS OF TORTURE MIGHT BE MADE

NGOs may receive allegations of torture and other ill-treatment in a wide range of contexts and places. In general, they are unlikely to be received in the place where torture and other ill-treatment has occurred (or the statement will be more cautious), but rather in the very next place where the torture victim feels able to speak freely. This could be upon transfer to prison if he or she has been tortured while in police custody, in court, upon release and return to the community, or even upon leaving the country.

General contexts in which allegations may be received include:

- Situations of political unrest or generalised violence;
- Conflict zones.

Specific contexts in which allegations may be received include:

- Visits to custodial institutions;
- Medical settings;
- Camps and centres for refugees and internally displaced persons;

Most of these contexts are self-evident. However, information can also sometimes be found in unusual places which one might not immediately think about and it pays to be resourceful. This is particularly true of information that is able to support or provide evidence of an allegation which has been made orally in an interview or elsewhere. Possible places to look or people to talk to include:

- Court and administrative files;
- Prosecution files;
- Medical reports;

- Records of admission and release in police stations and prisons (inconsistencies and gaps in such records are often a sign of an irregular practice);
- National, regional or international monitoring bodies' reports, such as reports after the visits in the places of detention;
- Personnel files where complaints against their behaviour might be recorded, for example prison staff files;
- Records of attendance at a place of employment or education (this could help to confirm a claim that an individual was unable to attend for a certain period because of injuries resulting from torture or other ill-treatment);
- Local newspapers or news reports;
- Community support groups, e.g. youth and women groups;
- Religious personnel;
- Other detainees;
- In the context of fact-finding missions, commissions of inquiry, transitional justice mechanisms and other similar context.

The typical contexts in which torture and other ill-treatment allegations may be received need little elaboration. However, there are some settings in which it would be useful to be aware of certain specific factors.

Conflict Zones

Violations in conflict zones are likely to be perpetrated by both parties to the conflict, whether governmental or not, and it is important to keep accurate records of the alleged perpetrators in each case, or of any characteristics that may help to identify them. It is worth remembering also that the fear and intimidation factor is likely to be very great as civilians are often subject to persecution by both parties to discourage them from offering support and assistance to the opposite party.

Visits to Custodial Institutions

Detainees are understandably less willing to make allegations of ill-treatment while still in the custody of the body investigating them or while on remand, and

in such settings one should be especially conscious of the security of the individual. As a general rule, detainees are more willing to discuss their experiences at the hands of the investigating authorities once they have been convicted and are held in a regular prison.

The distinction between the two categories of places of detention (pre-trial detention and prison) can be blurred by several factors: in some countries, both pre-trial and convicted prisoners may be held in the same institution; in others, the staff of one or both types of institutions may originate from the very same authority as is responsible for the investigation, such as the police. In such cases, it is important to be aware that being transferred to another place of detention does not necessarily mean being transferred out of reach of the investigating authorities.

Access to custodial institutions is difficult, but certain NGOs may have privileged access by agreement with the authorities, to provide health care, food or as part of a system of prison visiting, including conducting regular interviews. In such cases, however, it should be borne in mind that prison authorities may try to impose several conditions on such a visit, sometimes even the condition of confidentiality. An NGO will need to make a decision whether to accept such conditions or not (see for example the work of the International Committee of the Red Cross, which operates under a confidentiality clause, but it may negotiate a much wider access). Other persons who may have access to prisons include lawyers, healthcare professionals, priests.

In such circumstances, three broad categories of allegations may be received:

- 1) Particularly in the case of new arrivals, allegations may be received about treatment experienced prior to arrival at the institution, whilst in the hands of the investigating authorities.
- 2) Allegations may be received about individual incidents that have occurred within the institution, such as abuse of an individual by a guard or by other inmates with the approval or encouragement of guards, a specific event such as a riot in which named individuals were attacked by guards, a particularly

extreme case of solitary confinement, or the case of an individual who has been refused adequate medical treatment for a serious condition.

- 3) Information can be obtained about general conditions in the institution, such as the living space, hygiene, a particularly distressing aspect of the institutional regime, unacceptable methods of punishment such as the use of chains or fetters, or prolonged isolation.

Speaking with the doctor at the institution can be very informative, particularly if he or she is willing and able to show the documenter the medical files of prisoners. Of course, such access to medical files should be consistent with the need to protect the identity of individuals where confidentiality is expected (see note on confidentiality in Chapter B.2.1 on Ethical Considerations and Confidentiality). Where medical examinations are carried out upon arrival at a prison, it is particularly useful to ask to see the medical report of this first examination. Such a report may provide evidence of injuries received while in police custody, or show that the individual was in good health on arrival and may have received injuries or become ill subsequently. Doctors may be more inclined to show evidence of events that occurred outside of their institution as this is less likely to have implications for them.

Important: An NGO should be aware that there may be repercussions for the doctor depending on how an NGO intends to use this medical information. If possible, this should be discussed with the doctor or other health staff, and if an NGO wishes to get access to medical information of particular victims, the victims' consent should always be obtained first (see note on informed consent in Chapter B.2.1 on Ethical Considerations and Confidentiality).

Medical Settings

In countries where torture and other ill-treatment is a regular occurrence, doctors and other health care professionals are sometimes early witnesses, when they are called to treat the resulting injuries or psychological trauma of ill-treatment. In some countries doctors have specialised knowledge of types and probable causes of injuries or disease; this area of medicine is called forensic medicine.

For legal reasons a forensic doctor is often asked by the police or courts to examine victims of violence and should keep detailed records. While doctors may be too afraid to report cases themselves, requesting a medical file from the forensic doctor, the family doctor, hospital or a prison doctor could yield valuable information. In many countries, there will be a provision in the law giving the individual the right to access to their medical records or at least obtain copies. Again the documenter must receive prior consent **from the victim to obtain access to such documents** and should precisely set out how the information will be used (see Chapter B.2.1).

Professional ethics requires doctors to make accurate reports, and yet in some cases there may be strong pressure to omit findings or even falsify reports. One of the difficulties with medical reports may be that injuries are often described without listing a probable cause. In such a case, it may be possible to ask an independent expert to interpret the findings to see if they are consistent with allegations of torture and other ill-treatment.

Camps and centres for refugees and internally displaced persons

Camps and centres for displaced persons, whether within or outside their own country, particularly in conflict zones, are inevitably home to many deeply traumatised persons who have both experienced and witnessed torture and other ill-treatment, and who may wish to make allegations of such. It should be noted that not all refugees and IDPs live in camps (many live in urban dwellings) and there is no universal model of camps. For example, those where movement is restricted are fundamentally different than those where movement is unrestricted. If information is sought in connection with a specific incident or series of events, the camps will often contain persons originating from the same region or village who can provide corroboration or persons living in urban dwellings can refer an NGO to other people. Some caution will be needed, though, because there may be a possibility of obtaining an unbalanced account of events if an NGO only speaks to one group of people. In addition, perpetrators may also have concealed themselves in the camp and may give misleading information. Where information obtained from refugees or IDPs appears to indicate that widespread

torture and other ill-treatment is one of the causes of the refugee flow, the NGO should consider passing on the information to the UN High Commissioner for Refugees where it has a mandate to operate (see Chapter C.9.1 on Possible Sources of Help).

Crisis Centres, Shelters

Especially in cases where torture or ill-treatment is committed by non-state actors, there are no typical places or contexts where persons are more likely to make an allegation of torture and other ill-treatment. Nevertheless, if a person is subjected to domestic violence or trafficking in human beings, an NGO might talk to them in crisis centres, shelters or safe houses for victims of abuse, but also in any other setting. The safety and security of people alleging torture and other ill-treatment should be a primary concern.

4. SUMMARY OF PART A

1. Introduction

The aim of this Handbook is to provide guidance to NGOs that deal with documenting and reporting torture or other ill-treatment to national, regional and international human rights bodies. Part A of the Handbook is introductory and deals mainly with basic concepts and definitions of torture or other ill-treatment and highlights the changes that have occurred since the first edition of the Handbook. This chapter also provides an overview of the content of the entire Handbook and provides a short terminology section.

2. What is Torture and Other Ill-Treatment?

The definition of torture contained in UNCAT is indicative. When reporting torture, one must be able to prove the essential elements of torture:

- Severe mental or physical pain or suffering;
- Purpose;

- Intent (negligence or recklessness might be considered as other ill-treatment);
- State involvement or knowledge or failure to prevent or protect.

Be aware that the definition of torture and other ill-treatment varies according to the jurisprudence of regional and international treaty bodies.

3. How Does Torture and Other Ill-Treatment Happen?

Who are the perpetrators?

- Anyone acting in an official capacity. This might include police, gendarmes, security forces, prison officers, military personnel, government officials or civil servants, political superiors, ‘death squads’, medical personnel.
- Non-state actors. While the State is the only actor that can be held accountable for human rights violations, perpetrators can be non-state actors if it can be proven that the State acquiesced or consented to their activities. It will be difficult to establish that the State violated the prohibition of torture specifically if the regional or international body interprets the purposive element as entailing a “State purpose”. This should not stop one from attempting to prove that they were perpetrators of other ill-treatment which the State failed to prevent or protect from. International humanitarian law also prohibit torture by non-state actors.

Who are the victims?

Anyone can be a victim of torture and other ill-treatment and every person experiences torture and other ill-treatment differently. Sometimes certain categories of people may be more vulnerable to torture and other ill-treatment.

Where is torture and other ill-treatment most likely to occur?

Torture and other ill-treatment may occur in any location (including during transportation or in a victim’s own home), but especially any place where interrogation is likely to take place as well as places with limited public scrutiny.

When is torture and other ill-treatment most likely to occur?

Torture and other ill-treatment is most likely to occur in the early stages of depriving a person of his or her liberty, particularly if being held incommunicado (without access to a lawyer or family). The risk persists as long as the person remains in or returns to the hands of the investigating officials.

4. Contexts and Places of Receiving Information on Torture and Other Ill-Treatment

Allegations of torture and other ill-treatment may be received in a wide range of contexts and places. In general, they are unlikely to be received in the place where torture and other ill-treatment has occurred, but in the next place where the victim feels able to speak freely.

- **General contexts:** These could include situations of political unrest or generalised violence, or conflict zones.
- **Specific contexts:** These could include visits to custodial institutions, medical settings, camps and centres for refugees and internally displaced persons.

PART B. DOCUMENTING TORTURE AND OTHER ILL-TREATMENT

The purpose of Part B of the Handbook is to provide guidance on how to document allegations of torture and other ill-treatment. While this Handbook deals specifically with documenting and reporting torture and other ill-treatment, allegations of disappearances, extra-judicial killings and other human rights violations can also be documented using broadly similar methods.

Certain basic principles should be borne in mind when documenting allegations of torture and other ill-treatment. One of the most important goals of documenting human rights violations is to ensure that the information collected is accurate, reliable and of a good quality. Lawyers, researchers and investigators must abide by ethical principles, otherwise individuals and their families may be put at serious risk and the credibility of the information collected may be questioned (leading to allegations, for example, that witnesses were unduly influenced or evidence was doctored).

Interviewing the person alleging torture or other ill-treatment is particularly important for litigation but can also be valuable for wider advocacy efforts, in order to illustrate a particular practice or pattern in a State. In addition to the testimony of the victim, corroborating evidence from multiple sources should be collected to support the claim. However, it may not always be possible to obtain a wide range of corroborating evidence due to the clandestine circumstances in which torture and other ill-treatment typically takes place meaning that there may be no witnesses; where there are witnesses, they may fear repercussions if they testify and may therefore not be willing to assist; and the State may be unwilling to release information. In such circumstances, the lawyer or NGO should try to supplement victim testimony with medical and psychological reports and any background information that might contextualise allegations.

The Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol) is one of the most widely used set of principles and guidelines on

investigating and documenting torture and other ill-treatment. The Istanbul Protocol is a set of international guidelines that serve to help with the assessment of alleged victims of torture and other ill-treatment, for investigating cases of alleged torture and other ill-treatment, and for reporting findings to the judiciary or any other investigative body. It includes minimum standards for the effective investigation and documentation of torture and other ill-treatment.³⁴ Anyone engaged in documenting torture and other ill-treatment should therefore use this Handbook in conjunction with the Istanbul Protocol and the Essex Human Rights Centre, Manual on Medical Investigation and Documentation of Torture: A Handbook for Health Professionals' which provides further guidance for health professionals involved in the documentation of torture and other ill-treatment.³⁵

1. THE AIMS OF DOCUMENTATION AND REPORTING ALLEGATIONS OF TORTURE AND OTHER ILL-TREATMENT

The main aim of documenting allegations of torture and other ill-treatment is to provide high-quality, accurate and reliable information which can be used for reporting the allegations of torture and other ill-treatment at the national, regional or international level. The information gathered can be used to establish responsibility of individuals and States, establish patterns of violations, identify measures needed to prevent recurrence, and facilitate prosecution and provision of reparation to victims. Reporting can be done either by NGOs and individuals as part of their advocacy strategy or a means of redressing individual violations of torture and other ill-treatment or by national, regional and international organisations that issue reports on violations of the prohibition of torture and other ill-treatment as part of their mandate or “reporting function”.

³⁴ Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 2004, Introduction, pp. 1-2.

³⁵ Essex Human Rights Centre, Manual on Medical Investigation and Documentation of Torture: A Handbook for Health Professionals' (2005).

1.1. Drawing Attention to a Situation, Establishing a Pattern of Violations

Governments whose agents commit human rights violations prefer to keep such practices out of the public eye, in order to escape condemnation. Reporting allegations to national, regional and international human rights mechanisms raises awareness of the real situation in a country and can contribute to bringing the practice to an end.

If supporting information is available, it is important to try to present evidence of a pattern of violations. A pattern may indicate that torture and other ill-treatment is embedded within the State system and its frequency makes it more difficult for a State to argue that it is not involved or is unaware of the practices. Consistent and regular information is evidence of such patterns and will raise greater concern with the international community about the prevalence and systemic or systematic nature of the practice. Such information may be useful to access certain regional and international procedures that are focused specifically on large-scale or systematic human rights violations and when attempting to establish that torture constitutes a crime against humanity. Information on patterns of torture and other ill-treatment may also be used as supporting evidence in individual cases, be relevant to the nature of remedies and be used for special procedures, such as commissions of inquiry. Establishing such patterns is not, however, a prerequisite for successfully pursuing individual torture and other ill-treatment cases for which the State remains responsible.

1.2. Prevention

The documentation of torture and other ill-treatment may be part of a wider effort to bring the practice to an end and ensure its prevention in the future. If this is the objective, an NGO will need to analyse why the torture and other ill-treatment is happening by identifying the root causes of such treatment and seeking constructive and long-term improvements that will contribute to the ultimate elimination of torture and other ill-treatment in a country.

The information gathered in the process of documenting torture and other ill-treatment can be used for lobbying the national authorities (such as the legislative branch and the executive) to introduce legal and practical safeguards to minimise the risk of torture. Many regional and international mechanisms also make recommendations of ways in which States can improve the general situation. For example, recommendations could be made to introduce legislation to reduce the period for which a detainee may be held without access to a lawyer, the introduction of regular medical examinations by independent doctors for all persons in custody, the prohibition of the use of evidence obtained under torture, or measures to eliminate impunity. Usually, the recommendations of regional and international bodies are just the beginning of a dialogue with the State in question, the purpose of which is to ensure that the recommendations are implemented.

1.3. Combating Impunity

International human rights law imposes an obligation on States to ensure that individuals who have carried out torture and other ill-treatment are held responsible for their actions. If a State does not investigate allegations of torture and other ill-treatment promptly, impartially and effectively, and identify and hold the individuals responsible to account, it is likely violating its obligations under international law. If perpetrators are able to commit torture and other ill-treatment without being held to account, and indeed in some cases find that their chances of promotion are increased by using torture and other ill-treatment to obtain results, there is no incentive for them to give up practising torture and other ill-treatment. Where investigations and prosecutions at the domestic level are not carried out or are ineffective, regional and international bodies may be in a position to condemn official tolerance of torture and other ill-treatment and to recommend that a State take measures to end impunity. Torture and other ill-treatment reporting can therefore highlight an ongoing situation of impunity which NGOs can help combat by pushing for investigations, prosecutions and the full redress of victims.

1.4. Redress

The documentation of torture and other ill-treatment can be aimed at securing justice and reparation for the individual, particularly where an individual case is litigated at the national level and submitted to regional or international quasi-judicial bodies. Litigation can attempt to secure redress for the individual as well as being used strategically to highlight and address particular torture and other ill-treatment practices and/or barriers to accountability. On finding a violation, some human rights bodies make orders of redress (such as compensation) for the individual victim as well as requiring certain systemic changes.

1.5. A Finding of a Violation

A key objective in documenting torture and other ill-treatment, especially in the context of redress for victims, may be to secure a determination of whether or not torture, other ill-treatment or a related violation has taken place. Ideally, a finding of violation should be achieved through criminal investigations at the national level and litigation in national courts. If this is not viable, regional and international (quasi-)judicial bodies can also make such a determination. An authoritative declaration by a (quasi-)judicial body can provide the victim with an official acknowledgment that supports the claim of torture and other ill-treatment and confirms that the State has breached its human rights obligations in relation to a particular individual. If the State does not react to allegations of torture and other ill-treatment and does not investigate them in accordance with its human rights obligations, this can result in a separate finding of violation.

While a finding of a violation is only one step towards full redress of the particular victim, it can provide some relief. A public finding of the responsibility of the State in question, forcing the State to account for its behaviour, can also be used as an advocacy tool for advancing the overall improvement of the situation of torture and other ill-treatment in the country (for example, for establishing safeguards able to prevent torture and other ill-treatment from recurring).

1.6. Reparation

Reparation is about repairing the damage which has been caused to an individual; it has both individual and broader preventive and deterrent effects. Regional and international (quasi-)judicial bodies increasingly specify the forms of reparation required of States found to be responsible for torture and other ill-treatment. The documentation of torture and other ill-treatment may therefore be aimed at securing an award of reparation for the individual and as a means of guaranteeing the non-repetition of torture and other ill-treatment in the future. If an individual wants to pursue reparation, this should be reflected in the process of documenting torture and other ill-treatment, part of which should then be dedicated to the harm suffered and the impact that torture and other ill-treatment had on an individual. The victim should be asked what is most important for him or her in terms of reparations, and this will inform the strategy for claiming reparations.

International human rights law recognises five forms of reparation:

- 1) **Restitution:** meaning measures that restore the victim to the original situation before torture or other ill-treatment occurred. Given the typically long-lasting effects of torture and other ill-treatment, it will never be possible to put a victim of torture and other ill-treatment back in the position enjoyed prior to the torture and other ill-treatment. However, certain measures of restitution may be possible, such as the restoration of liberty, enjoyment of human rights, return to one's place of residence, return of property, etc. Restitution should be done in a way that prevents the victim from being at further risk of being tortured or ill-treated again (which is linked to the below-mentioned guarantees of non-repetition).
- 2) **Compensation:** Monetary compensation is a frequent form of reparation, but this alone is not considered as a sufficient means of redressing the violation. Pecuniary and non-pecuniary damages should be assessed and compensation awarded for physical or mental harm, lost opportunities (such as the loss of employment, education and social benefits), material damages

and loss of earnings (including potential earnings), moral damage and all costs associated with legal, medical, psychological and social assistance required.

- 3) **Rehabilitation:** victims of torture and other ill-treatment should be fully rehabilitated (to the extent possible), which should include providing medical and psychological care and legal and social services. All functions of the person, as well as their full inclusion and participation in society, should be restored and guaranteed and the victims should be included in the processes of establishing and administering rehabilitation services and programmes.
- 4) **Satisfaction:** States should take all necessary steps to stop the violations, reveal the truth and publicly acknowledge the facts regarding the violations, make a public apology and accept responsibility, search for the disappeared and assist families in identification and reburial of the dead, sanction those liable for violation, commemorate victims, etc.
- 5) **Guarantees of non-repetition:** This type of reparation is not aimed at encouraging States to make empty declarations, guaranteeing that torture and other ill-treatment will not occur in the future (either to the particular individual(s) affected or to anyone else) although such declarations are also important as form of satisfaction. Instead, they should introduce a series of measures addressing the root causes of the problem, such as legislative measures, promotional activities, educating officials, putting an end to impunity.

In each individual case a full scope of measures to redress violations should be adopted and reparation should be proportional to the gravity of the violations and the harm suffered.

1.7. Preventing Transfer to a Country with a Risk of Torture

An individual complaint may challenge a deportation, expulsion, extradition or other transfer decision and after domestic procedures are exhausted an individual may, under certain circumstances, bring a case to a regional or international mechanism. A number of such mechanisms are also prepared to

take urgent action requests or interim measures to prevent transfer of individuals to countries where they are believed to be at risk of torture. If an individual or an NGO can establish the existence of such risk, the regional or international mechanism may request that a State where the individual is present does not transfer him or her, at least until the mechanism in question has had an opportunity to consider the case. Such requests are often binding or considered as authoritative interpretation of State's obligation under treaty concerned.

Further reading

- Committee against Torture, General Comment No. 1, Implementation of Article 3 of the Convention in the context of Article 22 (1997),
https://www1.umn.edu/humanrts/cat/general_comments/CAT_CIXX_Misc1_1997.html
- Committee against Torture, General Comment No. 3, Implementation of Article 14 by States parties (2012),
http://www2.ohchr.org/english/bodies/cat/docs/GC/CAT-C-GC-3_en.pdf
- UN, Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Violations of International Human Rights and Humanitarian Law (2005),
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>
- REDRESS, Taking Complaints of Torture Seriously. Rights of Victims and Responsibilities of Authorities (2004),
<http://www.redress.org/downloads/publications/PoliceComplaints.pdf>

2. BASIC PRINCIPLES OF DOCUMENTATION

There are two important sets of considerations that should be taken into account when documenting allegations of torture and other ill-treatment:

- 1) **Ethical considerations**, including professional ethics, informed consent, and concerns over protecting the safety and integrity of persons supplying the information, and
- 2) **Standards of documentation**, which should support efforts to obtain a record of events that is accurate, reliable and precise. The uses to which this record may be put are varied, but all rely equally on the quality of the record which has been established. This means that when documenting allegations, an NGO should:
 - Try to obtain good quality information;
 - Take steps to maximise the accuracy and reliability of the information.

These two sets of considerations (ethics and standards of documentation) should be implemented simultaneously and should not be seen as mutually exclusive.

There are many objectives of documenting and reporting torture and other ill-treatment such as obtaining justice for the individual, prevention, accountability and raising awareness on the general situation. However, victims should not be seen solely as sources of information that help advance broader goals of eradicating torture and other ill-treatment. Instead, the documenting process should be victim-centred and led by the primary principle of “do no harm”. For this reason it is important to adhere to professional ethics, obtain free and informed consent and take care of the safety and security of affected persons.

2.1. Ethical Considerations and Confidentiality

Every individual or NGO that documents torture and other ill-treatment needs to respect ethical standards. Ethical considerations and the principle of “do no harm” should be at the forefront of preparations for documentation, not only for documenting itself. Ethical standards are not static and the NGO should stay up-to-date with the latest ethical standards and guidelines. Where available, NGOs should consider arranging regular training for staff on how to document allegations of torture and other ill-treatment in a safe and ethical manner, bringing in specialists such as psychologists. Another best practice is to regularly

exchange knowledge with other organisations that document torture and other ill-treatment, such as human rights NGOs that have well-trained staff with a history of conducting investigations on the ground and organisations that make regular visits to places of detention.

Chapter 4.3 (Before the Interview) provides detailed advice on how to prepare for conducting interviews in an ethical manner. The interviewer, the location of the interview, the interview questions and their order should be carefully selected and, to the extent possible, decided or outlined in consultation with the interviewee.

When documenting allegations of torture and other ill-treatment, efforts must be made to avoid re-victimising, re-traumatising and exposing victims to further humiliation and pain. To this end, the interviewer should have a professional, respectful and non-interrogatory attitude towards the interviewee. The demeanour of the interviewer must be appropriate and he or she should refrain from using expressions or behaving in a way that could be perceived to be judgmental or insensitive, both in relation to an individual victim or his or her culture as a whole. Even greater care needs to be taken when interviewing children; extra safeguards must be put in place to avoid re-victimisation and even the most experienced interviewers should seek advice from experts before interviewing children. Detailed ethical guidelines specifically relating to interviewing are available in Chapter 4.3 (Before the Interview).

Observing ethical guidelines demands significant preparation and knowledge of the situation and the particular individual to be interviewed. Interviewers should not simply document and leave, but should use a “victim-oriented approach”, meaning that the victim’s needs and interests should be the priority, he or she should be in control of the process and be informed of this. Some important issues that need to be taken into account are:

- 1) The potential risks to a person’s safety and security should be discussed with the interviewee and he or she should decide whether the benefits of documentation outweigh the potential risks. Steps should be taken and

preparation done in advance to ensure the questions are not likely to re-victimise. Documentation should not continue if it is too dangerous for any person involved (the victim, the witness, family members and also interviewees, translators, lawyers and other professionals associated with the case), even if this affects the ability to prepare a successful case or report.

- 2) Knowing when to start and stop documenting is crucial; not all times and situations are appropriate for interviews. Efforts must be made to ensure that the interviewee knows that he or she is in control and can end or decide not to answer a question at any time and that his or her decision will be respected. If an individual does not seem ready or is very upset, the interviewer should not pressure him or her to go forward with the interview, even if there are time constraints or the interviewer is working to a deadline. The decision should be fully in the hands of the interviewee.

2.1.1. Support and rehabilitation of the victim

An NGO will often engage with documenting and reporting on torture and other ill-treatment as part of its institutional efforts to produce a report, advocate for change, and litigate strategically. Nonetheless, the victim should always be at the centre of the NGO's concerns. This means not only obtaining the information from him/her in a sensitive and ethical manner, but also ensuring (to the extent possible) that the victim has access to adequate medical, therapeutic, legal and psychosocial support or that the interviewer supports or directs the victim to support and rehabilitation services. This is particularly important when a victim is the NGO or lawyer's client or when he or she is working closely with the NGO or lawyer. Whether the victim decides to access or use these services is his or her decision.

It is also beneficial if the victim has support from his or her immediate environment (family and friends), although this will sometimes not be possible if the victim is separated from his or her family, the family does not know what happened or does not support the decision of the victim to engage in litigation or wider advocacy efforts. Support from family and friends can help the victim

participate in the litigation or advocacy efforts with less risk of re-traumatisation and also reflects a key factor in the possibility of rehabilitation. If the family is supportive, the NGO could encourage the victim, where appropriate, to include the family in a support programme or be involved in another way.

Rehabilitation must be seen as an integral part of working with torture victims. The NGO, lawyer or human rights defender documenting the case should offer as much effective support to the victim as possible and appropriate, both during and after the interview. Aside from having prepared a list of organisations that can offer further help in rehabilitation, an NGO may even be in a position to contact a health clinic, help soliciting a *pro bono* legal service, ask a local refugee NGO for assistance and similar. Organisations are encouraged to pursue this question further with the specialised agencies listed in Appendix 3.

2.1.2. Confidentiality

Confidentiality is another important aspect of documenting allegations ethically. Efforts must be made to protect the information received, particularly the identity of the victim and witnesses in order to avoid putting them at risk and any confidential materials gathered in the course of documenting and reporting allegations of torture and other ill-treatment. For example, revealing the individual's identity to the authorities or criminal groups or leaving the information unprotected so that it could be accessed could subject the individual to severe reprisals.

Some professions such as law and medicine have specialised professional ethic codes. The work of lawyers is guided by national standards and by the UN Basic Principles on the Role of Lawyers. Doctors and other health professionals are bound by the principle that they should do no harm and they should work in the best interests of the patient, respect confidentiality, and examine and treat patients on a non-discriminatory basis. While lawyers and doctors may have more formalised ethical codes, it should be emphasised that NGOs and anyone conducting documentation should adhere to the highest ethical standards set

either by their organisations or drawn from ethical codes of other relevant organisations or professional bodies.

In certain limited circumstances, the obligation of confidentiality may appear to be in conflict with the interests of the community at large to make violations public for the purposes of the greater good – shining a light on the practice of torture and other ill-treatment with the view of eradicating it. Equally, ethical standards are not always clear on whether maintaining confidentiality is in the best interests of an individual when the individual cannot express his or her will, for example if he or she is disappeared or held incommunicado. In these circumstances, it is necessary to seek guidance from supervising or authoritative professional organisations. Doctors and other healthcare professionals should seek advice on how to deal with ethical conflicts by contacting a medical organisation, either national or international, which should be able to provide support and guidance on the best way to proceed. Other professional organisations should be able to provide similar assistance to their members, as should less formal professional support networks or specialised NGOs.

2.1.3. Free and informed consent

The principle of informed consent is aimed at upholding the autonomy of individuals, giving them control and fully informed decision-making power over the legal, medical and other processes that concern them.

Before obtaining consent, if it has not been done in previous meetings, the interviewer needs to explain:

- Who the interviewer is, the organisation he or she belongs to, its purpose and the nature of its work, what does it do and also what does it not do (i.e. an advocacy organisation should explain clearly that it does not litigate individual cases);
- The purposes and objectives of an interview. The interviewer must explain clearly what he or she is doing and why he or she is interested in speaking to the interviewee;

- That the interviewee is in absolute control of the conversation. The interviewer must make it clear that the person he or she would like to interview is under no obligation to speak, if he or she does not wish to do so. If the interviewee agrees to continue with the interview, he or she has the right to stop it or take a break at any time. If he or she does not feel comfortable answering a question, this is also his or her choice and it will be respected.
- The risks of conducting an interview. Potential risks must be identified and openly discussed. In this regard, the interviewer should ask whether there is anything that can be offered which the interviewee feels will adequately protect him or her. If the purpose of documenting is to produce a public report, the interviewer can offer to use a pseudonym although the interviewee should also be advised that anonymity can also make it difficult for the authorities to investigate the allegations. The interviewer should explore whether any other options can be explored to mitigate risk.
- The purposes, objectives and modalities, including benefits and negative consequences, of the further use of the information gathered. Providing examples of previous reports is a useful way to demonstrate to the person how the information could be used. The interviewer also needs to explain how and where the information will be stored, who will have access to it and what measures will be taken to secure it (including if it is being stored or transferred via the Internet);
- If the interviewee is willing to go ahead with the interview, the interviewer should ask whether the interviewee prefers that written notes are taken or the interview audio-recorded. If one of the options is recording via video/film equipment, then the interviewee must have a choice about if his or her face or other identifying features or clothing can be seen or are to be obscured and agreement must be secured on this beforehand.

Obtaining informed consent not only ensures that the interviewee agrees with gathering information and pursuing the allegations, but also that he or she is aware of the potential risks and setbacks that may occur. If the victim is aware of the risks that will most likely occur and he or she is still willing to go ahead with documenting and reporting, a thorough discussion is needed on what this

cooperation will look like, what safeguards should be implemented, any emergency contacts and similar arrangements. The interviewee should also be aware of the perseverance that is needed when reporting allegations of torture and other ill-treatment or litigating a case before the courts. While it would be counterproductive to present risks as more dire than they are and sound too alarmist, it is crucial to present all risks objectively and not hide any concerns from the person to whom they relate.

Everything should be explained in accessible/comprehensible language, objectively and honestly addressing potential issues and not attempting to persuade the individual to provide his or her consent. Consent should always be freely given; individuals should not be pressured into giving their consent where it is clear that they do not wish to after having been fully informed of the implications. It is vital that interviewers ensure that a person understands that he or she can withhold consent at any time (during or even after the interview) and that this choice will be respected even if the interviewer considers that the individual has important information. The interviewee may also give partial consent or allow the use of information in an anonymised form. It is particularly important for a person who has experienced torture or other ill-treatment to have his or her choices respected at all stages of the interview. The interviewer should check if the person understands the explanations and whether anything needs to be repeated or re-explained and if he or she would like more information or if he or she has any questions or concerns. The interviewer should invite questions and should schedule his or her time with this in mind. In some cultures or with some individuals, the interviewer may need to invite questions more than once before the interviewee will feel comfortable asking questions or expressing confusion about the information. The terms of the consent should never be exceeded and if an NGO wants to use information for other purposes other than those agreed upon in the beginning, it should seek further explicit consent from the interviewee.

Obtaining free and informed consent from a child is problematic. On the one hand, there is a question of legal capacity and the age limit to be able to consent

varies from State to State. On the other hand, there might be a situation where a child needs help, but you cannot get in touch with his or her parent or guardian (for example, to file a *habeas corpus* petition) or their decision is manifestly not in the child's best interest. If the child can consent, it is important to ensure everything is explained with words that he or she understands and extra safeguards are taken in all steps of the documenting process. Such safeguards should ensure that the children are consulted and involved in all aspects of the process that relate to them, their voices are heard, they are protected from any possibility of coercion or silencing and, if possible, they are accompanied by a responsible adult whom he or she trusts. The child's consent and the reasons why the guardians could not provide consent should be recorded.

Whether it is necessary to reveal personal data about individuals interviewed will depend on the type of reporting the information will be used for. No one should ever be named or identified as a source unless free, informed and express consent has been given.

- In cases of litigation, personal data will necessarily be revealed to the body that will consider the petition and the Government in order for the State to be able to respond to the allegations. If the person does not consent to being the applicant, the case cannot proceed to courts (except in rare cases where public interest litigation is allowed, such as before the African Commission on Human and Peoples' Rights). Witnesses on the other hand may refuse to be named, but their statement consequently cannot be used as hard evidence.
- In the case of wider advocacy efforts, there might be more leeway for a decision to give personal details or not and the individual should be the one making the decision. If an NGO's intention is to name an individual in a report, his or her consent must be obtained to that course of action and honestly discussed all its implications, both positive and negative. If an individual decides he or she does not want to be identified, but consents to have anonymized information used, the interviewer needs to take great care to ensure that any information included in the reports or other submissions does not enable re-identification or further risk of reprisals, societal stigma, criminalisation or attack.

If a report or any of the information is to be published online, including on social media sites, the interviewer should inform the victim of this plan and explain the wide-ranging consequences of publishing the name, a photo or any other identifiable information of the individual online. The consequences for individuals' safety may be grave if they are identified by authorities or non-state groups and suffer reprisals. The problem with information online is that it spreads quickly and practically can never be completely removed once it has been published. Before publishing information online, it is important to consider whether such information might be used and abused in ways that were not previously anticipated. While information may be carefully presented in a particular context, it might be later manipulated, taken out of the context or paired with other pieces of information that would enable identification of the individual even if personal data has been redacted.

If an individual does not need to be named expressly in a report, document or other communication, the risk involved will probably be less severe. It is still necessary to obtain an interviewee's consent before the interview and to ensure he or she understands the risks, but it is possible to assure a person that he or she will not be identified and that the risks posed are lower. It is important to remember that only omitting a person's name is not enough to anonymise the documents, and all identifying information needs to be omitted or altered (with a note explaining any alterations). This includes places of detention in combination with specific allegations, the person's image and voice, sometimes even the way he or she expresses him or herself, distinctive clothing and any other identifiable information.

Best practice requires concluding the interview by repeating the purposes and objectives of gathering information after the interview is finished to make sure that a person consents to the use of information he or she has just provided. A person may withdraw his or her consent at any time and this should be strictly respected.

2.1.4. Security of persons and information

Safety and security concerns should be at the forefront of documenting and reporting torture and other ill-treatment. Under no circumstances should a NGO, lawyer or human rights defender compromise the safety of the person in order to document torture and other ill-treatment. This includes taking into account security of the person, documents and equipment. One should understand that not all risks can be mitigated and it will sometimes not be possible to document and report torture and other ill-treatment because of the concerns for the safety of victims and their families. The NGO should also realise that safety and security guidelines do not exist in vacuum and that the NGO needs to stay up-to-date with technological developments, the cultural context and the specific situation in a country or in a setting being monitored or investigated.

It is important to explain to a person the limits of what can be done to protect him or her. Interviewers should make sure that a person does not misunderstand that help or protection can be provided if it cannot. Interviewees should be asked about their own security concerns, and their concerns should be fully discussed. If possible, follow-up discussions should be had during and after the interview.

One of the most important elements in mitigating the risks is confidentiality and keeping the information safe. Materials, both in physical and electronic form, should be stored, processed, transported and shared with extreme caution. Individuals may suffer severe reprisals if confidentiality is broken or if authorities obtain relevant documents. Electronic documents and correspondence should be encrypted and password protected and interviewers should use one or more of the tool-kits developed for the protection of electronic documents for human rights defenders (see below, under Further reading). The threat of hacking and intercepting information is real and every device with the possibility of connecting to the Internet should be treated as a potential security risk. Files should be securely locked in protected offices and backups should be maintained if possible, especially in countries where authorities may or do raid offices of human rights defenders and NGOs, as documents can get destroyed or planted.

Sometimes, transferring documents out of the country is needed to protect them and the organisation, which again should follow strict security measures. All this should not be seen as an exhaustive list of protective measures. Every organisation dealing with documenting and reporting allegations of torture and other ill-treatment should consult specialised publications and “top tips” for the protection of persons and information (see for example Front Line Defenders’ Manual on Digital Security and Privacy for Human Rights Defenders, http://www.frontlinedefenders.org/files/en/eseccman.en_.pdf).

It is also necessary to choose safe locations for the interview and other related processes. Planning for a safe environment includes checking how the place looks, what security considerations apply and taking into account the whole architecture and infrastructure, while bearing in mind that some cities and States have controlled parts where movement is under surveillance. Threats to security might not come only from the authorities but also from gangs, rebels and similar groups. It is particularly important that no one is listening to the interview(s). When interviewing or engaging in sensitive conversations, it may be necessary to completely disable mobile phones by taking out the battery and separating the battery from the phone. When a safe location is arranged for the interview and there is a risk that someone is tracking the interviewer’s or interviewee’s movement, the phone’s battery should to be taken out before travelling to the agreed location. If the interview is conducted in a detention facility or where authorities are inevitably present, it is important to find a space, if possible, where no one is within hearing range. It may be necessary, particularly where there is a fear of reprisal, for individuals to refrain from demonstrating injuries or processes of torture and other ill-treatment if the authorities remain in the line of sight.

Further reading

- Front Line Defenders, A Manual on Digital Security and Privacy for Human Rights Defenders (2007), http://www.frontlinedefenders.org/files/en/eseccman.en_.pdf

- Front Line Defenders, Workbook on Security: Practical Steps for Human Rights Defenders at Risk (2011), http://www.frontlinedefenders.org/files/workbook_eng.pdf
- Front Line Defenders and Tactical Technology Collective, Security in-a-box: Tools and tactics for your digital security, <https://securityinabox.org/>
- Istanbul Protocol, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Chapter II: Relevant Ethical Codes, pp. 11-17 (2004), <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>
- Save the Children, Interviewing children: A guide for Journalists and Others (1998), http://www.savethechildren.org.uk/sites/default/files/docs/INTERVIEWING_CHILDREN.pdf
- UN, Training Manual on Human Rights Monitoring, Chapter V: Basic Principles of Monitoring, pp. 87-95 (2001), <http://www1.umn.edu/humanrts/monitoring/monitoring-training.html>
- Witness: Conducting safe, effective and ethical Interviews with survivors of sexual and gender-based violence, <http://library.witness.org/product/guide-to-interviewing-survivors-of-sexual-and-gender-based-violence/>
- Essex Human Rights Centre, 'Manual on Medical Investigation and Documentation of Torture: A Handbook for Health Professionals' (2005)

3. STANDARDS OF DOCUMENTATION: QUALITY, ACCURACY AND RELIABILITY OF INFORMATION

Collecting quality, accurate and reliable information should always be the goal, no matter how difficult it might be in a given circumstance. Some situations will force researchers to make compromises and sometimes ethical considerations will limit the extent to which documentation is possible, but it is necessary to strive for the best possible result of your documenting efforts. It is sometimes difficult to be certain of the quality, accuracy and reliability of the collected information. However, when assessing the nature of the information it is important to remain objective, no matter what opinion one may hold about the

general situation or however strongly one feels about the content of the allegation. This is important because the information put forward to national, regional and international bodies will reflect the researcher's reliability and will affect individual's and organisation's credibility and reputation with the relevant regional or international bodies.

The quality, accuracy and reliability of information necessary in relation to a particular allegation depend on the purpose for which it is to be used. For example, judicial procedures, particularly at the national level, usually require a higher standard of proof than reports of torture and other ill-treatment within a State party report. This is because criminal prosecutions entail legal consequences such as the conviction and imprisonment of an individual. By contrast, state party reports do not make determinations of individual guilt or innocence but examine individual cases from the perspective of the compliance of the State with its international obligations on torture and other ill-treatment.

It is important to keep in mind that when collecting evidence, especially if it may also be used in criminal proceedings, NGOs and human rights defenders should take care not to make the job of professional investigators and prosecutors more difficult. There can be a risk that the defence will claim that the victim was 'coached' by lawyers, which might undermine a criminal prosecution. If a witness statement is taken by an NGO, and this ends up contradicting a later statement by a criminal investigator or prosecutor, the discrepancies can be used to undermine the credibility of the witness, and may negatively impact an eventual prosecution. Where possible, these issues should be discussed with prosecutors in the countries concerned, to minimise risks.

In this Chapter, the emphasis is placed on documenting allegations of torture and other ill-treatment in order to be of use across the various types of procedures including, where possible, for litigation. This is because while an allegation may be documented with a report in mind, thus requiring a lower standard of proof, at a later date, the victim may wish to submit a complaint or initiate a criminal procedure. Using the report as evidence in a criminal trial will require meeting a

much higher standard of proof. Collecting evidence of the highest quality ensures that it can be used for a diverse range of purposes at different times or simultaneously.

3.1. Remaining Objective and Relying on Facts

The majority of national, regional and international human rights institutions and bodies require objective information, grounded in facts. It is important to critically examine the accuracy, reliability and quality of information and try to corroborate it with other evidence. Sweeping statements, unsupported allegations, and politically motivated accounts will lower the chances of achieving the aims of documentation and reporting. Especially when documenting in an environment in which the researcher is not very familiar, thorough research of the cultural and political situation of the country is required in order to assess the possible alternative motives of sources. Nevertheless, even if the motives of sources of information might be questionable, evidence of torture and other ill-treatment might be compelling in its own right and still relevant and reliable (if corroborated).

Remember that where you have genuine cause to believe that a person is in danger and urgent action is needed, you may need to act quickly even where some doubts remain as to the reliability of information. It is clear that in such circumstances, the security of the person should take priority.

3.1.1. Maximising quality, accuracy and reliability

When gathering evidence, it is important to pay attention to the clarity of the account. Throughout the process, researchers should ask themselves whether there are any aspects that they do not understand or which seem unclear, vague or contradictory. Attention needs to be paid to gaps in the chronology, where periods of time are not accounted for, and to inconsistencies between different evidence. Returning to these gaps and apparent contradictions may reveal elements that were not initially considered.

When carrying out interviews, the quality, accuracy and reliability can be maximized by:

- Making sure the person feels safe and trusts the interviewer.
- Making sure that interviewees understand that additional assistance (such as humanitarian assistance) will not depend on whether or not they supply information. This may reduce exaggerated accounts that can occur because people expect favourable treatment.
- If possible, it is better to interview a person several times for shorter periods instead of one time for a long period. This prevents the interviewee from becoming exhausted, enables a rapport between the interviewer and interviewee to develop and can also help the interviewee tell a fuller and more reliable account, because he or she might not remember some details or may not be comfortable talking about it the first time. It also gives the interviewer the opportunity to think of any additional, clarification questions to ask.
- Inviting the interviewee to explain what happened freely, with his or her own words. The interviewee might start talking about what happened to him or her as a series of events or go back and forth and tell the account as a series of impressions and scattered memories. While the interviewer needs to reconstruct the chronology of the events, it is best to let the person speak freely and, when necessary, ask precise clarifying questions to establish a timeline. These questions will help identify and address any inconsistencies in the account. If it is possible to conduct two interviews or even more, one could be used for building rapport and hearing the interviewee tell a story freely and the other interview could be dedicated to asking questions and get the details straight.
- Reviewing apparent inconsistencies from several angles, rewording your questions if necessary. Interviewees may be confused or may not understand a question initially. If a question seems unclear to the interviewee, the interviewer should ask whether it was unclear and whether the interviewer should ask the question differently or explain why he or she is asking a particular question.

- Asking for indications of supporting evidence, such as any witnesses to the alleged incident or any supporting documentation, such as a medical report or a copy of a petition lodged as a result of the incident. It is important to explain that supporting documentation can help to make an allegation stronger and may increase the opportunities available for a remedy.
- Observing the interviewee's demeanour and noticing signs of tiredness or distress. The interviewer should ask the interviewee if he or she needs a break or want to end the interview and return to it at a later stage. The fact that a person does not want to talk about certain events may mean different things and the interviewer should be wary of making incorrect assumptions about why a person does not want to speak about it. It is important to realise the influence of factors such as culture, gender and psychological state of a person giving the interview.

Information that might be considered as of good quality, accurate and reliable is:

- Coming from a reliable source;
- Detailed;
- Consistent and non-contradictory;
- Corroborated from several angles;
- Corresponding to a pattern;
- Recent.

Each of these elements will be discussed in some detail below.

3.1.2. The source of the information

The greater the distance, temporally or physically, there is from the victim or incident, the less dependable the information is likely to be. As a rule, the victim should be interviewed, unless this is impossible because the person has died, disappeared or is being held incommunicado, as well as any witnesses. If it is not possible to secure such testimonies, this should be explained in the submission. If the authorities prevent the documentation efforts the burden of proof might, under some circumstances, shift towards the State.

3.1.3. The level of detail

The submission should include as many details as are available about the alleged torture or other ill-treatment. Any unexplained gaps need to be explored by asking the victim follow-up questions and gathering additional sources of information. Sometimes, NGOs only gather basic information, which does not help establish what happened. The more details an NGO presents, the less likely it is that the State will be able to defend against allegations. Ethical considerations must guide decisions as to when digging further into a victim's story will be more damaging for a person than it will be useful for the reporting efforts.

Establishing the minimum elements of an allegation of torture and other ill-treatment, based on the definition of torture or ill-treatment, is essential (see Chapter A.1.1 on Definition of Torture Under International Law and Chapter 1.4 on The meaning of torture in practical terms). In the absence of evidence for these elements, it will be difficult to pursue the allegations further. As mentioned, best efforts should be used in gathering as much evidence as possible to prove the allegations. Nevertheless, some situations are less than ideal and many times a documenter will need to operate in circumstances in which some evidence is missing or impossible to obtain. Some details may not be determinative for proving allegations and if under time pressure, an allegation should still be sent if there is enough information and evidence to make an arguable case that there has been a violation following a particular standard of proof that needs to be reached in particular circumstance.

3.1.4. Corroborating information, seeking supporting evidence

The more supporting documentation that can be provided, the more likely it is that the allegation will be found credible. Verifying the accuracy and reliability of information can be a difficult, sensitive and time consuming task. It is, however, possible to maximise the likelihood that information is accurate and reliable by

seeking corroboration of the account with information from other sources as well as experts.

Corroborating evidence includes:

- Medical information on the health of the individual alleging torture or other ill-treatment prior to detention;
- Medical and psychological examinations while in detention. Where these cannot be obtained, this should be explained in the submission, noting the burden on the State to provide such information;
- A recent medical and psychological assessment indicating the degree of consistency of findings (injuries) with the allegations of torture or other ill-treatment. Medical reports preferably prepared in conformity with the Istanbul Protocol will assess whether the injuries are consistent and how consistent they are with the allegations of torture and other ill-treatment as well as noting any potential false allegations and other possible causes of injuries;
- Witness statements;
- Other reports that support claims of torture or other ill-treatment in the same detention centre or by the same State agency.

If part of the victim's account relates to an unknown, rare or disputed torture and other ill-treatment technique, a specific expert opinion might be useful as it may help convince the human rights institutions that receive allegations of torture or other ill-treatment that, although not frequently recorded, such allegations are plausible. Some experts might be trained in documenting particular injuries (such as stemming from electric-shocks or use of chemicals) or issues such as late disclosure of torture and other ill-treatment.

Any aspects of the story that cannot be corroborated or that cast doubt on the whole account need to be thoroughly explained. Often there will be a perfectly reasonable explanation, for example that the victim cannot remember certain (even very important) details because of the injuries or effect of torture and other ill-treatment (such as trauma). Discussing the gaps with the alleged victim can lead to clearer explanations or the identification of witnesses and other

information that can corroborate the account. Indeed, the lack of evidence may sometimes be the basis of a legal argument, for example that the authorities did not conduct an effective investigation, that they hindered the use of remedies, that they do not keep detention logs or that the medical examination was not available. However, even in such circumstances, recent medical and psychological assessments can be obtained, ideally, by a practitioner who is knowledgeable in the use of the Istanbul Protocol. In such cases, it may still be possible to submit witness testimony. This can be a difficult task in practice due to fears of repercussions.

General precautions that can maximise reliability include:

- Knowing the sources, their motives and the context in which allegations are being made;
- Maintaining contact with sources in order to obtain or verify details at a later stage. Victims' names and contact details are necessary even if they are kept confidential;
- Being cautious and thorough with verifying or using vague or general information;
- Avoiding allegations based purely on media reports or rumours without seeking corroboration first. Submissions based purely on media reports may even be deemed inadmissible.

Ultimately, good judgment must be exercised. Where there are doubts about the accuracy or reliability of an allegation, it is worth spending more time seeking corroboration. If there are reservations about the allegation, bodies that deal with allegations of torture and other ill-treatment will likely pick them up as they are reading the allegations as they are presented in the submission.

3.1.5. Minimising contradictions and inconsistencies

It is necessary to determine if the account is consistent throughout or whether there are contradictions in the account or elements that do not make sense. Good information should be consistent, or at least with a reasonable explanation

for any inconsistencies. For example, if a victim or witness has made two statements which contradict each other, it may be a result of intimidation or confusion due to trauma, which should be indicated in the report. The best way to achieve a consistent account is to approach it chronologically and explore the key points that show inconsistencies. Minor inconsistencies are common and may not affect the overall quality of the information, but major inconsistencies should prompt further verification of the information (see above). Some decision-makers erroneously think that if there is a slight inconsistency in the story, the person is lying. This is often not true for a number of reasons, including that people often have trouble remembering the details of traumatic events, they might not be ready to talk about the worst parts of what had happened to them at a particular point in time, or they might have been unconscious for some of the relevant time. It is necessary to address any gaps or inconsistencies and explain them in the submission.

3.1.6. Fitting a wider pattern of torture and other ill-treatment

If the individual allegation that you record is similar to many allegations made in the country, a region or in a particular detention facility, this might strengthen the credibility of the information. Where there is evidence of a commonplace practice, there may be a higher presumption that the information is true. Conversely, if the allegation is the only one of its kind, such as an allegation of electrical torture where it has never been recorded before, you might need to go to greater lengths to demonstrate the credibility of the allegation, for example by presenting different types of evidence (witness accounts, media reports) on the same issue and/or gaining a medical report that addresses this particular issue in some detail.

The submission should include analysis of whether the individual allegation fits wider patterns of torture and other ill-treatment recorded in the country. When presenting findings, it is important to remain objective and not manipulate information, remaining aware of the limits of both quantitative and qualitative data analysis. For example, if there are only a small number of reports on torture and

other ill-treatment or a limited experience with particular methods of torture and other ill-treatment, general assumptions of the situation in a country are inappropriate. The credibility of the report or submission might be attacked and discredited on the basis of information included and conclusions drawn by the reporter, particularly if statistics are used. A sound methodology is needed with systematic and robust research. A methodological section in a report or submission, describing the process of obtaining information and reaching conclusions, is important to avoid undue criticisms of the report.

3.1.7. The age of the information

Information should be as recent and up to date as possible. The fresher the information, the easier it is to investigate or verify facts alleged. Interviewing the alleged victim as soon as possible – taking into account how ready he or she is to speak – is important because he or she might otherwise forget some crucial details. It is often not possible to obtain information of this temporal quality, but this does not mean that information gathered cannot be used. When injuries that are allegedly the result of torture and other ill-treatment are not visible (anymore) and there is no documented evidence of their existence (a medical report, photographs), obtaining a psychological report is vital.

Further reading

- Istanbul Protocol, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Chapter III: Legal Investigation of Torture, pp. 17-25 (2004), <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>
- UN, Training Manual on Human Rights Monitoring, Chapter VII: Information Gathering, pp. 99-109 (2001), <http://www1.umn.edu/humanrts/monitoring/monitoring-training.html>
- HURIDOCS, What is documentation. A manual (2003), <https://www.huridocs.org/resource/what-is-documentation/>
- Essex Human Rights Centre, 'Medical Investigation and Documentation of Torture: A Handbook for Health Professionals' (2005)

4. GATHERING EVIDENCE

The guidance below sets out the optimal information that can be collected. This is not a rigid checklist, and must be used flexibly, adapting to the particular context. It is important not to be overly focused on obtaining a specific “number” of details, which may either be inappropriate in a particular case or may result in failing to pick up other important points that were unexpected. Even more importantly, the individual interviewed must be respected and not seen as simply a source of information, as the interview may then come across as an interrogation (see guidance on ethical documentation in Chapter B.2.1).

4.1. Model information

Information should, when gathered, assist in answering the following key questions:

- **Who did what to whom?**
- **When, where, why and how did it occur?**

The preferred “model” for information is based on situations where evidence is gathered in the context of allegations of torture and other ill-treatment in detention settings, by, at the instigation of, or with the consent or acquiescence of a public official or persons acting in an official capacity. When collected and submitted, the information should be able to:

- Identify the victim(s) (even if that information is kept confidential or anonymized);
- Identify the perpetrator(s);
- Describe how and under what circumstances the victim was deprived of liberty;
- Explain where the victim was taken or held;
- Describe what the holding conditions were like;
- Describe the details and form of ill-treatment;

- Describe the effect of the torture or other ill-treatment on the individual;
- Outline the nature of all complaints made to the authorities by or on behalf of the victim;
- Identify any other ways in which the State should have been on notice of the alleged torture and other ill-treatment (for example, a newspaper report); and
- Describe any official response to the incident and any complaints made.

You need to be flexible with this “model” when documenting allegations of torture and other ill-treatment in other contexts or when ill-treatment is alleged against non-state actors.

While conducting the interview, the interviewer needs to make sense of the chronological order of the events that occurred, even if the interviewee does not tell his or her story chronologically. This will help in identifying any missing or contradictory information.

4.1.1. Identifying the victim(s)

The more details that can be provided about the individual, the more definite the identification can be. Identifying information may be:

- Full name (and father’s or mother’s maiden name, which is relevant to some cultures),
- Gender (this may not be clear from the name alone);
- Date of birth or age;
- Country of birth and country of residence;
- Address (be careful: when representing an individual for whom there are security risks, revealing an address may be ill-advised. Some human rights bodies will demand this information, but confidentiality can be requested. It is preferable to request that all communications with the individual are directed through his or her representatives, particularly when the person is outside of the State alleged to be responsible for the violation);
- Occupation;
- Appearance, including any unusual physical characteristics;

- Photographs of the victim (alive or dead if this should be the case).

4.1.2. Identifying the perpetrator(s)

For a violation to be established, the submission must prove that the victim was in the custody of, or held with the acquiescence of, the authorities, or that the authorities failed to protect the victim or investigate the alleged violations. It is not necessary to identify the individual perpetrators (though this should be done if possible), but the information provided needs to be sufficient to help establish that the State should be held responsible. Some of the important elements that the evidence should help establish are:

- **The identity** of perpetrators. This will ideally include the number of people and their name, rank and the unit. If this information is not possible to obtain, the emphasis should be on providing any details that could help with the identification, for example:
- **The unit** that the perpetrators belong to (security force including police and military, paramilitary, etc).
- **The clothing**, whether they wore uniform or plain clothes and any special insignias.
- **A detailed description** of the perpetrators' appearance and if they had any unusual characteristics.
- **Weapons** that they carried, some weapons may be fairly specific to a force.
- **Vehicles** that were used, whether they were marked or unmarked, including any special characteristics, or the number plate or registration, if noted.

Other pieces of information may help with the identification of the perpetrators, for example the date and place in which the ill-treatment occurred, which may make it possible to check who was on duty at that time. While the unit, clothing, appearance, weapons or vehicles can help in the identification of perpetrators who otherwise remain unknown, these pieces of information are also important in their own right as corroborating information. It is important to try to gather this information even where a victim claims to know who committed torture and other ill-treatment.

4.1.3. Circumstances of arrest or taking into custody

The method of abduction or taking into custody and subsequent treatment may be characteristic of a particular group operating in the area, and helps to establish that the victim's claims of being held by the perpetrators is credible. To offer a reliable account of the circumstances in which the person was deprived of liberty, lawyers or NGOs should try to establish:

- **The place** where the person was deprived of liberty, e.g., home, street, place of worship, outside a military base.
- **The time** at which the person was taken into custody (e.g., whether it was morning, afternoon or night) and the exact or approximate date (month or season of the year, or where necessary, special events around that time that may help establish a date).
- **The way** the arrest or abduction was carried out, including whether there was any warning, any form of restraint or force used, any witness present, the victim was summoned to a police station, as well as the general situation (for example, there might have been demonstrations), what the captors said, how they behaved, etc. If none of these details are known, establishing when and where the victim was last seen and in whose company may assist in supporting a claim.
- **The reason** given for the arrest, if any was given. Even if no official reason was given, a reason may be suggested by the kind of questions asked or the circumstances of the arrest. If no reason was provided or no questions or statements were made during an arrest, this should be noted in the submission.

4.1.4. The location of detention

Victims may have been held in a particular place or may have simply been taken to an area of the town and then left, with ill-treatment occurring during the transport. It is important to try to establish, with the evidence:

- **The name and location** of the police/gendarme station, military camp, institution or area;
- **The length** of the detention; and
- **Any transferring** of the person to another place of detention. If a person was transferred, the question is how, where to, approximately when, by whom, for what reasons (if any were given), and how long did the transfer last. Often, ill-treatment occurs during the transport to a different location, so it is important to address that in your interviewing and reporting.

4.1.5. Conditions of detention

The conditions of detention may form a part of the ill-treatment itself and may be one of the root causes for the occurrence of torture and other ill-treatment (e.g., incommunicado detention). Proving the existence of secret places of detention may be particularly challenging. In such situations, it may be necessary to rely on the combined testimonies of different individuals to establish that the place actually exists and for help in identifying its name and/or location.

The interviewer should ask the victim to describe the place in which he or she was held in as much detail as possible, particularly the cell or place where he or she slept and any other rooms where he or she was taken, including for any interrogation. Victims may have been blindfolded, in which case, they should be asked to describe the situation using senses other than sight, such as what they heard, smelled or touched. Below is the type of information that needs to be documented about the conditions:

- **Location of the room within the institution:** it might be useful to ask how the interviewee reached the room (was it upstairs or downstairs, etc.), did he or she notice any landmarks on his or her way there, what could they hear and smell, could anything be seen out of the window of the room (if there was one)? It is useful if the interviewer and the interviewee can construct a map of the layout of the establishment.
- **Others held in the room:** the number and identity of other people held in the same space is very important, as they may be potential witnesses that can

corroborate the victim's account. The pertinent questions are whether they noticed anything in regards to the state of health of the victim and the state of health of other people present, were there only adults or also children/adolescents as this may reveal another set of violations?

- **The room itself or another place where the person is held:** it is important, to the extent possible, to record the size, shape and anything unusual about the room or another place, including what the walls, floor, ceiling, door etc. were made of, and what was in the room (bedding, furniture, toilet, sink, etc.).
- **The conditions in the room:** what was the temperature, was there any ventilation, dampness or light, was the light natural or electric (how long was the electric light on), what was the colour and intensity of the light?
- **Hygiene:** did the facilities for personal hygiene exist and in what condition were they, where and how did the detainees go to the toilet or bathe, was there privacy for these activities, what was the general hygiene of the place, and was it infested in any way? It is also important to note what clothes detainees wore and whether they could be washed or changed.
- **Food and drinking water:** it is relevant to note how often, how much and what quality of food and water was given, who provided it and whether it was provided free of charge. If the victim refused to eat, how did the authorities respond? This is important to know with regard to force-feeding.
- **Exercise:** questions could include whether there was an opportunity to leave the cell for exercise, for how long and how often, and what the detainee was allowed to do when outside of the cell.
- **Isolation:** if the victim was in isolation, the interviewer should record the information on the length and manner of isolation.
- **Medical facilities:** some questions to explore are whether medicines were available and if so, what type, who provided the medicines to detainees, whether a doctor or any other form of healthcare professional was present or available, had there been any concerns about health professionals, whether treatment was adequate in circumstances, had there been any delays in treatment, and whether the prisoners could be examined or treated in a separate medical facility, such as by a family doctor or hospital, etc.

- **Family visits:** did the family know where the person was, were family members allowed to visit, where did these visits take place, and could conversations be overheard?
- **Legal representation and consular notification:** it is necessary to document whether the victim could access legal representative of his or her choice, whether access was asked for but denied, when access was first given (i.e., how long after the victim was first taken into custody), how often was it given, where did visits take place, and if the conversation could be overheard. If the person is a non-national of the State in which he or she was detained, you should establish whether the embassy or consulate was notified (ex officio or upon request) and whether a consular representative had access to the person while the latter was deprived of liberty.
- **Appearance before a judicial officer:** Did the victim appear in person before a magistrate or court and if so, when did this happen (i.e. how long after the victim was first taken into custody)?
- **Bribes:** Did bribes have to be paid for access to these facilities and or realisation of these rights?

4.1.6. The details and form of torture and other ill-treatment

Remember that torture and other ill-treatment encompasses psychological forms of ill-treatment as well as physical. The forms of torture and other ill-treatment are limited only by the imagination of the perpetrator, and it is neither possible nor desirable to provide a list. The victim or witness should be asked about the exact nature of the treatment inflicted:

- Where did it occur?
- What happened?
- How often?
- What effects did it have on the victim, both immediately and later?

In particular, the victim, witness and supporting evidence should help establish the following facts:

Where did it occur?

- The evidence should provide a detailed description of the location (a room, hallway, vehicle, etc.), including any distinctive things about the room in which torture and other ill-treatment took place.
- If necessary, the person should draw the map showing the layout of the room(s) where torture and other ill-treatment occurred.

What happened?

- Keep in mind that the submission should be as detailed as possible and should be structured chronologically, describing exactly what occurred and for how long. The interviewee might not describe the events chronologically, but he or she should be ordered and presented like that in a submission.
- If torture and other ill-treatment was physical, it is important to have a description of any instruments used and the parts of the body to which the treatment was applied. If torture and other ill-treatment was psychological, it is necessary to understand the exact nature of the treatment, how the victim's senses and/or personality were disrupted and how the treatment made the victim feel, both at the time and afterwards. If the treatment is physical it most likely also causes psychological effects and vice versa.
- The purpose of torture may be indicated from the questions asked, or other things said, during the course of the torture (N.B. verbal abuse and derogatory remarks may also constitute ill-treatment in their own right).
- If there were any other detainees present at the time, it is important, if they are willing, to find out what they saw, whether they were aware of what happened to the victim, and if they suffered any ill-treatment themselves. It is also important to find out whether the victim experienced any abuse by other prisoners.

How often did it happen?

- In establishing the severity and the cumulative effect of torture and other ill-treatment, it is relevant to know how protracted and/or frequent each particular form of torture and other ill-treatment was.

What effects did it have on the victim immediately and later?

- Record the details of all the immediate effects the victim experienced following each particular form of torture and other ill-treatment.
- Establishing the long-term effects (physical or mental) might be more challenging as the State might dispute the correlation between the alleged treatment and the effects. Ask the victim about the effects, noting at particular intervals (after a week, a month, etc.). It is important to try to support the victim's account with medical and psychological assessments if possible.
- It is also important to show the individual's state of health before being arrested or detained, and to document whether he or she received any medical treatment, either immediately or at any later time, including upon release.
- If there were any medical personnel present before, during or after torture and other ill-treatment, ask about their identity, or a description that can help identify them, as well as their role in the torture and other ill-treatment.

4.1.7. The nature of complaints made to the authorities by or on behalf of the victim

The victim should provide information on the following:

- Whether he or she has complained, either through an internal complaints procedure, such as those that should be available in prison, and/or externally to police, prosecutor, courts, human rights institutions and similar bodies.
- Whether he or she lodged a *habeas corpus* petition (a petition requesting the court to assess the lawfulness of custody and order a release in case of unlawful detention), whether there has been periodic court review of the decision to detain and/or whether the victim lodged any claims after the release from detention.

If possible, the victim or his or her representative should obtain proof that the complaints were made (such as an official stamp or a similar proof), and make copies of complaints before submitting them. Copies of complaints should be securely stored. If the victim cannot provide a copy or proof, details on when he

or she sent complaints, to whom, and what information was included should be noted. The victim should also document the following:

- **Response to complaint:** if the victim complained or told anyone in authority about torture and other ill-treatment, was there a response? Collect and keep any documentary evidence of the official response.
- **Investigation:** was any form of investigation initiated? If so, what did it entail? Include details on its scope and basis and gather information that will help establish whether the investigation was prompt, impartial and effective. The evidence should establish whether any witnesses and/or alleged perpetrators were interviewed, and if the victim died in custody whether an autopsy was carried out and whether or not it was independent.
- **Contact with the officials:** since the incident, has the victim been contacted by the officials who took him or her into custody (or other officials from the same branch or force), brought in for further questioning or appeared before court? If he or she was detained outside of the State of nationality, was the embassy contacted and have representatives communicated with the authorities? If so, what was the nature of the communication and response?
- **Medical examination:** the evidence should establish whether the victim was seen by a doctor either during or upon release from custody; whether the doctor was an independent practitioner or a doctor employed by the State (including within the detention centre). How the victim got to the examination room, whether anyone accompanied him or her or was present during the examination; who carried out the examination; whether the doctor issue a medical report and if so, its content; and whether the victim had any obvious signs of injury at the time.
- **Charges against the individual:** if the victim appeared before a magistrate or court at any time during the period of custody, was he or she informed of any charges against him or her? Was he or she accompanied and represented by a lawyer? Did the presiding judge ask about the victim's treatment in detention and/or did the victim raise it? In case of the latter, what was the response? Did the victim have any visible signs of injury when before the court and did the judge ask about them?

- **The role of the family:** did the victim's family apply to authorities for information about the victim at any point, including the early stages of being held in custody, and if so, was there any response?

It is important to keep a record of all correspondence with the authorities or ask the victim to bring any correspondence he or she has. All failures of the authorities to respond should be noted, as this could prove important in court proceedings when establishing that the victim sought to remedy the violations and/or tried to trigger an investigation into torture and other ill-treatment.

4.1.8. Ill-treatment by non-state actors

In instances where the alleged perpetrator is a private individual rather than a State official, he or she should be dealt with under the ordinary criminal law of the State concerned. International human rights law will only be engaged if the State, through its officials, is on notice of the allegation and fails to prevent or protect the victim from harm by the private actor. It therefore needs to be established first that the State knew or should have known of the alleged violations and second, that it failed to act. This is a particularly high threshold to meet. However, recently regional and international bodies have found States responsible for failures to protect women from domestic violence and victims of trafficking in human beings. In reaching these findings, the courts placed emphasis on factors such as the heightened 'vulnerability' of the victim, the framework in place to prevent and protect such victims and any statistics, documents and reports revealing a wider pattern of failure to respond to complaints of a similar nature, and specific international obligations on violence against women and trafficking in human beings. More information on non-state actors and the responsibility of States is available in Chapter A.2.1.2 of this Handbook, which may provide advice to NGOs on further information they need to obtain. For the purposes of documentation, the NGO, lawyer or human rights defender should document any and all attempts by the victim to bring the ill-treatment by a non-state actor to the attention of State actors such as police or social workers and any other ways in which the State may have been put on notice of the allegations of ill-treatment by

a non-state actor. The responses (if any) of the State actors should also be documented.

Further reading

- UN, Training Manual on Human Rights Monitoring, Chapter VII: Information Gathering (pp. 99-109), Chapter IX: Visits to Persons in Detention, pp. 127-167 (2001); Chapter X: Monitoring and Protecting the Human Rights of Refugees and/or Internally Displaced Persons Living in Camps (pp. 167-203); Chapter XVI: Monitoring During Periods of Armed Conflict (pp. 327-349), <http://www1.umn.edu/humanrts/monitoring/monitoring-training.html>
- UK Foreign & Commonwealth Office, International Protocol on the Documentation and Investigation of Sexual Violence in Conflict (2014), https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/319054/PSVI_protocol_web.pdf

4.2. Interviewing

This Handbook provides guidance on interviewing. However, it should not replace in-depth and in-person training of staff which should be considered essential for an NGO involved in the documentation of torture and other ill-treatment. There are also particular situations that will require an experienced interviewer, for example when interviewing children.

Each interviewee, whether a victim, a relative or a witness, is an individual with a distinct story. Even if there are known patterns of violations that are prevalent in a particular area of focus and there is some certainty as to what happened to a particular victim, it should not be assumed that each victim will have the same or similar story. Each interview should be treated as a unique record. The interviewer should always keep in mind the purposes of the interview, which is to gather a statement for the purposes of reporting on torture and other ill-treatment and further information that could lead to finding other corroborating evidence.

4.3. Before the Interview

4.3.1. Planning and preparing for the interview

When planning the interviews, the methodology needs to take into account at least the following:

- Who the victims are (their identity, gender, age, particular vulnerabilities and the type of violation they suffered, e.g. victims of sexual violence), and, correspondingly, who would be the best choice for the interviewer (for example male or female interviewer, their cultural background, etc);
- The possible consequences of torture and other ill-treatment (e.g. posttraumatic stress disorder - PTSD);
- The location of the interview and what limitations need to be considered (for example interviewing in prisons, in a conflict zone, in a refugee camp);
- Specific risks for different persons involved (aside from security risks, the interviewee may face other consequences in his or her community, such as harassment and exclusion);
- The purpose of the interview, the interview questions and the order in which they will be asked. (The types of questions to take into account in the planning and developing of methodology are considered in Chapter B.4.1 on Gathering Evidence.)

Interviewers need to ask themselves if and when it is necessary and appropriate to conduct an interview. This is important because the interview should not place any excessive burden on the interviewee. It is also important to be well prepared for the interview.

As good practice, it is important to review the most recent professional and ethical standards before the interview (Chapter B.2.1), as they are central to the process and the interviewer will need to explain certain aspects of the standards carefully to the interviewee. It is also necessary to review the information already known about a particular person to see if there are any particular areas or

previous inconsistencies that need to be explored, or symptoms that the interviewer needs to be conscious of.

Preparation for interviews should include thorough research of the relevant issues, including the common patterns of violations and the social and political situation in the country and in specific settings that you are exploring. Understanding the legal system and local legislation will often be essential. Local survivor groups, NGOs, professionals and other people familiar with the situation may offer indispensable assistance and input, including in the preparation of culturally sensitive questions.

When scheduling interviews, the interviewer needs to make sure that the timing is convenient for the victim. Bear in mind that the person might work and that he or she should not be asked to take time off work for the interview. If interviewing children, it is necessary to take into account when they should be in school.

Whenever possible, some time should be spent with the interviewee before the actual interview to speak with him or her informally and establish a rapport. While the interviewer should not go into details, the events and objectives of documenting in general can be discussed in a preliminary meeting.

4.3.2. Who Should the Interviewer be?

There is no strict rule on who should conduct an interview, so the appropriateness of an interviewer will depend on the individual interviewee and interviewer. Often, there may be specific gender preferences. For example, women may be more comfortable being interviewed by a female interviewer, especially if the account is likely to involve sexual violence or similar sensitive issues. Men may sometimes also prefer to speak with a woman about sexual violence, although in certain cultures this would be unacceptable. Similar considerations apply to interpreters. As a rule, the preferences should be discussed with the interviewee rather than assuming what his or her answer would be.

Other circumstances might also be important when selecting the interviewer, as it is important to minimise any similarities between the situation and environment in which the victim was tortured and that which will be used for the interview. Sometimes, social and cultural background, language or even the accent of the interviewer might prevent an interviewee from feeling at ease. As with the gender considerations, it is important to discuss the potential issues about the environment or situation with the interviewee when necessary.

It may be difficult for an interviewer to carry out the interview alone, because he or she will need to ask questions, listen, develop a rapport with the interviewee, handle difficult emotional situations, take notes and watch out for gaps and inconsistencies all at the same time. Where circumstances permit, it is usually best to interview in a pair, with one person asking the questions and the other taking notes. It is even better if the two individuals have complementary skills, e.g. medical and legal expertise. This helps to make sure that no important points are missed and that the right questions are asked. In order to avoid confusion for the interviewee and to facilitate the establishment of a rapport, however, one of the interviewers should have primary responsibility for questioning and the second interviewer to take notes and ask questions at the end, if he or she thinks anything requires clarification or has been omitted.

4.3.3. Interpreters

First and foremost, the interviewee needs to agree to the use of an interpreter. The gender of the interpreter and other considerations, similar to those for selecting the interviewer, need to be taken into account and when possible discussed with the interviewee. Using a local person as an interpreter might create mistrust on the part of the interviewee or may entail risks for the interpreter. All relevant circumstances need to be considered and sometimes it will be best to use an outside professional interpreter.

Prior to the interview, make sure that the interpreter is aware of the need for absolute confidentiality and that he or she understands that the same ethical standards apply to him or her as they do for the interviewer. This is particularly important when using non-professional interpreters. It is best, where possible, to use interpreters who have been specifically trained to work with victims of abuse. Non-professional interpreters may be more easily drawn into the conversation than professional ones, so it is important that they know and understand that the purpose of their job is to relate the interviewee's words exactly as they are said and not in summary form. When using a local or non-professional interpreter, it is important to remember that he or she too, may have been victimized, may be close to someone who was victimized, or have otherwise had a personal experience which he or she wishes to tell you about. It is important that he or she has a separate meeting, rather than working his or her story into the interview which he or she is supposed to be interpreting. Be aware that the interpreter may find the content of the interview difficult to deal with, so these issues can be discussed in advance and, if necessary, after the interview.

At the start of the interview, invite the interpreter to introduce him or herself and explain to the interviewee that the interpreter is also under a professional duty to respect confidentiality.

Interpretation can present a problem for the interviewer, who may be tempted to "switch off" during interpretation or to begin planning the remaining path of the interview. Conscientious interviewers will avoid this, as it is important to establish a rapport with the interviewee, demonstrating interest in his or her story.

4.4. During the Interview

4.4.1. Beginning the interview

The interviewer should start the interview by introducing him- or herself, his or her organisation, the objectives, the possible uses of the information that will be gathered and who will be able to access the information. If someone suggested

interviewing a particular individual, the interviewer should explain how he or she was identified and who made the referral. It is important to ensure that the interviewee has no objection to note taking, the use of recording-devices or interpreters. The issue of informed consent should be addressed and the confidentiality of the interview emphasised.

Explaining the purposes and objectives of the interview is of utmost importance. Without this, it is impossible to get free and informed consent, but it is also important for managing victims' expectations. Asking the victim about his or her expectations and goals reduces the potential for the victim to develop unrealistic expectations. Where the victim has unrealistic expectations, it is important to be upfront about all the possible limitations of documenting and reporting. If the interview is for the purposes of litigation, it is important to explain how long judicial proceedings can take at the national and particularly regional and international level, the potential that the claim will be unsuccessful, the possibility that a positive court decision would not be implemented, and other possible scenarios. If the interview is for the purpose of general reporting, this should be explained clearly and the very limited direct benefits to the interviewee highlighted.

How the interviewer explains the purposes of documentation will also depend on how well the victim knows the legal system and legal procedures. One might need to explain the basic processes or even the victim's rights in plain language. The goals of the interviewer and the victim's should also be generally aligned. Where the victims' expectations cannot be managed, or where their goals run counter to the purpose of the interview, it may be necessary or appropriate to delay the interview while further discussing what can and cannot be done for the victim.

4.4.2. Establishing trust and making the interviewee feel at ease

Interviews about very personal experiences, such as ill-treatment, can be extremely intimidating. The parties to the interview may not have much control

over the setting in which the interview takes place, but even small considerations on the interviewer's part can help establish trust and make the interviewee feel more comfortable.

Establish as comfortable and private a setting as possible. If possible, the interview will take place with only the interviewer(s), interviewee, and if necessary an interpreter. However, the interviewee may feel more at ease with someone else present, such as a family member. In such circumstances, it is important that the third party agrees to not interfere with the conversation, even if he or she was a witness of the events or observed the consequences of torture and other ill-treatment on the victim. It will be important to establish clearly this expectation and the reason for it, which is that the interviewer needs to collect a statement from the victim explaining what happened with his or her own words. While the other party may have heard the story before, and may want to protect the victim, the importance of having each testimony serve as its own separate record can be undermined by third party interventions. Explaining the importance of hearing the victim's own words can help the third party understand that his or her attempts to protect the victim or alleviating the pain that comes with recounting his or her experience can harm the process. Should the family member or another third person interfere with the interview, trying to determine the pace or the direction of the interview, influencing the victim's answers, it might be necessary to suspend the interview and determine the most acceptable way forward for the victim. If the family member insists on being present at the interview, but the victim does not want this, an NGO might propose a joint meeting together with the family member and then to meet the victim separately.

If the interview cannot take place in private, try to ensure that others are out of hearing distance. This applies equally to co-detainees, family members and other relatives, and anyone involved in the situation in any way. If the interviewer or the NGO that he or she works for are of local origin, he or she should probably already be aware of any sensitivities – these should always be taken into account. In any case, the decision on who should and should not be present is ultimately the interviewee's.

It is particularly important that the interview does not resemble an interrogation. The interviewer's posture and how he or she sits in relation to the interviewee can affect how comfortable the interviewee will feel. For example, leaning forward in a confined space may appear threatening, while under other circumstances, not doing so may convey a lack of interest. Some victims or witnesses may prefer to sit closer to the interviewer, others may be very protective of their personal space or shy away from being touched. Again, some of this may be informed by cultural expectations and the preparation in advance of the interview should help to identify appropriate and inappropriate means of communicating interest. Being aware of surroundings and observing the body language of the interviewee is also important to gain a sense of what may be most appropriate in a given case.

The interviewee should have the interviewer's full attention throughout the interview. Mobile phones should be completely switched off unless you are expecting an urgent call, in which case you should explain that to the interviewee. It is important not to appear distracted or uninterested; acute attention should be paid to eliminating distractions and to body language or statements that may suggest a lack of care or concern.

Explain to the interviewee that he or she can ask questions or take breaks when needed. If the person appears tired or distressed during the interview, he or she should be offered a break.

4.4.3. Keeping notes, recording the interview

Keeping a detailed record of the interview is important to ensure accuracy, but informed consent requires ensuring the interviewee understands how these notes will be used and who will have access to the information contained in them. There may be some instances when it is more appropriate to just listen (e.g. in a small police station) and make notes immediately afterwards. Sometimes it might be useful to make side-notes on the particular behaviour of the interviewee.

Some interviewees might not agree to recording and will only be comfortable with handwritten or typed notes. Hidden recording devices are an unethical breach of trust, so audio or video recording can be used only if the interviewee consents. It might be very useful to record the interview, but this carries a great responsibility in relation to confidentiality. Security concerns are not limited to detention facilities and it is important to consider whether and how you can safely and securely store information. Often, recording an interview will present grave security risks, in which case, recording should not be used at all (see further, 2.1.5 on Security of Persons and Information). If the situation permits recording, the interviewer should be clear on the reasons why the interviewer wants to record the interview and how he or she intends to secure the recording before getting the interviewee's informed consent. If it is necessary to conceal the interviewee's identity, precautions might need to be taken while recording. For example, a pseudonym could be used to address the interviewee, information such as his or her place of residence should not be recorded. Such endeavours have obvious limitations (such as, the victim might accidentally reveal his name and become stressed about keeping the precautions in mind) and should not be practised without taking care of the security of the recording in the first place.

4.4.4. People who are too afraid to talk

Some interviews may be conducted in a relatively safe place, but in many cases the surroundings will not be secure. This is particularly the case where interviewees are still in the custody of the authorities. You cannot ensure their safety, but you can take steps not to place individuals at greater risk than necessary (see Chapter B.2.1 on Ethical considerations).

- The first step is not to employ undue pressure or excessively encourage victims who do not want to talk, to talk. Some victims will simply not want to talk or would be willing to provide general information but not details on their own individual situation. In such cases, the interviewer will need to respect this decision.

- Before obtaining informed consent, the interviewee should be aware that his or her name will never be used without his or her express consent. To make the interviewee feel more secure, it may be appropriate to repeat during the interview that his or her identity will be protected as far as is possible.
- In some places, additional steps should be taken to avoid unintentionally identifying individuals. For example, in a location with a very small number of detainees, like a police station, it will sometimes be necessary to interview all detainees and to not react immediately to allegations in a way that makes it possible for the authorities to identify the source of information. If the interviewer feels that an issue should be taken up urgently, for example, with a police station chief, it is necessary to first consult the interviewee. It is never appropriate to approach an official without the consent of relevant victims and witnesses.
- Make it very clear to interviewees that they should let you know if they or any of their relatives or friends are subject to intimidation or pressure of any kind as a result of the information they have provided. The interviewer should provide his or her contact details – usually a business card is appropriate – and emphasise the importance of contacting him or her in these circumstances. The interviewer should remember that their ethical obligations to the interviewee extend beyond the interview.
- Do your best to follow-up with individual cases, especially if you suspect they may be at risk as a consequence of speaking with you. You may want to call the interviewees or use other ways of communicating at regular intervals or when agreed. Discuss with the interviewee how you will follow-up with him/her.

4.4.5. Minimising the risk of re-traumatisation

Interviews about experiences of torture and other ill-treatment can be sensitive and painful, but taking appropriate steps can help to minimise the risk of re-traumatisation of victims. For example:

- **Respect:** Show regard and respect for the interviewee with tone, language and attitude;

- **Control:** Give the interviewee the control of the interview process;
- **Do not pressure** interviewees if they become distressed to talk further. Be aware that some victims might not be ready to talk about their experience;
- **Cultural sensitivity:** Be aware of cultural factors and exercise particular sensitivity towards culturally taboo subjects. Never say anything judgmental or challenge the person's beliefs. Demeanour and body language should reflect cultural sensitivity;
- **Referring:** Advise the interviewee about the possibility of obtaining support or a referral;
- **Empathy:** Listen and allow expression of personal and family concerns. Showing empathy is acceptable. Acknowledge pain and distress, but maintain professional boundaries. Manage expectations and do not create unreasonable ones about what can be accomplished, as well as the pace at which goals are likely to be met;
- **Breaks:** Allow the possibility of breaks, offer the interviewee a break when he or she appears tired or distressed, make sure he or she knows he or she can take a break when needed;
- **Several shorter interviews:** Where possible, it may be better to carry out several shorter interviews rather than one long and intensive one. This gives the interviewee a chance to discuss issues and events that he or she might not have been prepared to talk about initially, but are willing to discuss at a later interview;
- **Ending the interview:** Try not to end an interview suddenly without bringing the conversation around to a less sensitive subject. Ease the interviewee out of the interview setting by discussing something less upsetting.

4.4.6. Maximising the reliability of information

The interviewee should describe what happened to him or her in detail. The interviewee might not present the account in a chronological fashion, although the interviewer will need to make sense of the exact order of the events. As a best practice, the interviewer should let the interviewee decide how he or she wants to recount what happened and ask questions to confirm the chronology

(either during, before the end or at the next interview). It will not be enough to simply ask the interviewee to explain what happened; guidance will be needed on which aspects of the story to elaborate upon. The interviewer should ask clarification questions, such as “What did the room look like?”, “Was there anyone else in the room?”, “What did you do next?”, “In what type of vehicle did they transfer you?” It might be useful to get a mixture of observational information (e.g., about the surroundings) and information about what the person was experiencing.

Remember that the role of the interview is to provide guidance, not to put words in the interviewee’s mouth or influence him or her in any way. Always begin with general or open questions (questions to which the answer is unlimited, e.g. “Did anything happen to you?”, rather than “Were you tortured?”), and become more specific on the basis of the information which is offered to you.

Interviewers should:

- Avoid leading questions. These are questions that there is a particular answer you are looking for or a “right” answer. For example asking “Were you tortured in custody?” would be a leading question because it suggests you wish for the interviewee to confirm that he was both “in custody,” meaning held by State agents, and tortured. On the other hand, “Who held you?” and “Did anything happen to you during this time?” would not be leading questions. It is important that the account given by the interviewee is his own, not yours.
- Encourage interviewees to use their own words.
- Avoid the use of checklists where possible, as they can lead to inaccuracies where the items on the list do not correspond exactly to the experience of the interviewee.
- Be aware that inconsistencies do not necessarily mean that an allegation is false. The interviewee may be confused or may have found your question difficult to understand. It is also important to understand that after experiencing trauma the memory may be distorted. Sometimes inconsistencies can be resolved by asking the same question in a different way.

- Pay attention to body language and signals that indicate the interviewee is tired or distressed, that he or she does not want to discuss a very painful issue or that he or she wants to talk more about an issue but needs more assurances of safety and confidentiality. It is important to realise that false assumptions can easily be made if the interviewer is not very experienced or there are cultural particularities that one is not familiar with.

4.4.7. Ending the Interview

The interview should not end abruptly and the interviewer should try bringing the interviewee back to less upsetting topics. An important step of ending the interview is asking the interviewee if he or she has any further questions or if there are any issues on which he or she would like more explanations (e.g. on the process of reporting). The interviewer must reiterate the standards of confidentiality that will be employed and ask if the person still agrees with the premises of the consent given. The interviewer should discuss with the interviewee how he or she will stay in touch and the next stages in relation to documenting.

Then, it may be helpful to ease the interviewee out of the interview by discussing his or her immediate plans, for example what he or she will do that day. It may be appropriate to suggest that the interviewee does something relaxing, like talking with family and friends, taking a walk or something similar. Make sure he or she has support available. End on a positive note unrelated to the experience of torture or other ill-treatment as this helps limit the negative impact of the interview on a person.

4.4.8. Taking care of yourself

Interviewing alleged victims of torture or other ill-treatment can be emotionally and mentally exhausting. Some NGOs offer psychological support to interviewers and investigators of human rights abuses. For example, a therapist might be available for the interviewers to talk to. If professional therapist is not available,

the interviewers should make sure they talk about what they are experiencing, while respecting confidentiality, with colleagues and others who can offer emotional support, such as friends or family. The psychological impact on interviewers should not be underestimated and the interviewer should accept that the feelings he or she is experiencing are normal. Over time, the interviewer should learn to recognise the feelings he or she is experiencing, to identify them and engage appropriate coping mechanisms.

4.4.9. Interviews in less than ideal environments

Interviewing in “less than ideal” environments will most likely mean that the highest standards of interviewing will not be possible to reach. Many people believe that it is better to do something, even if it is not ideal, than not do anything at all. Even a brief five minute interview with a person in a detention might result in important information or insight. Nevertheless, it is important to make informed decisions about when it still makes sense to document allegations in non-ideal conditions. Some NGOs decide they will not interview in a prison when they cannot get a private room; others are satisfied with having guards out of hearing range. Whatever the decision, it is important to be aware of the limitations of interviewing in difficult circumstances, including the possibility that the information gathered may not be objective or of a high quality. While you may determine that compromises regarding the quality of information are acceptable, you should avoid compromising the safety of the interviewee and others, such as his or her family.

Awareness of group dynamics and internal structures is important when interviewing individuals in prisons, other places of group custody, refugee/IDP camps, etc. In such situations, it is also necessary to cooperate with the authorities that decide on NGO’s access to detainees or individuals in these or other types of group settings. Continuous access to such facilities often requires a working relationship with the authorities.

Where there is a prisoner, refugee or other group representative, it can be helpful to interview and seek the co-operation of this person first. Similarly, there may be a certain hierarchy among persons in long-term custody and it may be useful to be aware of this. If representatives suggest individuals to interview, it is important to supplement those interviews with other individuals who are randomly selected to avoid any bias or possible agenda from the “representative”.

In small detention facilities, try to interview all detainees to avoid identification of those who contacted the NGO to complain about mistreatment. In a large facility, a significant group of detainees of a particular category should be selected for interviews if possible. If interviews must be carried out in a ward or dormitory environment, it can be helpful to begin with a general group interview introducing yourself and what you are looking for, followed by individual interviews with each detainee. Even if there are others in the same area and privacy is not possible, it is important to try to create individual time with each selected detainee.

4.4.10. Interviewing children

The primary goal when interviewing children must be to do no harm. Interviewing children is very different from interviewing adults, and needs to be treated as such – an even higher responsibility is attached to interviewing children. Adjustments to language and the overall approach are necessary. It might be necessary or appropriate to use drawings and toys, and the discussion should be less formal. Most importantly, the interview should not be an intimidating experience. Interviewers should have experience working with children or the effects of an interview may be more detrimental than the potential benefits. Ideally, interviewers should have both experience and expertise, and if they have never done an interview with a child before, it is advisable to run through a mock interview with another member of the interview team in order to get a feel for the process. It may be appropriate to include an older juvenile (who should be trained) in the team.

The following should be borne in mind:

- It is important to give children a sense of security and support during the interview. This may be achieved through the presence of a parent, relative or guardian, or a counsellor if the child has been seeing one. If parents or particular family members would compromise the child's sense of safety then it would be better if they were not present.
- Children should be able to speak for themselves without adults interfering and speaking on their behalf.
- Children are particularly sensitive to tiredness and should not be pressed.
- It is most important to observe a child's behaviour during the interview: the ability of children to express themselves verbally depends on their age and stage of development, and behaviour may reveal more about what happened to the child than his or her words.
- Children are even more susceptible to leading questions, so it is necessary to take extra precautions to avoid leading questions.
- Children should be treated with respect, taken seriously and never looked down on.
- In addition to, or instead of, being tortured themselves, children may have been forced to witness the torture and other ill-treatment of others, particularly parents or close family members. You should not underestimate the effects that this may have on them.
- If the child may have been the victim of a physical or sexual assault, an intimate examination should be carried out only by an expert doctor.
- Try to ensure that the child is provided with a support network after the interview.

4.4.11. Interviewing refugees and internally displaced persons living in camps

Not all refugees and internally displaced persons (IDPs) live in camps where they are separated from the local population with their movement restricted. On the contrary, many refugees and IDPs live in urban locations or in camp-dwellings close to population centres where their movement is unrestrained. Interviewing

refugees and IDPs will depend on the realities of their living situation, so will the information that needs to be gathered.

In a camp setting, it will be important to note whether movement is restrained or not and whether the situation resembles (or is) detention. In a restricted camp setting, it is necessary to speak with camp authorities and there might even be refugee/IDP representatives. Be aware that there may be allegations about both abuses that occurred prior to arriving in the camp and abuses that have occurred inside the camp. If possible, recording the conditions in the camp can be helpful to future claims. It is likely that the accounts of violations will include many different human rights, meaning you need to be well prepared to refer victims to other sources of help.

In many cases, the alleged victims will be unrestrained camp-dwelling or urban refugees. They may face specific problems, which will determine what information must be gathered in the process of documenting allegations of torture and other ill-treatment, such as the risk of being arrested and detained, harassed, exploited, discriminated against, housed in inadequate shelters, and being exposed to sexual and gender-based violence, human smuggling, trafficking.³⁶

4.4.12. Conflict zones

Some of the guidance on interviewing in refugee / IDP camps may equally apply to gathering evidence of torture and other ill-treatment in conflict zones. It might also be relevant to distinguish the consequences, particularly psychological consequences, suffered as a result of the alleged torture and other ill-treatment and the consequences of living in the conflict zone.

4.4.13. Abductions, disappearances and extra-judicial executions

³⁶ See Act Alliance, Urban displaced populations (refugees and IDPs), <http://psychosocial.svenskakyrkan.se/default.aspx?di=65835>.

In the case of abductions, disappearances and extra-judicial executions, it is generally not the victim that is being interviewed himself, but more likely a relative or close acquaintance. It is necessary to concentrate on the circumstances surrounding the disappearance of the person, the *modus operandi* of the abductors, and particularly on the task of identifying witnesses who may be able to provide information not only about the circumstances of the arrest, but also about the condition of the victim at the time of being taken into custody. Where the victim's body has been found, the information about his condition before detention will be very important in helping establish that marks or injuries on the body must have occurred during custody.

Further reading

- Hauksson Pétur, Psychological evidence of torture. How to conduct an interview with a detainee to document mental health consequences of torture or ill-treatment, Council of Europe (2003), <http://www.cpt.coe.int/En/working-documents/cpt-2003-91-eng.pdf>
- IRCT, In pursuit of justice: The importance of psychosocial support for torture victims participating in legal proceedings (2014), <http://www.irct.org/Admin/Public/DWSDownload.aspx?File=%2fFiles%2fFiler%2fpublications%2fIn+pursuit+of+justice+--+FINAL+web.pdf>
- Istanbul Protocol, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Chapter IV. General Considerations for Interviews, pp. 25-33 (2004), <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>
- Save the Children, Interviewing children: A guide for Journalists and Others (1998), http://www.savethechildren.org.uk/sites/default/files/docs/INTERVIEWING_CHILDREN.pdf
- UN, Training Manual on Human Rights Monitoring, Chapter VIII: Interviewing (pp. 109-126), Chapter XII: Children's Rights, pp. 249-283 (2001), <http://www1.umn.edu/humanrts/monitoring/monitoring-training.html>
- Witness, Conducting safe, effective and ethical Interviews with survivors of sexual and gender-based violence,

4.5. Medical Evidence

Medical evidence (documentation stemming from physical and psychological assessment of the victim) is among the most important type of evidence that can be obtained and can add strong support to witness testimony. Whenever possible, a researcher should therefore strive to obtain a medical report. In the best-case scenario, a medical report or any medical records prior to the person going into detention should be obtained as well as a recent report. Attempts should be made to obtain any medical reports prepared while the individual was in detention. These should include a report on the medical examination on entering the place of detention and further medical examinations thereafter. Where it is not possible to obtain these reports or a record of the reports from the State agency, this should be noted in the submission.

Technical procedures for medical personnel carrying out physical or psychological examinations on individuals alleging torture or other ill-treatment are described in a number of other specialised manuals and documents (see Appendix 2), in particular the Istanbul Protocol and the Essex Human Rights Centre manual on 'Medical Investigation and Documentation of Torture: A Handbook for Health Professionals'. To avoid duplication, they will not be analysed in this Handbook, but you are advised to consult them when necessary and to try to use doctors trained in the Istanbul Protocol where available. However, it is important for anyone wishing to report allegations of torture and other ill-treatment to understand the role of medical evidence, the difficulties it raises and some very basic measures which may be taken to record such evidence in the absence of an opportunity to refer a victim to a medical expert for examination.

It is rare for medical evidence to be conclusive (i.e. that it can prove with certainty that torture and other ill-treatment occurred). Some forms of torture and other ill-treatment leave few traces or long-term physical signs that torture and other ill-treatment was committed. In addition, it is also possible for injuries or marks alleged to have resulted from torture and other ill-treatment to have been the product of other causes. What medical evidence can do is demonstrate that injuries or behaviour patterns recorded are consistent with (could have been caused by) torture and other ill-treatment described. Where there is a combination of physical and psychological evidence consistent with an allegation, this will strengthen the overall value of the medical evidence.

Both physical and psychological examinations will need to be carried out by specialised medical personnel. This is important because of their technical expertise. In addition, in order to be of use in court, the examinations need to be drawn up and interpreted by qualified professionals. Medical professionals carrying out examinations should be independent, experienced and properly trained to examine victims of torture and other ill-treatment, preferably in the Istanbul Protocol. An independent report can also provide a point of contrast with a State report, particularly if there are questions over the nature and quality of the State report. Medical evidence that does not meet these standards will be of lesser value. While it can still be submitted, its lack of compliance with the Istanbul Protocol should be noted.

The timeliness of conducting medical examination is of utmost importance, particularly in cases where signs or other evidence fade away quickly, for example in rape cases. However, even if it is not possible to obtain a medical examination immediately, this does not mean that the researcher should not record any physical marks or noticeable behaviour observed during the interview. On the contrary, these can be extremely useful. Careful questioning of interviewees and recording details of the way they were treated is at least as valuable as recording the physical and psychological effects. Talking to a witness such as a spouse can greatly assist in finding out how the victim appeared after

torture and other ill-treatment and noting any change in his or her demeanour or behaviour.

When obtaining medical evidence, it is important to be aware of the difference between therapeutic (treating patient's symptoms) and forensic (legal) medicine. The objective of forensic medicine is to establish the causes and origins of injuries and is a specialised field. In many countries, both therapeutic and forensic functions are carried out by the same health professionals. Where possible, one should seek the assistance of someone who has forensic skills and understands the distinction between the two forms of medicine.

4.5.1. Physical evidence

NGOs will often be in a position where they will have to record physical signs of alleged torture and other ill-treatment. It is very important that this is done following professional standards in order not to lose perhaps the only opportunity to record evidence and to be able to present reliable evidence before a court or the human rights body that will receive the allegations.

If a doctor is not immediately available, it is worth recording visual evidence of abuse, but only after the consent of the individual is obtained. The NGO representative should make it clear that he or she is not a doctor and that he or she will not be able to obtain or influence any immediate treatment. In a custodial setting, any observations may have to be based on only a brief interview, but in a non-custodial situation the interviewee may be able to partially undress and move about, making possible more detailed observations. It is important to remember that the absence of any visible injury does not mean that ill-treatment has not taken place.

External signs will be most evident within a few days of the injury taking place. However, there may still be indications of injury at a later stage. As much information as possible should be recorded. As a guide, the following should be noted:

- Any obvious injury such as swelling, bruises, cuts, grazes or burns;
- Any difficulty in movement of the body such as walking, climbing stairs, sitting or standing up for long periods, bending down, or raising the arms;
- Any deformity of shape or posture of the back or limbs.

Physical evidence should be recorded in two ways: (1) with a **detailed description** and (2) by **photographing the injuries**.

When recording findings:

- Note the site, size, shape, colour and type (cut, bruise, burn etc.) of all injuries.
- Use a ruler to measure size. If this is not possible, make an estimate of size by comparison with a common object (but avoid using objects of variable size, such as an orange).
- If there are numerous injuries, indicate them on a body diagram (See Appendix 4), making clear which description corresponds to which injury on the body diagram.
- Describe appearances as accurately and in as much detail and as clearly as possible, e.g. "A purple raised circular bruise 4cm in diameter on the outer aspect (outside) of the right arm 10cm above the elbow."
- Describe how the injuries were allegedly sustained.
- Ask about the consequences of the injuries, the symptoms and any treatment the person has received since the incident. An answer as to the consequences of the bruise might be: "A week ago I couldn't lift my arms to 90 degrees but now I can get them right up above my head. I still can't move my wrist fully and my hand is still numb." Such statements should be quoted word-for-word. If possible (and without causing further injury), the interviewee may be asked to demonstrate abnormality of movement or posture and describe it. Consequences might also include incontinence, bleeding, effects on sexual life and possible sexually transmitted diseases in case of sexual violence.

4.5.2. Photos of the injuries

Photographs, even amateur ones, can be useful for experts to examine later. If available, a professional photographer can be brought in later. There are forensic rules and protocols that need to be applied if the photograph is to be used as evidence, especially in judicial proceedings.

It is important:

- To realise that taking photographs of parts of person's body is a very sensitive issue and thus special importance should be given to obtaining free and informed consent and respecting confidentiality. Nothing should be done without the person's express permission and special safeguards for protecting the photographic materials. The researcher should be particularly careful if the person was photographed and/or filmed as part of his or her torture experience and perhaps threatened with exposure. There is risk of re-traumatisation.
- To use colour photographs;
- To use a forensic ruler or any other indicator of size (even a common object such as a matchbox will serve);
- To take a photograph of the individual's head (with face – only if necessary to establish identity and if the individual consents), a photograph of the upper body and a photograph of the lower body.
- To take both close-up shots of particular injuries and a full-body photograph. It is important to locate each photograph on a body chart (a diagram of a body). Especially with close-up photographs it might be impossible to tell at a later point which part of the body was injured;
- Ideally to include one picture that makes the general location of the injuries clear and a closer picture of each individual site;
- To indicate the date.

The authenticity of photographs may be contested by various actors that have an interest in disputing such evidence. It is therefore vital to record the date and identity of the person photographed (while respecting confidentiality) and

implement and respect the chain of evidence procedures – the origin, history, handling, storage and processing of evidence must be documented.³⁷ Before taking photographic evidence, the interviewer should consult specialised publications, such as “Photographic documentation, a practical guide for non professional forensic photography” (see Further reading). Those who were present at photographing injuries could also provide a statement or testify on the authenticity of photographs.

These guidelines can be adapted if an examination is required of a dead body. In such cases, a record of the conditions in which the body was found is necessary (e.g. where it was situated, the kind of surface it was lying on, if the weather was very hot or very cold, if the weather or the location was particularly damp) as this can help a forensic expert to decide the cause of any marks on the body. One should be extremely careful not to interfere with forensic evidence, especially by moving the body and changing the scene. If there is any chance of a more formal medico-legal or forensic investigation, moving the body may cause the loss of evidence associated with the body and could jeopardise the forensic integrity of the scene. There is some guidance available on identifying dead bodies aimed at non-specialists, which can be applied to documenting evidence of torture and other ill-treatment (for example ICRC, Management of Dead Bodies after Disasters: A Field Manual for First Responders). As a matter of good practice, only experienced documenters should deal with these types of evidence.

Further reading

- ICRC, Management of Dead Bodies after Disasters: A Field Manual for First Responders (2009), <https://www.icrc.org/eng/assets/files/other/icrc-002-0880.pdf>
- IRCT, Getting the evidence: Countering torture through medico-legal documentation (2013), <http://www.irct.org/files/filer/publications/feat-2013.pdf>

³⁷ Özkalıpcı Önder, Volpellier Muriel, Photographic documentation, a practical guide for non professional forensic photography 20(1) *Torture* 2010, p. 48.

- IRCT, Medical physical examination of alleged torture victims. A practical guide to the Istanbul Protocol – for medical doctors (2004), http://www.irct.org/Files/Filer/publications/medical_en_web_red.pdf
- Özkalipci Önder, Volpellier Muriel, Photographic documentation, a practical guide for non professional forensic photography, 20(1) *Torture* 2010, pp. 45-52, http://www.irct.org/Files/Filer/TortureJournal/20_01_2010/Photographic%20documentation.pdf
- Essex Human Rights Centre manual on ‘Medical Investigation and Documentation of Torture: A Handbook for Health Professionals’ (2005).

4.6. Psychological evidence

All forms of torture and other ill-treatment are likely to have psychological effects. In some instances, no physical violence will have been carried out but the victim may be left with psychological effects from psychological forms of torture and other ill-treatment. This is especially true if the victim has suffered deliberate psychological torture and other ill-treatment such as being held in continuous isolation, suffered religious or sexual humiliation or has been threatened with death or with harm to the family. In many circumstances, a combination of physical and psychological forms of torture and other ill-treatment may have been carried out.

A psychological assessment of an individual can only be made by an expert and should be sought in all cases in which torture and other ill-treatment is alleged. As with documentation of physical injuries, simple observations by a lay person (non-professional) of the individual's demeanour or behaviour, together with any subjective comments he or she may make about himself or herself (e.g. description of a nightmare, suicidal thoughts, depression) can and should be noted. These notes can be interpreted by an expert at a later date.

The following signs may be noticeable or recounted by the interviewee:

- Thoughts of the traumatic events persistently return, including recurrent and

intrusive distressing recollections of the events, recurrent distressing dreams of the events, suddenly acting or feeling as if the traumatic events were recurring (flashbacks);

- Intense distress when exposed to events that symbolise or resemble aspects of torture and other ill-treatment, shown by persistent avoidance of stimuli associated with the trauma, or general emotional numbing;
- Symptoms of increased arousal such as difficulty in falling asleep, irritability or outbursts of anger and difficulty in concentration. The interviewer may notice restlessness, agitation or an exaggerated startle response.

These are all indicators of stress and are not necessarily specific for torture and other ill-treatment, although the subject of dreams or flashbacks may indicate their source.

As most psychological symptoms are subjective, it is very helpful to obtain corroborative evidence from family or friends. Ask family and friends who are willing to talk about how the alleged torture and other ill-treatment influenced the behaviour and personality of the victim. Answers such as: "He wakes up screaming and sweating at night, with nightmares in which he is being tortured" or "He loses his temper easily. Before his arrest he was easy-going and placid" or "She always avoids going past the place she was arrested" are indicative of psychological stress and are relevant to the report.

Further reading

- IRCT, Psychological evaluation of torture allegations. A practical guide to the Istanbul Protocol – for psychologists (2007),
http://www.irct.org/Files/Filer/publications/psychological_en_web_red.pdf

4.7. Written Statement of the Victim

A written statement describing the events and signed by the victim or other person making the allegation should be prepared wherever possible. It will not be

essential in all circumstances, but it helps in proceedings to reinforce the credibility of the allegation. In addition, the absence of such a written statement will affect the available avenues, and may prevent the initiation of court proceedings. As a general rule, if litigation is anticipated or planned, you should obtain a written victim statement.

The statement should describe in detail the incidents of torture and other ill-treatment and the events leading up to and subsequent to them. There is no particular format for such a statement, but it should be as informative as possible. Sometimes, NGOs only provide a very short statement of less than one page when submitting an individual complaint to a regional or international (quasi-)judicial body. There is no required or expected length. However, attention should be paid to whether all relevant information has been included and in sufficient detail. The kinds of details that should ideally be included are described in Chapter B.4 on Gathering Evidence. As noted earlier, ideally the victim should not be asked to recount his or her experience too many times, although it may be too difficult or emotionally draining for the whole account to be discussed in one interview. The interviewer may also need to ask the victim to discuss or elaborate on particular aspects of the statement at a later date as once the statement is reviewed, it may be clear that there are gaps or an incident requires explanation in greater detail.

Such a statement does not need to be physically written by the person from whom the statement is being taken. It can also be written, or preferably typed up, by the interviewer, then read by the victim (or to the victim if the person is illiterate), who should then sign or thumb-print the statement. If the statement is to be used in judicial proceedings, it should be signed and dated not only by the person making the statement, but also by the person taking the statement and, where possible, a second witness or, ideally, notarised by a notary public.

Organisations often record statements by asking the individual making the allegation to fill out a standard questionnaire setting out the information required. Be aware that such questionnaires should be as open-ended as possible

otherwise they will not be of much use in the courts. Questionnaires can also be difficult for some individuals to fill in and may result in information being omitted by accident or overlooked. Where possible, it is preferable to take the statement during an interview in the manner described above.

4.8. Witness Evidence

Because torture and other ill-treatment often occur in private, it can be difficult to find witnesses to the incident of torture and other ill-treatment itself. Where there were witnesses, they may be reluctant to speak about what they saw in order to avoid repercussions, or simply because the experience was too traumatic. However, where witnesses exist and are willing to give a statement of what they saw, this can heighten the credibility of the allegation and broaden the evidence provided. Witness statements can also provide new details that the victim him or herself, or the person making the allegation, might not be able to give. They can help to reconstruct the chronology of events and set them in context. The purpose of witness statements is to help to understand exactly what took place, and therefore, like the statement of the direct victim, should be as detailed as possible.

Useful witnesses are not only those who witnessed the actual incident of torture or other ill-treatment but include:

- **Those who were present at the time** that the victim was taken into custody can give very valuable information about the identity of the perpetrator, the way in which the victim was treated while he or she was being taken away, and the condition of the person at the time of being taken into custody. This can be particularly important where the victim has died, but the body shows signs of torture and other ill-treatment and the State is arguing that he or she was never taken into custody or that the injuries were not inflicted by officials.
- **If an individual knew that the victim** had been receiving threatening phone calls or messages prior to being taken into custody, this could be reported.
- **Co-detainees** can confirm that the victim was taken away for interrogation and describe his or her condition both prior to and subsequent to being taken

away, or that he or she was never returned. They can give evidence of sounds they heard, such as screams or shouting, or of bloodstains or torture instruments they might have seen. They can give accounts of their own torture or other ill-treatment or that of other individuals they might have witnessed which may help to establish that torture or other ill-treatment occurs in the establishment in question, or that a particular police officer or prison warden has previously engaged in torture and other ill-treatment. This can help to establish patterns, e.g. “The police at station X always take the victim to office Y on the Zth floor,” or “prison guards always come after the day shift leaves and they take the victim to a particular location in the prison where ill-treatment is known to occur.”

- **A doctor** who examined a detainee shortly after an incident may also be able to give crucial evidence.
- **Officials/members of visiting bodies.**

The best way to identify possible witnesses is to work through the chronology of what happened with the victim, asking at each stage if anyone was present: at the time of taking into custody; at the time of arrival at the relevant institution or location where he or she was held; if he or she shared a cell or if there was anyone in adjacent cells; if anyone saw him or her being taken away to be tortured, or witnessed the incident itself, or saw the resulting injuries or unconsciousness; if anyone shared similar experiences with the victim. Where the victim is not the person making the allegation, because he or she has died, been disappeared, or is still in detention, the next-of-kin, neighbours or members of the local community may still be able to suggest possible witnesses, or may themselves be able to provide useful information.

Do not forget that the same principles of informed consent (see Chapter B.2.1.3) apply to witnesses as to victims. Remember never to reveal the identity of an individual without his or her consent. This is especially important when there are risks of reprisals. You need to do your best to shield the witnesses from such risks.

As with statements taken from the person alleging torture or other ill-treatment, written witness statements should be signed and dated by both the witness and the person taking the statement.

4.9. Other Evidence

There is no prescribed list of other types of supporting evidence. The type of evidence necessary or desirable will depend very much on the allegation you are trying to prove and will need to be identified on a case-by-case basis. Try to identify, on the one hand, evidence that supports the specific case, and on the other, objective evidence that demonstrates how the allegation fits into the overall picture. It pays to be resourceful and the possibilities are vast. When taking the victim's statements, areas of inquiry or knowledge may emerge that can be corroborated by other evidence, such as CCTV recording of an abduction or arrest, photographs of the facilities, drawings, custodial records, or other physical evidence gathered.

Examples of other types of evidence include:

4.9.1. Expert reports

These could be specially commissioned medical or forensic reports, ballistics reports, or other forms of expert testimony or research.

4.9.2. Official reports and statement

The findings of reports produced by special domestic inquiries or visits from regional and international bodies can be referred to in order to provide a more official source of information (for example a UN Special Rapporteur, a CPT, SPT or NPM reports). Resolutions adopted by international bodies expressing concern about the situation in a country can also be used, e.g. resolutions of the UN Human Rights Council, the OAS General Assembly, the European Parliament, statements by the OHCHR etc. For deportation cases, the UN High Commissioner for Refugees can provide valuable information. The United States'

State Department also produces annual reports on human rights situation throughout the world.

4.9.3. Evidence of the practice of torture and other ill-treatment in the country, region or setting

Such material adds credibility to the allegation, as it shows that there are precedents for the kind of behaviour complained of. While the individual allegation must be substantiated, this will be made easier if it can be shown with reliable evidence that torture or other ill-treatment is a common occurrence in the country or in specific settings, regarding specific types of perpetrators or profiles of the victims. It is of particular relevance in cases where the objective is to stop deportation of an individual to a country where he or she is at risk of torture.

Such information is most easily found in NGO reports. However, the value of such reports will vary according to the reputation of the organisation in question and the nature of the information, particularly its level of detail.

4.9.4. Specific research

If you want to demonstrate a particular point, patterns could also be identified by specific research of your own. For example, you could try to show that there is official tolerance of torture and other ill-treatment by collecting a significant number of cases in which no prosecution has been opened or where perpetrators have not been found guilty in spite of strong evidence; or a medical expert might be found who would be willing to give evidence that he or she has come across many torture-related injuries in the region.

4.9.5. Media reports

Such evidence should be used with some caution, and would generally be insufficient to initiate a complaint, but it can be very useful to provide independent evidence that an incident took place or to provide an indication of the general situation.

4.9.6. Copies of domestic decisions

If the intention is to bring a case before one of the regional or international (quasi)-judicial procedures, the complaint must show that the victim was not able to obtain a remedy at the domestic level. Thus, the complaint must include copies of all domestic decisions, whether judicial or administrative, that had been taken in the case. This would include any decisions not to prosecute or not to open an investigation and copies of any petitions made by the victim or victim's family, as well as any court decisions taken.

Further reading

- UN, Training Manual on Human Rights Monitoring (2001), <http://www1.umn.edu/humanrts/monitoring/monitoring-training.html>
- Istanbul Protocol, Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2004), <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf>
- IRCT, Action against torture. A practical guide to the Istanbul Protocol – for lawyers (2007), http://www.irct.org/Files/Filer/publications/legal_en_web_red.pdf
- IRCT, Documenting Torture Newsletter, <http://www.irct.org/our-support/medical-and-psychological-case-support/documenting-torture-newsletter.aspx>

4.10. Case Study

Two different accounts of the same events will be presented here. Read carefully the statement made by José, the alleged victim of torture, and see the analysis and suggestions on what Maria, the interviewer, should do to get all information that is missing but is vital for the reporting on torture and other ill-treatment.

4.10.1. Account 1 - BASIC

José Torres, aged 23, reported that he was arrested on 23 January 2015, taken to Anytown Central Police Station and released without charge on 25 January. He claimed that while in custody he was repeatedly hit on the head and on one occasion was electrically shocked by unknown officers while being interrogated.

4.10.2. Analysis

Account 1 is not inaccurate or wrong - it simply lacks detail. However, this detail is the key to many possible courses of action you might wish to pursue. Account 1 presents the basic elements for an allegation of torture or other ill-treatment (victim; perpetrator with connection to the authorities; ill-treatment) but the description of the ill-treatment is minimal and there is little indication of who the individual perpetrators might be or of how the allegation might be corroborated. This makes it difficult for any significant action to be taken in connection with such an allegation. It would have been completely useless for the purposes of litigation.

4.10.3. Questions of the interviewer

The questions which Maria might ask in order to obtain a more complete account are the following:

José: I was arrested on 23 January.

- Where did the arrest take place?
- At what time did the arrest take place? Were you sleeping, coming from work etc. when the arrest took place?
- Did anyone see you being arrested?
- Who arrested you? How many persons? How were you taken to the police station? What happened during arrest and transport?

José: I was taken to Anytown Central Police Station.

- When did you arrive at the police station?

- Where were you taken when you arrived there?
- Were your details entered into a logbook/computer/database?
- Was there anyone else in the room where you were held or the cell with you?
- Were there any windows in the cell?
- Were there any toilet facilities in the cell?
- What was the hygiene of the cell like?
- How long were you there? If you don't know, you can give an approximation?
- Where did you sleep?

José: While I was in custody, I was repeatedly hit on the head.

- When did this happen?
- Where did this happen?
- How did you get there?
- Did you go up or down?
- Who brought you there?
- What did they look like?
- Did you notice anything unusual about them?
- What was the office like?
- Was it furnished?
- Did you notice anything special about it?
- What exactly happened once you got there?
- Were you free to move about?
- You say you were hit - who hit you?
- What did they hit you with? Where exactly did they hit you? Did they aim at any particular part of the head? How often did they hit you?
- Did you notice where they got it from?
- Did they say anything to you or ask you any questions?
- Can you remember what they asked you about?
- How long did this last?
- Where did they take you afterwards?
- What consequences did you suffer; did you faint, bleed etc.? What were the short-term and long-term consequences?

José: Once I was electrically shocked while being interrogated.

- When did this happen?
- Where did this happen?
- Who brought you there?
- Did you hear or feel anything?
- How many times did this happen? How long did it last?

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- What happened once you got there?
- Were you free to move about?
- What happened next?
- What did the box look like?
- What did he do with it?
- Where exactly did he touch you with it?
- What did he do next?
- Did they say anything or ask you any questions?
- Did the treatment leave any marks?
- Would you mind if I took a look at them?
- Are you suffering from any other effects as a result of what happened?
- Short- and long-term consequences?

4.10.4. Account 2 - ELABORATED

José Torres, aged 23, reported that he was arrested at his home at 5 a.m. on 23 January 2015 and taken to Anytown Central Police Station where he arrived at 7 a.m. He was placed in a cell by himself in the basement, which had no windows, no toilet facilities and was infested with rats.

Approximately 4 hours later, José was taken from the cell by two officers dressed in civilian clothing, and taken in a lift to the 3rd floor to an office on the right hand side of a long corridor. The office was furnished with 3 grey plastic and metal chairs, a wooden desk and three grey metal filing cabinets. It had a short brown carpet and one small window with a closed blind on the wall opposite to the door. A calendar with pictures of cars was hanging on the wall to the left of the door. One officer was short with curly hair and a beard. The other wore glasses, had a small triangular scar above his right eyebrow, and smoked cigarettes. During the interrogation, the officer with the beard referred to the officer with the scar as 'Sarge'.

José was kept in the office for two hours. During this time, he was asked repeatedly by the officer with the scar to reveal information about a drug gang operating in Anytown. When he said that he knew nothing about a drug gang, the officer with the beard handcuffed his hands behind his back and repeatedly hit him on the head with a yellow telephone directory, which he took out of the top drawer of a filing cabinet.

José was returned to the same cell as before. Eighteen hours later, he was collected again by two officers in civilian clothing. One was the officer with the scar from the previous day. The other had short, with blond hair and a very deep voice. They took him to the same office on the 3rd floor. This time the blond-haired officer told him to remove his shirt and handcuffed him again while sitting on a chair. The same officer took a black rectangular box from the left-hand drawer of the desk, about 5 cm x 7 cm in size with two metal prongs protruding from one end. He held it against José's right nipple and pressed a button. José heard a short buzzing sound and felt a severe pain in the area of his nipple. This was

repeated three times. Again, during the time he spent in the office, the officer with the scar asked him questions about the Anytown drug gang and the details of a large heroin consignment expected the following week.

José was released without charge on 25 January.

When interviewed at his home on 28 January by Maria, a representative of NGO “Anytown Against Torture”, it was possible to see two small round red marks 8 mm apart beside José’s right nipple as well as purple and yellow marks of bruising in a circular pattern around his wrists. He also revealed large areas of bruising in the lower back and noticeable swelling in the kidney area, and complained of pain when urinating. He also complained of a continuous headache and a ringing sound in his ears. He seemed nervous as he described the events, had dark circles under his eyes, shifted position repeatedly, and appeared to be cold although the temperature was normal.

4.10.5. Analysis

Account 2 is detailed and informative, and provides many opportunities for corroboration. In addition to presenting the basic elements for an allegation of torture or other ill-treatment, it gives precise information on:

- **Perpetrators:** Gives many details about the individual perpetrators, which should make identification possible.
- **Location:** Describes the location and lay-out of the office where the ill-treatment took place in such a way as to make it possible to find it if a visit to the police station were carried out.
- **Instruments:** The description makes it possible to find the instruments used in the ill-treatment if a visit to the police station can be carried out.
- **Purposes:** Makes the purpose of the arrest and interrogation clear.
- **Conditions:** Gives some detail of the conditions in which the victim was detained.

- **Ill-treatment:** Describes the ill-treatment in a precise way such as to make it possible for a medical expert to express an opinion on its relationship with the victim's injuries.
- **Injuries and consequences:** Describes the victim's injuries, including a basic indication of his mental and emotional state.

Account 2 could be improved in certain ways, as some important issues were not covered:

- A more specific account of **what happened during the arrest** is missing. Maria could ask about how the arrest occurred, i.e. how many agents have there been, were they uniformed or in plain-clothes, did they use force, what did they say.
- It does not **identify possible witnesses** - we do not know if anyone saw José being taken from his home.
- The description of the **conditions of detention** is sketchy and could be elaborated upon.
- It does not indicate if José was allowed to **contact his lawyer or family**, if he was given a **medical examination** at any stage during his period in custody, or if he made a **formal complaint** about the ill-treatment to anyone in authority.
- It gives no information about what **might have taken place between** José's second interrogation and his release.
- Maria failed to notice the **time gap** between José's arrest at 5 a.m. and the time he arrived at the police station at 7 a.m. Not being a local, it did not occur to Maria to ask how far away the police station is from José's home. If, in fact, it is three streets away, what happened to José between 5 a.m. and 7 a.m.? Noticing the inconsistency in timing might have revealed a further incident of ill-treatment, which José may have forgotten to mention or thought insignificant compared to what happened to him at the police station. Maria may have been too specific in her questioning in the early stages of the interview, asking him what happened at the police station, rather than what happened to him after being taken from his home, or simply asking what happened next.

5. SUMMARY OF PART B

1. Introduction

The purpose of this Handbook is not to give an exhaustive “to do” list, but general guidelines on documenting, which should be combined with other sources, in particular the Istanbul Protocol, specialised training, and individualised judgment in each individual case. There are multiple sources of evidence, and evidence is used for multiple purposes. Always strive to achieve the best possible quality of evidence, while observing ethical principles.

2. The Aims of Documenting and Reporting Allegations of Torture and Other Ill-Treatment

Documenting and reporting can serve the purpose of achieving individual and communal justice. It can help:

- Draw attention to a situation/establish a pattern;
- Prevention;
- Combat impunity;
- Seek redress for an individual victim, including a finding of violation, reparation and preventing transfer of an individual to a country where he or she is believed to be at risk of torture.

3. Basic Principles of Documentation

When documenting allegations:

- **Respect the principles of ethical documentation:** take a victim-oriented approach, observe the principle of “do no harm” and assess whether documenting entails more risks than benefits. Make sure the victim knows she is in control of the interviewing process. Confidentiality is a cornerstone of any documenting efforts. Obtaining a free and informed consent to the interview, which entails explaining the purposes, objectives and the risks involved, is necessary. All important aspects of documenting should be discussed with the

interviewee. The safety and security of persons and documentation should be the primary concern.

- **Observe the standards of documenting:** quality, accuracy and reliability of information are the standards to be achieved. Factors which contribute to the quality of information include the reliability of the source of information, the level of detail, the absence of contradictions and inconsistencies, the existence of corroborating information, the extent to which the information demonstrates a pattern and the age of the information. Accuracy and reliability of information can be maximized by taking general precautions, by seeking corroboration of specific cases at the time of the interview and afterwards, and by exercising good judgement.

4. Gathering Evidence

- **Information needed for reporting on torture and other ill-treatment in different settings**

Seek information that answers the following basic questions: who did what to whom, when, where, why and how. The information gathered should identify the victim(s); identify the perpetrator(s); describe how and under what circumstances the victim was deprived of liberty; explain where the victim was taken or held; describe what the holding conditions were like; describe the details and form of ill-treatment; and describe any official response to the incident.

In order to obtain these details without influencing the content of the account, avoid leading questions. Always begin with general or open questions and become more specific on the basis of the information offered.

Be aware that interviewing in different contexts may require different approaches and the information gathered might diverge from the “model information”.

- **Interviewing**

Interviewing is one of the most important tasks in documenting, but one of the most challenging too. Throughout the interview, it is important to balance:

- The need to obtain a useful account and the importance of respecting the needs of the interviewee;

- The need to obtain as many details as possible and the importance of not influencing the account.

A thorough preparation and research are crucial before starting the interview.

Before beginning with the interview, advance thought should be given to the following considerations: ethics and informed consent; who can be an interviewer and an interpreter; how to begin the interview; establishing trust and making the interviewee feel more at ease; taking notes and recording; keeping notes and recording; dealing with people who are afraid to talk; how to minimise the risk of re-traumatisation; how to maximising the reliability of the information. It is also important to end the interview well, to ease the interviewee out of the interview, and to take care of yourself as an interviewer.

Special consideration is needed when interviewing in less ideal environments and when interviewing children. Where interviewing children is necessary, interviewers should be specifically trained for this.

- **Medical evidence**

Medical evidence includes both physical and/or psychological evidence. Often, medical documentation or a report will be the most important piece of evidence. Strive to obtain such documents. Medical reports should be prepared by medical professionals, but when immediate medical assessment is not available, physical and psychological effects of the alleged torture and other ill-treatment should be documented to the best of your abilities by taking a detailed description and high-quality photographs.

- **Written statement of the victim**

This could be a formal written statement or take the form of a questionnaire.

- **Witness evidence**

These could include witnesses to the actual incident of torture or other ill-treatment, to the taking into custody of the victim, to the physical condition of the victim prior to or following any period spent in custody, or to any threatening behaviour by the authorities prior to the taking into custody of the victim. Possible

witnesses are best identified by working through the facts chronologically with the victim, asking who, if anyone, was present at each stage.

- **Other evidence**

Other supporting evidence might include expert reports, any corroborating evidence, official reports and statement, any evidence of a practice of torture and other ill-treatment in the country, region or setting, specific research, media reports, copies of domestic decisions.

5. Case Study

Observe and learn from a practical example on how to interview and gather as detailed account about the events, perpetrators, ill-treatment, consequences of torture etc.

PART C. RESPONDING TO THE INFORMATION COLLECTED

1. INTRODUCTION TO THE MECHANISMS AND POSSIBLE COURSES OF ACTION

Once you have finished your interviews and documentation as set out in Part B, you will need to think about choosing the most appropriate place to send the information and how to present it in a way most likely to obtain the result you want. This Part of the Handbook sets out the possible courses of action and provides guidance on how to make best use of the options available. It focuses on two main courses of action:

- 1) **Litigation** of individual cases of torture;
- 2) **Wider advocacy efforts** on individual cases and the wider situation relating to torture in a country.

Litigation and wider advocacy efforts are not mutually exclusive. Wider advocacy efforts can contextualise an individual case being litigated that is indicative of a pattern or practice of torture, or the case can highlight a barrier to the prevention or accountability for torture, which if successful, could be used in wider advocacy efforts. Thus, some of the most successful uses of the international human rights system occur when individual cases are connected to wider advocacy efforts. It is important to remember, though, that the victim should not feel compelled to join such efforts and informed consent for both litigation and advocacy initiatives must still be secured from the victim.

Litigation of individual cases of torture

Before submitting a complaint at the domestic or international level, it is advisable to check whether the State has accepted jurisdiction over individual complaints by one or more international (quasi-)judicial mechanisms. If it has, you should study the admissibility rules of that body as they can vary and change over time. If the intention is to pursue an international complaint eventually, it is important to understand the expectations before you submit the case to domestic authorities.

Domestic remedies must be exhausted first before the case can be brought before the regional human rights commissions and courts and the UN treaty bodies, commonly referred to as regional and international (quasi)-judicial bodies. Under international law, States should have the opportunity to repair any human rights violation for which they are responsible before an international (quasi)judicial body hears the case. Exhausting domestic remedies first also provides other important benefits, such as:

- **Strengthening and reinforcing national institutions:** In order to achieve long-term progress and improve the human rights situation in a country, strong and operational national institutions are needed. Pressing these institutions to deal with human rights violations and developing case law on the issues of torture and other ill-treatment can lead to improvements in a country.
- **Getting a more substantive evaluation of deficiencies** of the domestic legal system from international institutions: Engaging with domestic remedies first allows you to point out exactly where the deficiencies are in practice so an international body will be able to assess and comment on those deficiencies and their impact on the wider allegation. This way, national authorities can receive a clear and more precise substantive evaluation of what needs to be changed in order to avoid human rights violations.
- **Getting faster responses:** Where domestic remedies are effective, they often provide more immediate, direct, and effective satisfaction to complainants than the international procedures. International bodies may take several years to process a case due to the number of cases they receive.

The remedies that typically need to be exhausted are those capable of investigating and identifying responsible individuals, leading to their punishment and redress for the victim. There are exceptions to this rule if domestic remedies are proven ineffective or unable to provide a satisfactory remedy in an individual case. This is an exceptional standard, though, and requires meeting an increasingly high threshold. The rules and jurisprudence of the body to which you intend to submit the complaint should be checked carefully before pursuing this course of action.

Some of the UN special procedures also make findings in individual cases without the need to exhaust domestic remedies. Examples of these procedures include the UN Working Group on Arbitrary Detention which makes determinations on whether a detention is arbitrary³⁸ and increasingly the UN Special Rapporteur on Torture who sends ‘allegation letters’ to states to ‘clarify the substance’ of allegations of torture as well as deal with allegations of ‘systematic patterns of torture’.³⁹ Bringing a case before a UN Special Procedure in this way does not necessarily preclude litigation of the issues before one of the regional or international (quasi)judicial bodies discussed in this section.

For **wider advocacy efforts**, national, regional and international processes may be used to raise awareness about the case. It is a strategic choice for you, your organisation, and the victim as to whether you turn to only national institutions or also include international mechanisms, as well as whether you use domestic institutions first and then international actions later or use both concurrently. National and international options are therefore not hierarchical and domestic remedies do not need to be exhausted other than for individual cases before (quasi-)judicial bodies.

At the domestic level, there may be several non-adjudicative institutions designed to address human rights violations or to prevent them from occurring. National human rights institutions (NHRIs), ombudspersons and parliamentary commissions are some of the options that might be available. Usually, these institutions are encouraged to cooperate with NGOs, civil society, academics and experts and you are therefore encouraged to send them information regarding allegations of torture and other ill-treatment. Depending on the mechanism and the confines of domestic law, they may receive allegations of patterns of human

³⁸ See, individual complaints and urgent appeals: <http://www.ohchr.org/EN/Issues/Detention/Pages/Complaints.aspx>

³⁹ ‘Allegation Letters’: <http://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/Allegation.aspx>. See, Human Rights Council, ‘Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Juan E Mendez, Addendum, Observations on Communications transmitted to Governments and Replies Received’ A/HRC/28/68/Add.1 (5 March 2015) for an example of how the Special Rapporteur deals with individual cases.

rights violations and individual allegations that they can address in a non-judicial manner (for example, by intervening with the prison authorities). Some of these bodies, especially NHRIs and Ombudspersons, might also have a dispute resolution mandate and in exceptional cases might count as domestic remedy that should be exhausted in the case of individual complaints if the intention is to pursue an international mechanism. Be sure to know the objectives – either litigating a case or engaging in advocacy only – when considering your approach.

At the regional and international level, advocacy might involve submitting reports on the general situation of torture and other ill-treatment in a country, particular practices or types of institutions where torture or other ill-treatment is alleged, barriers to investigations and accountability for torture or individual cases to thematic rapporteurs within regional human rights systems or UN special rapporteurs or UN treaty bodies. This information can also be included in the UN Human Rights Council's Universal Period Review. These options are discussed in detail in Part D.

2. NATIONAL MECHANISMS

International human rights law obliges the State to promote and protect human rights, prevent violations and investigate and redress violations when they occur. The State is the primary duty-bearer in international human rights law and it is responsible for ensuring implementation of international standards. At the national level, human rights should be incorporated into adequate and efficient national legislation and policy and by assuring the effective functioning of bodies tasked with protecting and promoting human rights.

Domestic mechanisms are - or should be - at the forefront of the prevention of violations and the protection of human rights. Because of this, they need particular attention in whenever addressing human rights protections. This can be difficult as State mechanisms vary immensely from country to country. Domestic mechanisms differ in how they are established and regulated, how wide their mandate is and their functions and procedures. This Handbook could never hope

to go into detail on the whole spectrum of domestic mechanisms without stretching to several volumes. Nevertheless, there are some features common to domestic mechanisms following the international principles of the rule of law and the right to an effective remedy.

This section introduces some of the courses of action that are most likely to be available within the domestic system. Some mechanisms are established to raise awareness and put political pressure on authorities to respect human rights while others are legal procedures that may require special expertise or experience to use them effectively. Before considering legal procedures, consult with national lawyers and analyse domestic legislation and institutions to determine the actual remedies in a particular country, and the practicalities of using local remedies.

Upon receiving an allegation of torture or any information related to it, think strategically about how to best use this information at the national level. As discussed in Part B on Documenting torture, you will need to discuss two important issues with the person alleging torture before obtaining their informed consent to go forward with the process:

- 1) What he or she would like to achieve with the report;
- 2) What your mandate is and what you can do to help them achieve his or her goals.

If your work is centred on advocacy and you are not able to litigate an individual case, this should be explained to the individual. If he or she desires individual redress but you cannot assist them, refer them to an organisation or a lawyer that can bring a case to courts or similar bodies. Similarly, if you only litigate cases but the victim would like his or her case to be used for wider advocacy purposes, introduce the victim to organisations that carry out such work or make direct contact with them yourself. In defining the appropriate course of action, it is therefore useful to distinguish between:

- Domestic remedies aimed at investigating and redressing the individual instances of alleged torture (**litigation**); and,

- National mechanisms that receive reports on a general situation of torture in the country and may be tasked with prevention of torture (**wider advocacy efforts**).

It is important to bear in mind that some mechanisms can play various roles at the same time. For example, certain national human rights institutions can receive reports, propose legislative and policy changes and also investigate allegations and issue binding decisions on individual complaints.

As already noted, before making a complaint before an international or regional (quasi-)judicial body for the purposes of litigation, **domestic remedies must be exhausted**. When litigating torture and other ill-treatment cases at the national level, identify the available international and regional (quasi-)judicial remedies to which a complaint could be submitted; study their rules on admissibility and the exhaustion of domestic remedies in order to ensure that a complaint made at the national level complies with these rules. Additional tips on the exhaustion of domestic remedies particular to each individual international or regional (quasi-)judicial body are discussed below in the sections focusing on these bodies.

2.1. Challenging the Legality of Detention

Torture and other ill-treatment typically occur in a detention setting. If an individual in detention is at risk of torture or other ill-treatment and/or has been unlawfully detained, the legality and treatment in detention should be challenged through court proceedings.

Under international law, individuals deprived of their liberty are entitled to challenge the lawfulness of their detention before a judicial authority that has the power to order their release. Common names for such remedies include *habeas corpus* and *amparo*. The right applies to all cases of the deprivation of liberty, including detention in criminal proceedings, immigration detention, military, security and counter-terrorism detention, administrative detention, involuntary hospitalization, etc. The risk of torture and other ill-treatment is heightened if a

detention is arbitrary, and becomes particularly prevalent when an individual is being held in incommunicado detention. Therefore, the remedies available to challenge arbitrary detention are especially important in protecting against torture. Under international human rights law, these remedies must always be available, even during states of emergency.

Proceedings to challenge the legality of detention may be initiated by an application to a court, either by the individuals themselves or, where this is not possible, by any other person acting on their behalf. In some systems, it may be necessary for this to be done by a lawyer. Applications may generally be made at any time and should take priority over other court matters.

2.2. Criminal Proceedings

2.2.1. Reporting allegations of torture with the aim of initiating criminal investigation

An effective, prompt and impartial investigation into allegations of torture is a key international standard for redressing torture. To trigger the State's duty to investigate, the State needs to be put on notice of the allegation. The typical way of doing this is to make a complaint to the police, the public prosecutor or a domestic court, depending on the particular legal system. The State also has an *ex officio* duty to investigate even in the absence of a complaint once it is on notice of an allegation, for example, through a media report.

There is no prescribed form for how you or the victim should report a violation to the authorities. It is possible to do it in person, but there is a risk that the State will deny knowledge of the complaint if not evidenced in writing. Therefore, it is advisable to report the allegation of torture in writing and to take all possible steps to secure proof that you have or the victim has made the complaint. For example, send the report to other agencies, such as the NHRI, Ministry of Justice, Prosecutor's office, and indicate in the report to whom it was sent. It is also advisable to get an acknowledgment of receipt from the receiving authority (for

example a stamp on the copy of the complaint). Make sure to follow-up if you do not hear from the authorities in a reasonable time. Most importantly, keep the documents and all the correspondence on file and secure it from destruction or loss.

Where it is difficult to prove that a complaint has been made, evidence that demonstrates that the authorities knew about the alleged torture and did not act can help substantiate a claim of a failure to investigate. Such evidence might include an interview to the media at the time, informing the public and consequently the State about the allegation of torture, or a letter from an NGO or NHRI (or any other person or body) alerting the authorities to the alleged torture.

Torture can be reported to the police and in some countries also to the prosecutor's office. However, in many domestic legal systems, a victim cannot directly institute proceedings before a court. In such systems, a prosecution will only be opened if the public prosecutor decides that it is appropriate. Some countries allow private prosecution in some instances and the victim may file a complaint directly with a court. However, there are many obstacles for this path: the victim needs to know the identity of the perpetrator, provide all the evidence that is expected for the prosecution, and bear the costs of the prosecution if it is unsuccessful.

Determining whether NGOs may lodge a complaint on behalf of an alleged victim is also important. As reporting allegations of torture to the authorities is not formalised, usually anyone is able to inform the authorities about such violations. However, there might be serious ethical implications when reporting torture on behalf of the victim. When in contact with the victim, reconfirm that he or she is still happy to go ahead with the case and that the authorities can be contacted. Take into account that the victim might be too afraid to talk and that must be his or her decision as he or she will be the ones to suffer possible reprisals by the authorities, especially if still in detention. If it is not possible to obtain consent because the victims are missing or otherwise unable to protect their rights, you may need to make a decision on your own to report allegations, but safety and

security considerations need to be taken seriously. See Chapter B.2.1 on Ethical Considerations and Confidentiality for further guidance.

NGOs should thoroughly record all communications they or the victim make with the authorities seeking an investigation. Without carefully documenting the process, it will be close to impossible to prove attempts were made to trigger the investigation. It is important to:

- Make the complaints in writing and keep copies of them;
- Log information on the phone calls or any visits to the authorities (for example, dates, the specific authority, the names of any individuals with whom you spoke, the details of the conversation);
- Keep on file all responses received from the authorities;
- Try to get any copies of medical reports or any documents that may show the victim has reported the alleged torture to the authorities;
- Follow-up in regular intervals if you do not receive response to the complaints.

Generally, reports should be made as soon as possible. There are certain circumstances that may prevent an individual from filing a complaint immediately after torture has occurred. When still in detention or when released, a person may be too fearful to file a complaint even if he or she wishes to pursue justice. In such cases, it will be necessary to explain to an international mechanism why a complaint was not lodged immediately after the torture was committed.

The objective of criminal proceedings is to bring to justice those responsible for torture, not to provide compensation for the victim. Nevertheless, in some national legal systems it will be possible to demand compensation as part of the criminal proceedings either by becoming a party to the proceedings or at the end of a successful criminal prosecution. The criminal court might, after issuing a criminal sentence, award compensation to the victim. Where this is not possible, other mechanisms should exist at the national level to offer redress to victims of torture and, under certain conditions, their family members. Evidence gathered in the course of a criminal investigation can be crucial in this process.

2.2.2. Interim measures

Where an individual is believed to be at risk of torture during an interrogation, or in another custodial setting, it may be possible to apply to a court for an injunction (an order against the relevant public officials to refrain from a particular type of conduct). Additionally, some international procedures offer the possibility of requesting interim measures of protection (requests to the State to provide greater protection for an individual's human rights) (see Chapter C.3.5 on Submitting Information for Urgent Actions).

2.2.3. Responsibility of military personnel

When military personnel perpetrate torture, it is necessary to remember that in addition to a State's international human rights obligations, torture is an offence under the international humanitarian law. It is the responsibility of commanders to investigate breaches of the laws of war by their subordinates. Allegations of torture perpetrated by military personnel can generally be investigated in the same way as any other official. In some States, this occurs through the civilian system, while in others such allegations can only be heard in the military system. Investigations by military authorities may raise concerns over their independence. Those in charge of an investigation should be independent from those allegedly implicated in the events and should be operationally independent of the military chain of command. The conduct of the investigation is also important in determining whether it is effective.

Military personnel may be subject to internal military discipline, including the possibility of court-martial (trial of military personnel before a military court applying military law). Court-martial proceedings can only be initiated internally, although a complaint may be lodged with an appropriate senior officer. A failure on the part of a senior officer to initiate an investigation, or refer an allegation to relevant authorities, could constitute a failure to investigate as well as official tolerance of torture. It is worth knowing about this means of investigation as victims can complain to the military authorities or request an investigation.

As pointed out by the European Court of Human Rights, States are required to take all reasonable steps to ensure an effective, independent investigation ‘even in difficult security conditions’.⁴⁰ It is also worth noting that, as in the non-military context, there is no need to file an official complaint. As long as the authorities are made aware of the alleged violations, they are required to conduct an effective, prompt and impartial investigation.

Finally, it should be noted that internal ‘debriefings’ are not the same as a proper investigation. Military systems have internal procedures for reviewing the conduct of operations (sometimes called ‘a debriefing’), that are intended to ensure better operations in the future. Such procedures must not be confused with a proper criminal investigation able to identify those responsible and sanction them, as required by the international human rights.

2.3. Proceedings for Reparations

There are many forms of redress that a victim may seek, although the domestic legal framework may limit a victim’s options. Some forms of reparations are restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition. In general, the proceedings are judicial in nature and take place in the ordinary courts.

The usual route for claiming reparations is either through bringing a claim for compensation within a criminal complaint and or through a separate civil proceeding. States may have victim compensation funds in place. However, care has to be taken in assessing whether compensation funds – while providing relief – constitute a full remedy. The compensation fund may be inadequate if it does not involve a finding of responsibility on the part of the State.

2.4. National Human Rights Institutions / Ombudspersons

⁴⁰ ECtHR, *Al-Skeini and Others v. The United Kingdom*, Application No. 55721/07 (7 July 2011), para. 164.

National Human Rights Institutions (NHRIs) are considered cornerstones in the prevention and protection of human rights. The Human Rights Council in Resolution 5/1 (Institution-Building of the United Nations Human Rights Council) emphasised the special role of national human rights institutions. The UN defines a “national human rights institution” as “an institution with a constitutional and/or legislative mandate to protect and promote human rights”.⁴¹ Their mandate is usually very broad in relation to the prevention, promotion and protection of human rights. Ombudsmen can also be considered as NHRIs if they have a clear human rights mandate.

How you engage with an NHRI depends on its mandate and functioning. Some focus on the promotion and protection of human rights generally, for example, by:

- Issuing opinions, recommendations, proposals, reports on matters concerning the promotion and protection of human rights to the competent national bodies in the legislative, executive and judiciary branches;
- Promoting the ratification and implementation of international human rights standards into domestic legislation and practice;
- Playing a role in implementation of decisions of the international human rights bodies at the domestic level;
- Contributing to the work of the UN and regional human rights bodies, by submitting reports, cooperating in consultation processes;
- Advising the State on drafting and implementing human rights action plans; and
- Acting as the National Preventive Mechanism (see below, the sub-chapter on NPMs).

Sometimes, an NHRI also handles complaints from individuals, which may include a combination of the following functions:

- Investigating and considering complaints on allegations of individual violations of human rights;
- Starting investigations or an inquiry into a particular human rights situation;

⁴¹ UN, National Human Rights Institutions: History, Principles, Roles and Responsibilities, Professional Training Series No. 4, (2010), available at http://www.ohchr.org/Documents/Publications/PTS-4Rev1-NHRI_en.pdf.

- Providing friendly settlement, conciliation or mediation services;
- Acting as an advice line;
- Adjudicating cases in a specialised human rights tribunal;
- Taking up cases on behalf of an individual.

It is important to know whether an NHRI exists in a country and to study its mandate to determine what functions it exercises. Assess how the victim (and the general public) can benefit from using such institutions. Information on a case or the practice of torture might be sent to an NHRI in order for it to consider it within its promotion and protection work. Where an NHRI can act or provide support and assistance in relation to individual cases, it might be considered as a possible route. In such cases, it is important to assess and seek legal advice on whether the NHRI can be considered to be a remedy that requires exhaustion before submitting the case to a regional or international (quasi)-judicial body or simply constitutes an additional advocacy route.

Further reading

- APT, Asia Pacific Forum, OHCHR, Preventing Torture: An Operational Guide for National Human Rights Institutions (2010), <http://www.ohchr.org/Documents/Publications/PreventingTorture.pdf>
- Asia Pacific Forum, Raoul Wallenberg Institute, Manual on Conducting a National Inquiry into Systemic Patterns of Human Rights Violation (2012), <http://www.asiapacificforum.net/support/resources/training/national-inquiries/downloads/resources/manual-on-conducting-a-national-inquiry-into-systemic-patterns-of-human-rights-violation-2012>
- Asia Pacific Forum, Undertaking Effective Investigations: A Guide for National Human Rights Institutions (2013), <http://www.asiapacificforum.net/support/files/investigations-manual-for-nhris>

2.5. Non-Refoulement Claims

Individuals who have been or fear that they may be tortured by state or non-state actors if returned to a particular country, usually their state of nationality, may

challenge a removal decision on the basis of the principle of *non-refoulement*. The principle of *non-refoulement* differs depending on whether it is made under international refugee law (relevant to applications for refugee status) or international human rights law (relevant to any decisions to remove or deport a non-national). A claimant for refugee status may also be asserting *non-refoulement* under international human rights law.

First, where a person wishes to apply for refugee status, the applicant must show that he or she has a well-founded fear of persecution on grounds of his or her race, religion, nationality, membership of a particular social group or political opinion. Persecution is undefined, but includes violations of human rights such as torture and other ill-treatment. Persecution can be from state or non-state actors. When representing an individual in an application for refugee status (often called domestically an 'asylum application'), an NGO needs to ensure that it satisfies the standard of proof, as established in national legislation, that the individual would be personally in danger of being persecuted as a result of torture or other ill-treatment if the application for refugee status is rejected and the person returned. The individual will have to show that he or she is personally at risk of torture or some other serious human rights violation (i.e., not only that general human rights violations occur in that country) and the risk is ongoing (i.e. not historical or in relation to a previous government no longer in power). In some cases, it may be enough to show that as a person of a particular gender, sexual orientation, age and/or ethnicity, he or she faces that level of risk – the targeting of a group in a non-international armed conflict, for instance, puts the members of that group at risk. For refugee status, though, it may also be necessary to show that there is no safe place within the state to which they could return – even if they cannot return home.

Second, under international human rights law, an individual may challenge a decision to remove him or her from a state's territory on the grounds that he or she may be at a risk of torture or other ill-treatment on removal. The regional human rights courts and commissions, the Human Rights Committee and the Committee against Torture have all read the principle of non-refoulement into the

general prohibition of torture and other ill-treatment. For example, States Parties to the Convention against Torture must not expel a person to a country where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. The Committee against Torture requires applicants present an arguable claim and provide grounds that go beyond mere theory or suspicion. The risk does not have to meet the test of being highly probable, but it needs to be foreseeable, real, and personal. The applicant must show that the risk is on-going (i.e., not only that there was once a risk, but that this risk continues to exist) and is individualised (i.e. it is not sufficient to report on the existence of a wider situation of torture or other ill-treatment although this informed should be included). As discussed in Part A some international human rights bodies have recognised that the risks of torture may emanate from non-state actors as well as state actors and so a claim can be made on this basis where applicable.

If the application for refugee status fails or a decision to remove or deport an individual made, a number of the international mechanisms are able to grant provisional measures, including a request to the Government to delay deportation/removal until they have considered the case. The European Court of Human Rights, the Committee against Torture and Human Rights Committee have been especially active in this regard. The Special Rapporteur on Torture has also occasionally intervened by sending an urgent appeal to the responsible State. You should consult the rules of procedure and jurisprudence of the relevant regional and international bodies applicable to your state to see what requirements need to be met for an interim measure to be granted.

2.6. National Preventive Mechanisms

The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) obligates States Parties to set up, designate, or maintain at the domestic level one or several visiting bodies in places where people are or may be deprived of their liberty - national preventive mechanisms (NPMs). Some States have ratified the OPCAT

but entered a declaration postponing the establishment of NPMs. Under Article 24, the declaration can only be made at the time of ratification and is valid for a maximum period of three years with the possibility of extension for two years. You should check whether the country you are working on has entered such a declaration.

The OPCAT also established an international mechanism called the Subcommittee on Prevention of Torture (SPT). The SPT is discussed in detail later in the handbook. It advises and assists NPMs with a view to strengthening their capacities and the protection of persons deprived of their liberty. The work and the functions of the SPT and the NPMs are therefore intertwined. Together, they aim to achieve the goal of OPCAT to prevent torture and other ill-treatment by a system of regular visits to places where people are deprived of their liberty.

For the purposes of this Handbook, it is important to outline the functions of the NPMs, conditions for their work and how they interact with civil society.

2.6.1. Functions of NPMs

The core of the NPMs' mandate is to prevent torture and other ill-treatment. The most visible function for NPMs is regular, unannounced visits to places where people are deprived of their liberty. Such visits have been recognised as a key safeguard for the prevention of torture and should occur not only at detention facilities and police stations but also psychiatric institutions and social care homes and other places where individuals are deprived of their liberty. NPMs should discuss the recommendations made out of their visits with the national authorities in order to begin a dialogue on implementation.

NPMs also make recommendations to relevant authorities and submit proposals and observations on existing or draft legislation with a view to improving the treatment and the conditions of the persons deprived of their liberty and preventing torture and other cruel, inhuman or degrading treatment. The mandate of the NPMs is preventive and does not include responding to individual

complaints of alleged torture. If individual complaints are sent to it, it may forward them to a competent body. In some countries, the functions of the NPM are assigned to a body that also deals with individual complaints (such as an Ombudsperson). The SPT generally does not encourage this situation. However, where it arises, the SPT advises that there should be a strict delimitation between the roles and the NPM should be located in a separate unit from the complaints unit.

2.6.2. The requirements for the Establishment of an NPM

States may choose to create a new and specialised body to take on the role of the NPM or to assign this role to an existing institution or more than one institution. The debate on which of these options is better or more effective, is ongoing with much depending on the national context and the nature and capacity of the existing institutional framework. Whichever road a State Party takes, the NPM must be in full conformity with the provisions of the OPCAT, especially functional and financial independence.

NPMs should be established and operate in line with the Paris Principles relating to the status of national institutions for the promotion and protection of human rights. The most important principle that should guide States Parties in establishing the NPMs is the principle of independence. NPMs should be guaranteed functional independence, independence of their personnel, and be given the required capabilities and professional knowledge of the experts and make available the necessary resources for their functioning.⁴² The State Party should consider the recommendations made by the NPM and “enter into a dialogue with it on possible implementation measures”⁴³ and should also publish and disseminate NPM’s annual reports.⁴⁴

To enable the NPMs to fulfil their function, the States Parties must guarantee⁴⁵:

⁴² OPCAT, Articles 18 and 19.

⁴³ OPCAT, Article 22.

⁴⁴ OPCAT, Article 23.

⁴⁵ OPCAT, Article 14.

- Access to all information relating to the number of persons deprived of their liberty, number of places of detention and their location, the treatment of persons, and the conditions of detention.
- Access to all places of detention, their installations and facilities, and the liberty to choose which to visit. The ability to conduct unannounced visits to places of detention is an important requirement for facilitating the role of the NPMs.
- To conduct private interviews with persons deprived of their liberty, including being able to freely choose the persons they want to interview.
- To interview any other person who may supply relevant information, which includes civil society (see below).

The OPCAT includes a specific provision aimed at protecting individuals and organisations that communicate with the NPMs against reprisals for having communicated information to the NPM, whether the information is true or false. The information sent to the NPM is privileged and personal data will not be published without the express consent of the person concerned. No one should be sanctioned or prejudiced in any way for having communicated to the NPM any information, whether true or false.⁴⁶

2.6.3. Cooperation between NGOs and NPMs

NGOs and experts are a valuable source of information for the NPMs as NGOs work in the field, receive allegations, and may have a long tradition of monitoring the conditions in places where people are deprived of their liberty. They can also play an invaluable role in following up, advocating and monitoring the implementation of the recommendations of NPMs. The cooperation between NGOs and NPMs will largely depend on the model of the NPM that a country has taken on. Best practices of the collaboration between the NPMs and NGOs may include:

- Becoming part of the NPM or assisting it to undertake visits;
- Joint consultations and discussions;

⁴⁶ OPCAT, Article 10.

- Regular meetings to discuss on-going problems and challenges;
- Discussions on specific issues, such as the methodology used by the NPMs on visits of places of detention;
- Joint running of public education programmes and trainings of public officials.

NGOs can and are advised to send information that they gather through documenting torture to the NPMs. Reporting allegations of torture and other ill-treatment might be especially important where the information demonstrates a lack of safeguards to prevent torture, such as access to a lawyer, diplomatic representative, lack of medical examination and treatment, abuse of pre-trial detention, etc. As NPMs should cover all forms of detention, NGOs can play a role in gathering information on forms of deprivation of liberty (such as social care, for example) that they consider the NPMs need to examine or have not yet looked at.

On the other hand, the NGO can use an NPM's reports for advocacy purposes when writing their own reports on prison conditions, lack of specific safeguards and similar issues. NPM reports can also be a useful source when researching on patterns of torture in a country. For example, such reports may be used when an NGO is working to prevent a deportation to a country, or where an individual will be placed in a detention facility where there is a risk of torture.

Further reading

- APT, Optional Protocol to the UN Convention against Torture: Implementation Manual (2010), www.ap.t.ch/content/files_res/opcat-manual-english-revised2010.pdf
- APT, National Human Rights Commissions and Ombudspersons' Offices / Ombudsmen as National Preventive Mechanisms under the Optional Protocol to the Convention against Torture (2008), http://www.ap.t.ch/content/files_res/opcat-nhris-ombudspersons-as-npms-en.pdf

2.7. Other Proceedings and Advocacy Efforts

Disciplinary proceedings internal to the police, the military, other branches of the security forces, and the State administration are common in the context of addressing torture allegations. These are non-judicial proceedings in which a case is considered by a superior or superiors of the public official or by an entity hierarchically separate from the public official. The types of sanctions which may be imposed are normally related to the job, and may include withholding pay, temporary suspension from work, reassignment to another post or even dismissal. Disciplinary sanctions are sometimes used by states to show they have done something in response to allegations. However, without a proper investigation that leads to prosecuting and punishing those responsible for acts of torture and without providing full reparation to the victims, the State falls short of meeting its international obligations.

Disciplinary proceedings alone are not considered as an effective remedy that has to be exhausted before submitting a complaint to a regional or international (quasi)-judicial body. Foremost, they are usually not independent as they are usually conducted by a person superior to the alleged perpetrator and not by an independent investigatory authority. When a criminal investigation is underway, it might be necessary to suspend a person with pay until the outcome of the investigation. In countries that still do not criminalise torture and/or where criminal investigations are not a reality, these types of proceedings could at least make sure that torturers are removed from the positions where they could continue with their practices. NGOs can also lobby for the adoption of such internal regulations that prevent those who were sanctioned in a disciplinary proceeding from gaining certain employment, especially in the public sector.

You may report individual allegations of torture to these procedures, but you are advised to take steps to trigger an actual criminal investigation in order to demonstrate you have exhausted domestic remedies and to reflect your demand that the State use both the internal procedures and the criminal investigation.

3. INTERNATIONAL MECHANISMS IN GENERAL

A range of international mechanisms may be available for victims and NGOs seeking assistance, for reporting on general situations of torture, and for submitting complaints in individual cases of alleged torture. This Chapter will guide you through the possible mechanisms and provide advice on how to use them. If you do not wish to pursue these options, there are other sources to which you can turn to for advice, support or assistance (see Chapter C.9).

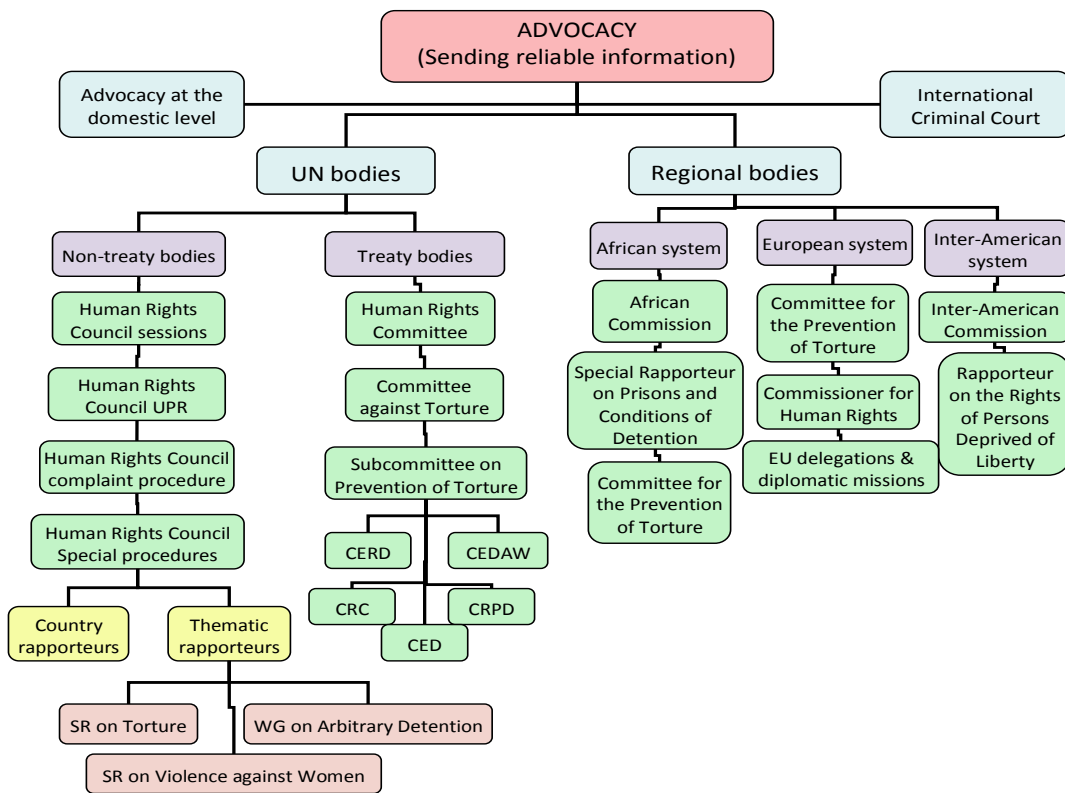
As at the domestic level, it is important for the NGO to decide whether the objective is **litigation** (following the exhaustion of domestic remedies) and/or **advocacy** bearing in mind that both can be pursued together. For **advocacy**, the objectives may be to alert the international community to the practice of torture in a State, to highlight the lack of effective preventive or accountability frameworks, or to draw an international body's attention to an individual case so that the body can raise the case with the State. If the aim is to have an individual case examined by a (quasi-)judicial body, those responsible for torture in an **individual case** and redressing particular victims, you will use mechanisms that receive and handle individual petitions or complaints. Some mechanisms will be able to take **urgent actions** on individual allegations of torture. The range of mechanisms available for these purposes is detailed below.

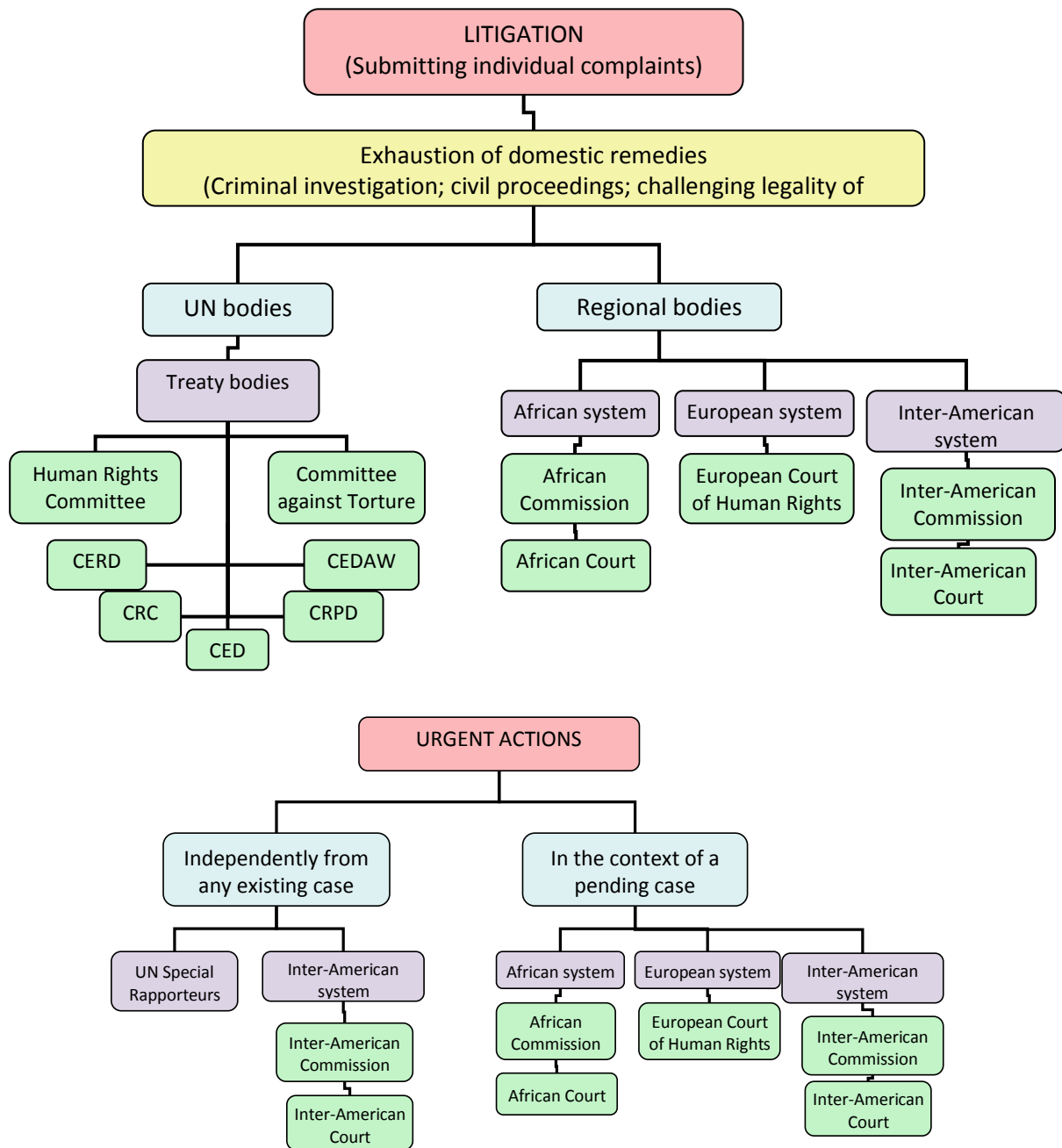
Regional and international human rights mechanisms differ based on how they were established:

- **Treaty-bodies:** International human rights treaties established special bodies within the United Nations whose task is to supervise States' adherence to their international obligations ("treaty bodies"). For example, the Committee against Torture was established to oversee compliance with the UN Convention on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The mechanism is available only if the State has ratified the relevant treaty that the body oversees.
- **Non-treaty bodies:** Some mechanisms are not set up for the purpose of supervising a particular treaty, but were established by an inter-governmental body to examine the general or specific human rights situation in States

members of that inter-governmental body (“non-treaty bodies”). The mechanism is available if the State is a member of an inter-governmental organisation, which establishes a human rights mechanism. For example, this includes the UN Human Rights Council procedures, which cover all UN Member States, and certain procedures of the Inter-American Commission on Human Rights, which address members of the Organisation of American States.

The following diagrams might shed light on the available mechanisms based on the goals that you are pursuing.





3.1 Different Functions of Different International Mechanisms

International mechanisms can receive individual allegations of torture and/or deal with wider situations or patterns of torture, ultimately with a view to having preventive effects. Many international human rights mechanisms have more than

one function; the same body sometimes deals with reporting, monitoring, and responding to individual complaints and/or urgent actions.

3.1.1. General situation of torture

The general situation of torture in a country is considered by mechanisms tasked with reporting on the human rights practice of States, monitoring compliance, and conducting fact-finding visits (also called “reporting mechanisms”). The term ‘reporting mechanism’ is used in this Handbook to refer to any international mechanism that receives and/or seeks out information in order to report or comment on whether States are respecting their obligations under international human rights law. The information it receives can concern individual and general allegations, while the ultimate objective is to obtain an accurate picture of the general situation and make recommendations. Reporting mechanisms can receive individual allegations, but they will only consider such claims as part of a general situation. They do not issue a legally binding decisions or award reparations to individuals.

The role of NGOs is crucial for the work of these international human rights bodies. NGOs working in specific settings and/or countries are in a unique position to send reliable information to alert these bodies to the problems on the ground. Such reports can include concrete instances or practices of torture or particular deficiencies in the national system that prevent effective investigations or inhibit redress for victims.

Although these mechanisms are used to report on general situations, it is important to include details originating from individual instances of torture. Such individual cases may illustrate wider deficiencies in a particular structure, law or procedure and may reveal patterns of torture (consult Chapter B.3 on Standards of Documenting to see how to establish patterns of torture).

An NGO may submit information to international bodies in relation to:

- **Universal Periodic Review:** The Human Rights Council considers State reports in a periodic, peer-review process, the goal of which is to improve the human rights situation worldwide. There are plenty of opportunities for NGOs to participate in the process, although in order to send written submissions or to address the Council in an oral statement, the NGO needs to be accredited with ECOSOC (Economic and Social Council). There is more information on the accreditation process in Chapter C.4.1 on Introduction to the UN Human Rights System.
- **Consideration of State reports:** Treaty bodies (bodies established by a specific human rights treaty, such as UNCAT, ICCPR, etc.) receive and examine periodic reports prepared by States Parties about the situation in their country and the manner in which they gave effect to their treaty obligations. States have an obligation to submit reports on a regular basis, although many delay the submission of these reports for many months or years. NGOs can engage in the process by submitting “shadow reports”. Some bodies adopt a List of Issues, which is a list of concerns prepared by a treaty body on which States need to focus in their State report or in addition to their report. NGOs can send a substantiated report on which issues should be included on the list. The State report is then considered in a formal meeting, which the public may attend. During this meeting, the State whose report is being considered is given an opportunity to introduce its report. It will then normally be asked by the committee to answer further questions raised by the report. Finally, the committee will adopt its conclusions and make recommendations to the State on ways to better implement its obligations.
- **Confidential inquiry:** Some human rights bodies initiate inquiries if they receive reliable information with well-founded indications of serious, grave or systematic violations of human rights.
- **Monitoring:** Certain mechanisms may engage in monitoring, often from a particular perspective, e.g., torture or violence against women, or the general human rights situation in a specific country. It normally involves receiving and

analysing information about both individual and general allegations of widespread or systematic violations in order to report on the situation. A special combination of international and national monitoring mechanism was established by the OPCAT, which provides for preventive monitoring.

- **Fact-finding visits:** Certain mechanisms may also carry out a fact-finding role and will visit countries, either on a periodic basis, or an *ad hoc* basis when there is a particular cause for concern. Information can be sent to their attention prior to or during the fact-finding country visits.

3.1.2. Complaint procedures

Complaint procedures are aimed at redressing individual instances of alleged torture. Victims (and NGOs before certain bodies such as the African Commission on Human and Peoples' Rights) may submit information that they have gathered and initiate a complaint procedure. There are two kinds of complaint procedures:

- 1) **Individual complaints:** Such complaints provide a quasi-judicial process focused on the individual allegation itself. The aim is to establish whether or not a State has violated the rights of individuals under the relevant human rights treaty.
- 2) **Inter-state complaints:** Under this procedure, States may make complaints against other States alleging breaches of their human rights obligations or commitments. This type of complaint procedure will not be addressed in this Handbook, but if you intend to submit an *amicus curiae* brief (an intervention from a non-party to the proceedings), consult relevant sections of this Handbook, particularly on how to report on wider patterns of torture.

3.1.3. Urgent actions

A request for an urgent action may be sent to international mechanisms that have the power to request a State take measures to avoid irreparable damage to the

alleged victim.⁴⁷ This is an especially useful tool in cases of imminent danger to safety and security of a person who has been deprived of liberty and who reports he or she is being tortured or detained in a situation where there have been reports of torture. These bodies will not decide upon the individual allegations of torture, but will do what is in their power to prevent torture from (re)occurring.

3.1.4. Existing mechanisms and their functions

The tables below indicate which existing international mechanisms carry out which of the functions.

<p>UPR AND CONSIDERING STATE REPORTS</p> <ul style="list-style-type: none"> • UN Human Rights Council, the UPR • Committee against Torture • Human Rights Committee • Committee on the Rights of the Child • Committee on the Elimination of Discrimination against Women • Committee on the Elimination of Racial Discrimination • Committee on the Rights of Persons with Disabilities • Committee on Enforced Disappearances • African Commission on Human and Peoples' Rights (African Union) 	<p>CONFIDENTIAL INQUIRY</p> <ul style="list-style-type: none"> • Committee against Torture • Committee on the Elimination of Discrimination against Women • Committee on the Rights of Persons with Disabilities • Committee on Enforced Disappearances • Committee on Economic, Social and Cultural Rights • Committee on the Rights of the Child
<p>MONITORING</p> <ul style="list-style-type: none"> • UN Human Rights Council complaint procedure • Special Rapporteurs of the UN Human Rights Council • Committee against Torture • Subcommittee on Prevention of Torture 	<p>FACT-FINDING IN COUNTRY</p> <ul style="list-style-type: none"> • Special Rapporteurs of the UN Human Rights Council • Committee against Torture • Subcommittee on Prevention of Torture • Inter-American Commission on Human Rights (Organisation of American

⁴⁷ See Rules of procedure of particular committees.

- European Committee for the Prevention of Torture (Council of Europe)
- Inter-American Commission on Human Rights (Organisation of American States)
- African Commission on Human and Peoples' Rights (African Union)
- Committee for the Prevention of Torture in Africa (African Union, based on a soft-law instrument)

INDIVIDUAL COMPLAINTS

- Committee against Torture
- Human Rights Committee
- Committee on the Rights of the Child
- Committee on the Elimination of Discrimination against Women
- Committee on the Elimination of Racial Discrimination
- Committee on Rights of Persons with Disabilities
- Committee on Enforced Disappearance
- European Court of Human Rights (Council of Europe)
- Inter-American Commission on Human Rights (Organisation of American States)
- Inter-American Court of Human Rights (Organisation of American States)
- African Commission on Human and Peoples' Rights (African Union)

States)

- African Commission on Human and Peoples' Rights (African Union)

URGENT ACTIONS

- Special Rapporteurs of the UN Human Rights Council
- Committee against Torture
- Committee on Enforced Disappearances
- Human Rights Committee (interim measures)
- Committee on the Elimination of Racial Discrimination
- Committee on Rights of Persons with Disabilities
- European Court of Human Rights (interim measures)
- Inter-American Commission on Human Rights
- African Commission on Human and Peoples' Rights (provisional measures)

3.2. Selecting the Right International Procedure

In order to choose among the wide range of procedures that exist at the international level, you need to consider:

- **Availability:** which mechanisms are open to you?
- **Suitability:** which mechanisms are best suited to your objectives?

Remember that you may only use the personal information of alleged victims of torture for the proceedings to which the individual agrees. Especially if you represent an individual in a specific case before the courts or other adjudicative bodies, the client's wishes are the ultimate guidance in choosing a particular mechanism.

3.2.1. Availability of a mechanism

As mentioned above, there are two types of international mechanisms:

- 1) Treaty-bodies;
- 2) Non-treaty bodies.

This distinction might dictate available courses of action and you will need to explore whether a mechanism is available to you based on several elements.

3.2.2. Treaty-body mechanisms

For treaty-body mechanisms, make sure that the State:

- Has **signed** and **ratified** the treaty;
- Has **not entered any reservation** that would limit the availability of the mechanism;
- Has **recognised the competence** of the treaty body to hear individual petitions and/or conduct confidential inquiries, if it has these functions.

Reservations

At the time of becoming a party to a treaty, States often have the opportunity to make a reservation to a treaty. Making a reservation means that the State has not accepted the exact terms of the treaty, but has modified one or more of its

provisions to suit itself as a condition of accepting the treaty. You should always check if the State has made any reservations to a treaty in case it is relevant to your case.

Recognising the competence of a body

The competence of a body to receive and consider individual communications is not automatic when the State becomes a party to the treaty. There are two means by which a State can recognise the competence of a body: by becoming a party to an optional protocol to the convention; or, by entering a special declaration expressing consent for the mechanism to receive individual allegations of torture. For example, the ICCPR does not envisage that the Human Rights Committee would receive individual allegations, but the States need to sign and ratify the first Optional Protocol. Article 22 of CAT provides an option of individual communications, but only if a State Party to the Convention enters a declaration recognizing the competence of the Committee to receive and consider individual communications. The Committee cannot consider communications unless a State is a party to the CAT and has made such a declaration.

3.2.3. Non-treaty body mechanisms

In contrast to treaty-based mechanisms, the UN Human Rights Council, for example, will accept information about any State in the world. Using this mechanism is especially important for States that are not parties to relevant treaties and thereby avoid the scrutiny of such mechanisms as CAT, HRC, CERD, CEDAW etc.

3.2.4. Suitability of a mechanism

Once you have identified which mechanisms are in principle available, it is necessary to decide what the goal is in submitting the information. This will help guide you in selecting the mechanism(s) most likely to fulfil your objectives. There are other strategic and substantive considerations that should be taken into

account before deciding which mechanism to use. For example, sometimes two or more international human rights bodies may be suitable for achieving your goals, and choosing which to pursue may be a strategic choice based on other cases pending before the body, the body's previous interactions with the State, or the body's jurisprudence on a particular issue.

For **advocacy** purposes, a primary consideration will be whether you have sufficient resources to engage with a range of bodies at the national, regional and international level or whether your efforts are best concentrated on particular mechanisms, due to their perceived effectiveness or track-record on working on a particular country or issue related to torture. You may also wish to consider sequencing your advocacy strategies and alternating between joining submissions by other organisations, leading a coalition, or submitting reports alone.

For **litigation**, if there are two international bodies that can potentially hear the complaint (for example, a regional human rights court and a UN treaty body or two treaty bodies), you may wish to consider specific circumstances, such as:

- Formal admissibility requirements and how strict a certain body is when assessing them. Two of the most relevant considerations here are:
 - The time limit to submit a complaint;
 - Whether the international body acknowledges special circumstances that prevent the exhaustion of domestic remedies;
- The backlog of cases pending before the international human rights body;
- Whether it is possible to use a procedure for interim measures;
- The jurisprudence of a particular human rights body, which helps determine whether a body is more or less likely to find violations of rights in specific circumstances;
- The range of issues the body can deal with, for example if the case not only involves torture but also freedom of expression, then a body with a general human rights mandate may be more suitable than one that is limited to dealing with torture alone; and

- The client’s specific wishes. For example, a client may indicate he or she does not trust the regional mechanism and insists on using international ones.

Consider these circumstances carefully because you might not get more than one opportunity to bring a case to an international body.

3.3. An Example of Using Various Mechanisms

One of the examples of using multiple different international mechanisms is the Campo Algodonero or “the Cotton Field” case on the rights of women not to suffer violence perpetrated by non-state actors in Mexico. It is deemed as an important precedent for the fight against gender-based violence and in particular femicide.

After receiving hundreds of communications from individuals and NGOs, the Inter-American Commission conducted an on-site visit and issued a thematic report on violence against women in Ciudad Juárez, State of Chihuahua, Mexico.⁴⁸

The case was brought to the Inter-American Commission on Human Rights, which then filed a petition to the Inter-American Court on Human Rights. The Commission claimed that Mexico knew of the existence of a pattern of violence which had resulted in the deaths of hundreds of women and girls, did not respond to the reports on the disappearances of the victims, failed to diligently investigate murders, denied justice, and failed to provide adequate compensation to the women’s next of kin.⁴⁹ Several NGOs submitted *amicus curiae* briefs.⁵⁰ The Court issued a judgment in 2009⁵¹ finding a violation of the positive duty to guarantee life, integrity and personal freedom of three women and a failure of the duty to adequately investigate the crimes against women.

⁴⁸ Report available at <http://www.cidh.org/annualrep/2002eng/chap.vi.juarez.htm>.

⁴⁹ Commission’s petition is available at <https://www.cidh.oas.org/demandas/12.496-7-8%20Campo%20Algodonero%20Mexico%204%20noviembre%202007%20ENG.pdf>.

⁵⁰ See the judgment of the Court, para. 14.

⁵¹ Case of Gonzalez et al. (“Cotton Field”) vs. Mexico, Judgement of 16 November 2009, available at http://www.corteidh.or.cr/docs/casos/articulos/seriec_205_ing.pdf.

The situation of violence against women in Mexico was also dealt with by CEDAW in two different ways. First, CEDAW undertook an inquiry upon receiving reliable information on grave or systematic violations relating to the abduction, rape, and murder of women in and around Ciudad Juárez by two NGOs.⁵² After conducting examinations and a country visit, CEDAW issued a landmark report with recommendations concerning the investigation of the crimes and prevention of gender-based violence.⁵³ Second, in the State party reporting process, CEDAW raised the issue of violence against women in Ciudad Juárez in several periodic reviews of Mexico, most notably the fifth, sixth and combined seventh and eighth periodic reports.⁵⁴ The Committee against Torture also conducted an inquiry under Article 20 of the UNCAT.⁵⁵

Aside from these proceedings, the situation of women in Ciudad Juárez was also brought to the attention of several UN Special Rapporteurs – the Special Rapporteur on violence against women, its causes and consequences; Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions and the Special Rapporteur on the Independence of Judges and Lawyers – which conducted missions in Mexico in relation to gender-based crimes in the region and beyond.

The reports and decisions issued by these mechanisms all reflect the vital nature of information received from NGOs and the different roles played by advocacy and litigation strategies in dealing with the situation.

3.4. Submitting Information on General Situations of Torture: State Reports, Monitoring and Fact-Finding

The allegations of torture you have documented might reveal indications of widespread, systematic or generalised situations of torture or particular deficiencies in the national legal system and procedures. If you decide to use international mechanisms dealing with general situations (and not submit an

⁵² See for example <http://www.equalitynow.org/node/702>.

⁵³ The report is available at <http://www.un.org/womenwatch/daw/cedaw/cedaw32/CEDAW-C-2005-OP.8-MEXICO-E.pdf>.

⁵⁴ <http://www.un.org/womenwatch/daw/cedaw/reports.htm#m>.

⁵⁵ Committee against Torture, 'Report on Mexico Produced by the Committee under Article 20 and Reply from the Government of Mexico', CAT/C/75 (26 May 2003).

individual complaint), the following section will provide guidance and highlight the rules you should follow when submitting information to these mechanisms. This information is general and should be used in combination with the particular information given in Chapters C.4 - C.8 on the individual UN and regional human rights mechanisms that you plan to use.

The principal objective of reporting mechanisms is to monitor and assess the extent to which States are respecting their obligations under international human rights law.

Each mechanism issues its own rules on how to submit information and how the submission should look. What you should be most careful about is:

- The **essential information** that must be included in a submission (this will be considered under each mechanism separately); and
- The **quality of information**, which will often determine whether a submission will be considered, and what impact you can hope to achieve.

3.4.1. The quality of submissions

International mechanisms that deal with general situations of torture often receive large amounts of information from many sources, and the quality and detail may vary. Low quality of submissions might diminish the efforts put into gathering evidence and drafting.

To prepare a quality submission for a reporting mechanism, ensure that the submission:

- Is written in an **accessible language**;
- Respects the guidelines for **length**;
- Is **credible and balanced**;
- Contains enough **details**.

3.4.2. Language of the communication

Most international organisations make a distinction between *official languages* and *working languages*.

An NGO should submit a communication in a working language of the body as this might bring faster consideration of the communication and ensure that it is read. There are certain situations where a body will consider a communication in an official language other than working languages if there are enough staff. If an NGO or a victim can only submit information in an official language other than working languages, they should still do so; the international body will determine how to deal with such instances and if they have capacity to translate the submissions. You should always strive to at least highlight what the submission refers to in a working language, preferably at the start of the submission before the non-working language submission.

Many organisations have limited resources, meaning that translation from the official language into a working language that staff will understand is not always a priority, and in many cases it is not done at all. English is the most understood and commonly used language of UN bodies; other languages may prevail with other mechanisms (e.g. Spanish in the Inter-American system).

In addition to the question of which language to use, you should always use *simple language* and explain specialised terms. Do not assume any specialised knowledge on the part of the staff receiving your submission, particularly when it relates to national law, procedures or institutions. If you use specialised terms or terms only used in a local context, abbreviations and acronyms, clearly explain them. It is important that the staff understand what you are discussing. Terms that may seem simple to you may not be widely understood outside of your country.

In addition, do not use emotive language or abusive language, and avoid colloquialism. Be as precise and as objective as possible.

3.4.3. Length of submissions

There is generally no required length for submissions to reporting mechanisms. The exception is the information provided for the UPR process, which is discussed specifically below. Submissions to some mechanisms, for example to the Human Rights Committee, reach up to 50 pages. If NGO submissions are published on the body's website, check the average submission length and try not to exceed it. Well-edited submissions are often more effective.

Even when you are not formally limited by length, try to submit a succinct and tightly written submission that is clearly structured and avoids repetitive language or irrelevant information. There are two reasons why you should not make the submission any longer than it needs to be: your time and resources; and the limited time and focus of members of the reporting mechanisms' staff. For example, you do not need to repeat them at length or provide extensive analysis of the jurisprudence of the mechanism that you are submitting to, nor of mechanisms from the same organisation. Instead, it is better to apply the findings to the situation you are raising.

As good practice, it is advisable to include an **executive summary** and reserve space for **specific recommendations**.

3.4.4. Credibility and balance

You can make your submission balanced and credible by introducing yourself, being objective and avoiding sensational claims.

- **Introducing the NGO**

If your NGO does not already have a track record of supplying reliable information to the reporting mechanisms on a regular basis, you should make the introduction more comprehensive. The aim is to include any information that will help the mechanism form an accurate impression of your organisation and the quality of your information. While the body will not treat an NGO's submission

differently simply because it does not know their previous work, it will be important for the body to know, for example, what your methods of work are.

If you are affiliated with other organisations or international NGOs working in the field, it might be useful to mention them. There are some international NGOs that offer assistance to other NGOs intending to communicate with an international body, helping to coordinate their work, for example, when NGOs are making oral representations at sessions of an international body opened to NGOs. Such coordinating NGOs may be in frequent touch with an international reporting mechanism and the body may ask for its advice on your credentials if the mechanism is unfamiliar with your work.

Start by briefly explaining your mandate and activities, setting out the purpose and objectives of your work and the reasons for submitting the communication. Explain the methods of your work: describe how you collect information, whether it is first-hand or obtained by from secondary materials, such as press reports. Also reveal whether you are a politically oriented organisation, as this will help to place your information in context and demonstrate that you have nothing to hide. It is better to address these questions directly rather than leave them up to the imagination of the staff member reading the communication.

Do not make the introduction too lengthy, but also do not forget the importance of it. If the body is to respond to “reliable information” on patterns of torture, it must make sure that the information comes from a reliable source too.

- **Objectivity of information**

When presenting information regarding the general situation in a country, make sure that the information is balanced. While it is normal for information to appear somewhat one-sided if it is trying to establish that the State is responsible for violations, it is important to present it in an objective manner. You will be perceived as more objective if you can comment on which issues have improved in the country since the last State report, and which have deteriorated or have

appeared anew. If there have been some, even minor, improvements in the State you can mention them and explain that some other problems have arisen since.

An objective, balanced view of a situation will make your communication more credible and show that you are interested in presenting the real situation and not just one perspective. Explain the background of your information carefully, so that it cannot be perceived as having been taken out of context. This inspires confidence in your materials and submissions, and your information will be recognised in the future as coming from an organisation that has been reliable in the past.

- **Avoid sensational claims and exaggerated, emotive language**

It is better to consider a submission to an international body as a legal document and not an advocacy paper. Using sensational language or dramatic descriptions is likely to be detrimental to your submission. The international mechanisms receive communications that are full of sensational claims and contain no facts or substance. A balanced, informative communication supported by examples will be received with far more attention than those that are unsupported and unsubstantiated.

- **Identity of the victims**

The information you include in your submission should be accurate and verifiable. If you include the names of victims in your report, make sure you have secured their informed consent and always independently assess the security risks to the victims. It will be difficult for the authorities to investigate the allegations without knowing the identity of the victims. Equally, it is the choice of the victim whether his or her identity is revealed. Keep in mind whether your report will become publicly available when considering whether to reveal identities and when asking for consent. Remember that not only names but other information and contexts may lead to the identification of the victims or witnesses.

Level of detail

Making your submission detailed is not about being lengthy, it is about being informative. You should provide sufficient information for an international body to be able to reach its own conclusions about the practice of torture and the preventive and accountability frameworks in place in the State, while at the same time remaining concise and as brief as possible.

You need to make sure that the detail you include is relevant, meaning that it supports the claims you make in the report. Extensive materials in which an allegation is buried deep in the text makes the international bodies' work more difficult, as do large amounts of general information with little precise detail. Focus on key themes. Keep the general material brief, but informative - it needs to be there to set the context, but it should not take over or be the focus of the communication.

At the start of the submission, you should include an "executive summary," which is an important piece of the submission even if it is not required. Summarise the detailed information in the submission into a short statement about the submission's key findings and conclusions.

3.4.5. Specific information for State reporting procedures

The reports received by the UN treaty bodies are prepared by the States themselves. This does not necessarily mean that they are inaccurate, but it does mean that they represent the official view of a situation. It is important to make sure that when the treaty bodies reach their conclusions and make recommendations, they do so on the basis of information that accurately reflects the situation in a country. NGOs are crucial for supplying the treaty bodies with reliable information through their alternative "shadow reports". Submitting reliable information can help the treaty bodies to:

- Reach accurate conclusions about a country situation;
- Ask the right questions when examining the State report;

- Make useful recommendations appropriate to the situation.

Consideration of a State report by one of the treaty bodies is a significant event that often receives a lot of publicity. Your submission can help to ensure that the conclusions that often also receive this publicity, are reliable, and draw attention to real areas of concern. In addition, if you have used your submission to make constructive suggestions for improvement, they may influence the committee's recommendations.

There are additionally some specific considerations that need to be taken into account when addressing State reporting procedures at the UN (the CAT, HRC, CERD, CEDAW, etc.). The only regional system that provides for the State reporting procedure, the African system, has some specificities as well, which you are addressed below in the part of this Handbook dedicated to the African system. The ASEAN system does not formally provide for state party reporting although in practice some NGOs do report to it.

3.4.6. NGO's submissions and the timeline

At the UN, any State Party to human rights treaties establishing a State reporting procedure has a duty to submit regular reports on their adherence to the obligations in the specific treaty. An NGO should keep track of the times when a specific State report is due, when it will be considered and when in that period the relevant body accepts submissions of NGOs.

To find out when a specific country is expected to submit a report, an NGO can check the website or contact the Secretariat of the relevant body to find out which reports are due to be considered at the next session of the body. This is normally decided at the end of the previous session.

Not all States submit their reports when they are due. In reality, many States delay the presentation of their reports for months, even years. If an NGO is aware of serious problems in a country, they may alert the reporting bodies to the facts

even where a country has not yet submitted a report. However, some treaty bodies cannot accommodate information submitted outside of the reporting cycle, unless they decide that a State report is so overdue that they schedule a hearing in the absence of a report. Then it will be important for information to be sent even at the stage of drawing up the list of issues. You may check whether the body has a follow-up procedure, which allows a body to assess whether the State is meeting its obligations in between reports, and tailor and send information for this purpose.

The entire State reporting procedure is structured, which gives an NGO a good opportunity to schedule its activities around it. Once you know that a State report of a selected country will be considered at the next session, get started as early as possible so that you have plenty of time to prepare your submission. Also, you can use this time to try to coordinate with other organisations to make sure all issues are covered.

- **List of Issues and the timeline**

Some bodies, such as the UN Human Rights Committee and Committee against Torture developed a special procedure for considering State reports. In the initial State report, the State Party reports on all issues related to complying with its obligation under the particular treaty. However, ahead of the consideration of the State report, the Committee will prepare and adopt the 'List of Issues'. The State Party replies to the List of Issues and the replies supplement its report. The consideration of the report will then mainly focus on the issues raised in the List of Issues.

The involvement of NGOs is very important at this stage. An NGO seeking to inform the topics that will be discussed in the constructive dialogue with the State should send a report to the committee before it starts drafting the List of Issues. Check the information on each committee to determine the deadline for submitting information ahead of the adoption of the List of Issues as well as

whether the committee has adopted a simplified reporting procedure such as the Human Rights Committee (see 4.6.2. below).

- **Consideration of State report and the timeline**

The State reports are published on the website of the particular body. In case of UN treaty-bodies that consider State reports, an NGO should submit its report no later than the deadline given on the Committee's website (for example the Human Rights Committee's deadline is two weeks before the opening of the session). The Committee will not accept any written information after this deadline. In order to prepare a good report that will have some influence on the committee members, an NGO needs to start preparing well in advance to ensure quality research and a strong, concise and effective report.

- **During the session considering the State report**

NGOs may attend the sessions of a committee, but are not always allowed to speak. There are other ways of communicating with the committee members, such as at the official briefings for NGOs or unofficial meetings with the committee or its members.

- **Follow-up**

After the body considers the State report and adopts the document with its findings ('concluding observations'), NGOs should monitor the implementation of the body's recommendations. Some committees (such as CAT and HRC) have adopted a procedure called "the follow-up to the concluding observations", where an NGO may provide valuable on-the-ground information.

3.4.7. The content of the submission

You should follow the general guidelines for submitting general information to a reporting mechanism. In addition, the content of the NGO submission should be guided by:

- The **provisions of a particular treaty**;
- Previous **findings in relation to the State** (concluding observations);
- The **current situation** in the country and any progress or worsening since the last reporting period; and
- The **purpose of the procedure**.

An NGO may decide to submit a thematic or a comprehensive report. The first focuses on a specific theme or a specific article of the treaty; the latter is an article-by-article analysis of the convention and the State's respect of its obligations. A thematic and targeted report can often be more effective than the traditional, article-by-article approach.

The content of your communication will vary somewhat depending on what your aims are. The communication should be divided into three parts: introduction, body, and conclusion with recommendations. You may wish to send information on general situations or individual cases (without, however, expecting a decision on individual allegations of torture).

When preparing a submission, bear in mind the following:

- **Treaty provisions and the implementation:** The human rights treaty-body will use the wording of the treaty as a focal point in its examination of a State report. Therefore, it makes sense to construct your report around the *provisions of the treaty*. General Comments or similar interpretational instruments of treaty monitoring bodies may also serve as a point of reference. Pick out those articles about which you have information and explain how the standards are being implemented in the country. This ensures that you are addressing issues that the treaty-body will be most interested in, and it helps you to identify the points that you should concentrate on. The State will most likely provide information about the formal legal situation, what legislation

exists, etc. Focus on the question of how this legislation works in practice and whether the practice complies with the international human rights law.

- **Setting the context:** This helps to set your allegations in the broader context of the State's history and current practices. See the information on submissions to the monitoring bodies for suggestions on how to describe the general background in a country.
- **Previous concluding observations:** If the report being submitted is not the first one submitted by a particular State, refer to the body's previous conclusions on that State in order to help identify the areas of concern to the body. You should comment on the extent to which the body's recommendations have been implemented since consideration of the last report.
- **Report prior to the adoption of the List of Issues** (if applicable): Raise pressing issues in the country that you think the committee should examine more closely. Use this process to identify important areas of concern that the State report may not have elaborated upon otherwise.
- **Comment on the State report:** If there is time between publication of the State report and its consideration, it can be helpful to comment on the content of the State report itself, whether you agree or disagree with it (always give reasons), or whether there is any additional information that should be brought to the attention of the body. This also helps you to focus on the points that will be most useful to the body. Make sure that your report is objective and does not concentrate only on the negative aspects – honestly recognise where what the Government has stated is true and when it has taken measures that improved the situation. A balanced approach strengthens your credibility. It also allows the body to determine what appears to work in practice, which can assist it in making recommendations in other cases.
- **Be concise:** Unless you can do so very briefly, do not attempt to address each and every point contained in the treaty or made by the Government, but concentrate on the most important issues. Remember that it is best to be concise whenever possible.
- **Examples and statistics:** It is important to provide raw information that will enable the body to reach its own conclusions. Try to give as many precise

examples and statistics as possible and avoid making unsupported statements. For example, avoid stating that something is ineffective without giving specific examples as to why this is so.

- **Recommendations:** Finally, be sure to make constructive suggestions for improvement. You are often in a better position than the body to get a sense of what measures might have a positive effect on the general situation. This insight can be very useful to the body and it also helps to show that your motives are not merely to challenge the Government but to genuinely seek improvements for the general situation.

3.4.8. Submitting the report

- **Joint reports:** The bodies receive a lot of information. Preparing submissions jointly with other NGOs is a good way of reducing duplication and being more comprehensive. The bodies generally prefer to receive a single, well thought out, and comprehensive submission than a dozen statements repeating the same points while leaving other issues out.
- **Electronic and hard copies:** Check the rules of a particular body to determine whether it requires you to submit the information electronically as well as in hard copies, and check how many hard copies you need to submit for the specific body.
- **Delivering the report in person:** If you have the opportunity to deliver your submission in person (as well as electronically), you should do so. This might help you to distinguish your report from the rest of the information received, and it means that you can draw attention to the most important parts of your submission. It can also help create a positive impression of you and your organisation.

3.4.9. Specific information for monitoring procedures

General situation of torture

When sending general information on torture in a country or in a particular context, you should include the following, in addition to a brief introduction to your organisation (as discussed above):

- A brief introduction to the objectives and working methods of your organisation;
- Set the context briefly. Recommendations on how to do this are below;
- The issues that you consider key to the prevention and prohibition of torture in the country. These may relate to the level or patterns of torture or other ill-treatment; particular groups in positions of vulnerability and/or deficiencies in the preventative and/or accountability frameworks;
- In selecting the thematic focus of the report, include as many detailed examples as possible;
- Where individual cases are referenced, explain what the cases represent (i.e. a wider pattern, a particular deficiency in the law, etc);
- Any available supporting documentation;
- A list of local organisations or persons that can be contacted to seek information about the country.

With regard to setting the context and establishing a pattern, the following advice might be useful.

Setting the context

It is very difficult for any of the mechanisms to get a clear picture of the problems in a country or to make useful recommendations if they do not have a good grasp of the context in which these problems are taking place. An objective summary of the general situation in the country is very valuable. Explain briefly the conditions present in the country that might affect the State's respect for its obligations to prevent torture. Do not make a few sweeping statements accusing the State of widespread violations of human rights.

Relevant factors might include:

- Main political groups and their respective standing, including any controversy about the coming to power of the current Government and principal rivalries;
- Any tensions along ethnic, social or religious lines;
- The existence of an armed conflict and the parties involved;
- The structure and powers of the security forces and military, particularly if the military are in control;
- Relevant traditional beliefs, practices and customs; and
- The legal framework, including relevant legislation and in particular any laws granting special powers, such as anti-terrorist laws.

The objective is to include the facts that you think an outsider might need in order to understand what is going on in the country.

Establishing a pattern

In contrast to individual allegations, each of which is concerned with the outcome in a specific case, general information should paint an overall picture of the practice of torture in a country, or identify a specific aspect of that practice. The point of an NGO shadow report is to show that certain forms of torture, or the behaviour facilitating torture, are not limited to a few isolated incidents, but occur on a regular basis. In order to establish a pattern, it is **not** enough to list a few individual cases and make unsupported statements about the practice of torture in a country. Instead, you **should** use as many examples as possible and analyse the individual allegations in order to identify *patterns*.

For instance, if you find a lot of allegations are about the use of electric shocks throughout a country, or about the rape of women taken into custody in a particular police establishment, you could suggest that the allegations, taken as a whole, support a pattern - the use of electric shocks as a common method of torture, or the rape of women in a specific police station. Other types of patterns that might be of relevance could include a high occurrence of torture and other forms of ill-treatment among suspects detained under a particular law, such as one permitting extended incommunicado detention, or a high incidence of torture

of detainees from a particular ethnic or social group, a consistent failure to prosecute officials accused of torture, a high rate of unexplained deaths in custody, or widespread reports of the torture of women or children.

When presenting your findings about identified patterns, it is best to:

- 1) Summarise all of the patterns you have identified;
- 2) Take each proposition one by one, and explain it in general terms;
- 3) After each proposition, provide as many examples as possible to support your statement.

3.4.10. Individual allegations

When submitting information on **individual allegations** make sure to include:

- A brief introduction to the objectives and working methods of your organisation;
- As many details as possible, but at least:
 - Name or other identifying characteristic of the victim(s);
 - Date and place of incident(s);
 - Alleged perpetrator(s);
 - Details of treatment;
- Any available supporting documentation;
- If you are requesting urgent action, a clear indication that the case is urgent and why this is so;
- A clear indication of which details are confidential.

With regard to the details that you should include, aim at including at least the following information wherever possible:

- **Name of the victim:** This should include both first and last name unless it is the local custom to have only one name. The objective is identification - if the name is very common, other identifying details should be given, such as address or place of residence, age, sex, or profession. Such details are always valuable and should be given if known. Most of the mechanisms

cannot take action on behalf of an unidentified individual, which normally means they require a named individual. The only exception where names might not be required would be where a clearly identifiable group is involved (e.g., a group of 50 students arrested after demonstrating outside the mayor's office of City X on 19 November 2014), but even then names should always be included if available.

- **Date of the incident:** This should be as precise as possible, and include the date of apprehension by the State officials and of any incident(s) of torture, if these are different. Dates are important as they help to understand the sequence of events. If you know the time of the day (exact time, or whether it took place in the morning or evening) this can also be helpful. Generally, you should present the information in chronological order to alleviate any confusion.
- **Place of the incident:** This should include the name of the town, village or local district, as well as the name of the State or region where applicable. Make sure to include the place of arrest(s) and of any incident(s) of torture or other ill-treatment, which may mean more than one place if there have been several incidents.
- **Alleged perpetrator(s):** If known, include the name and rank of the perpetrator. If you cannot identify the specific actor(s), try to at least identify the branch of the security forces or military involved, or the police station with which the perpetrator is associated. It is often possible to identify the group involved by the uniform worn. Remember that the perpetrator must have a connection with the State. While in an area where apprehensions by plainclothes police or military are known to be common, it may not be necessary to name the perpetrators, it will be possible to draw a strong inference from the surrounding circumstances. See Chapter A.2.1.2 on The Perpetrators of Torture and Other Ill-Treatment for a discussion of what to do if the allegation concerns non-state actors.

- **Details of treatment:** Avoid using the term ‘torture’ or ‘tortured’ without describing the treatment involved. Not every incident of unpleasant treatment is serious enough to constitute torture in legal terms, even though you may feel very strongly about it. The best approach is to describe the treatment in as much detail as possible. In this way, the international body will be able to determine for itself if torture in the legal sense has taken place.
 - Where the torture was physical, the details should include descriptions of the **treatment** involved, any **instruments** used, the **parts of the body** to which the treatment was applied, and any **injuries** suffered. For example, instead of saying ‘Mr. X was beaten’, which is too general, it is much more informative to say ‘Mr. X was severely beaten in the face and head with a metal bar, resulting in a fractured skull and a perforated eardrum.’
 - Where the torture was psychological, describe what it **consisted of**, how the victim **felt** while it was going on as well as subsequent to the treatment, and provide details of any way in which the victim’s behaviour or mental state has been **affected** by the treatment (e.g., if he is suffering from nightmares, paranoia, psychosis).

While there is a minimum amount of detail that should be present, there is no limit to the amount of relevant details that can be included. Relevant details are all those that could help the international bodies understand what happened and decide if a State is respecting its obligations. As States have obligations to investigate and remedy incidents of torture, information about what happened after the incident should be included. The following details might be relevant and should be included if known:

- Age, sex and profession of the victim - it is particularly useful to mention whether the person is male or female, as it can be difficult for someone unfamiliar with the local language to determine this;
- Identity card number;
- Address or place of residence;
- Race or ethnic group, where it might be a factor;
- Any injuries or long-term effects suffered;

- Whether the victim was granted access to a lawyer and/or doctor during his detention;
- Whether the victim made a complaint about the incident of torture;
- If a complaint was made, what the authorities have done in response, including whether there has been an investigation or prosecution, and if so whether any penalty was imposed.

It is not always possible to collect all this information, but an NGO needs to do its best.

3.4.11. Specific information for fact-finding bodies

Information to a body engaged in fact-finding can be provided either **in advance** of or **during** a fact-finding visit. This will affect the focus that your information should have.

Information before a fact-finding visit

In advance of a fact-finding visit, you should provide information that helps the body plan and prepare for its visit. Fact-finding visits are usually too short to examine every aspect of the situation in a country, requiring those engaged in the planning and preparation of a visit to be selective. Your information should help the fact-finding body identify the aspects of the situation that are most important, and the activities that it can most usefully pursue during the visit.

Your information should:

- Identify **areas of concern** that need to be examined most closely;
- Identify **areas, towns and specific institutions** that should be visited (those about which a lot of allegations are received and which appear to have the most serious problems);
- Include as much detail as possible relating to the **layout of the institutions** that should be visited and the location of rooms or areas within the institution where torture most frequently takes place. Sometimes it may even be possible

to construct a plan of, or map out, the layout or the route to the interrogation rooms on the basis of information received from victims. This may be particularly possible where the same description is given by more than one victim, e.g., “They took me through a door behind the main reception desk in the police station which led downstairs - we went down two floors, and turned left down a long corridor. The room where I was interrogated was the last door on the right at the end of the corridor.”

- Explain the **social and legal context** of a country, in particular drawing attention to any specific laws that appear to contribute to the problem. This would include legislation that permits extended incommunicado detention or that places restrictions on the possibility of prosecuting State officials, or legislation or case-law permitting the use of evidence obtained through torture in court.
- Identify any **State officials or parliamentary representatives** with whom it would be particularly important to meet: either because they have themselves been linked with involvement in ill-treatment (e.g., a State doctor known to have issued false medical certificates concealing the presence of injuries sustained in police custody; a public prosecutor known not to open cases concerning allegations of ill-treatment against public officials), or because of attempts on their part to address problems of ill-treatment (e.g., members of an independent national human rights commission).
- Provide a **list of contacts** with which the body might wish to organise meetings during the visit, e.g., national human rights NGO representatives (including those engaged in advocacy, reporting and rehabilitation), professional associations such as medical or lawyers’ associations, and individual lawyers familiar with the domestic system or active in the representation of victims, victim-support organisations.
- Inform the body if you would be able to **arrange for it to meet with alleged victims** of torture during the visit.

Information during a fact-finding visit

During the visit itself, if you have not already provided information to the fact-finding body in advance, follow the guidelines suggested previously as well as the additional considerations below. You need to be very selective at this stage. The fact-finding body will have a very tight schedule and its meetings with NGOs will be relatively short.

The purpose of a fact-finding visit is, indeed, to collect facts. At this stage, assuming the fact-finding body has been able to examine general information in advance of the visit, it is probably most interested in three things:

- **Concrete examples** of what really happens in practice.
- **Meeting alleged victims** in order to record personal testimony - it is probably best for this to happen separately from your initial informational meeting (though this will depend on the schedule of the visit) and to take place in a location that is not intimidating for the victims. You should discuss this with the representatives of the fact-finding body if it has not been arranged in advance. Remember to bring to the meeting photocopies of any documentation that supports the victims' allegations, such as medical reports or judicial decisions.
- Obtaining the names and locations of **individuals** who have very **recently been taken into custody**, particularly if they are being or have been interrogated, and individuals whom it may be possible to visit in detention (either at the place of police custody, or at a remand prison to which they may have been transferred following interrogation). It would also be useful to identify **individuals who have just been released from custody** and claim to have been recently tortured. Where an individual currently in custody has a legal representative, it would be useful to provide the contact details of the representative as well.

If you are presenting information in person, you should:

- Make sure to address the important points first in case you run out of time.
- Listen carefully to any questions you are asked and answer them precisely, even if this means that you are not able to say everything you have prepared -

the questions you are asked will be the ones which the visiting delegation most needs answers to.

- Prepare a written submission as well, and bring it with you to the meeting to back up your presentation - if you run out of time, this should provide all the necessary information, and it will help the representatives of the fact-finding body to remember you.
- Bring copies of any documentation explaining who you are and what you do, e.g., activity reports.
- Avoid using the meeting to make political statements - if you do this, you will run out of time and you won't be able to provide the fact-finding body with the information it really needs.

3.5. Submitting Information for Urgent Actions

Some Special Rapporteurs and courts may intervene urgently and directly with the Government when they receive credible information that a human rights violation has occurred, is on-going, or will very likely happen if no action is taken. The purpose of such intervention is to ensure that the State is swiftly informed of the violation or the imminent threat of a violation so that it can react to prevent or redress violations, order investigations, etc.

Urgent actions and allegation letters are aimed at putting pressure on Governments about the individual violations of human rights. However, this is not a judicial or quasi-judicial procedure aimed at resolving complaints.

The “standard of proof” that the torture occurred is not as strict as in the normal judicial procedure, so less comprehensive information might also be accepted. However, always aim to provide the most detailed information you can gather. Follow the instructions regarding the kind of information that should be provided when making an individual communication.

At a minimum, the UN Special Rapporteurs require the following information:

- Identifying information of the victim;

- “Date on which the incident(s) of torture occurred (at least as to the month and year);
- Place where the person was seized (city, province, etc.) and location at which the torture was carried out (if known);
- Indication of the forces carrying out the torture;
- Description of the form of torture used and any injury suffered as a result;
- Identify of the person or organization submitting the report (name and address, which will be kept confidential).”⁵⁶

As with all communications, attach any documents you have that corroborate your statements, such as medical documentation, any official records, and the like.

3.6. Submitting Individual Complaints

The term ‘complaint procedure’ is used in this Handbook to refer to: a formal judicial-style process in which an individual or group of individuals make a complaint to an international judicial body alleging that their individual rights have been violated in a specific case. A complaint under such a procedure may also be referred to as an application, a petition, or a communication.

International complaint mechanisms are designed to address individual cases of violations by States of obligations under human rights law, rather than to examine a general human rights situation. Complaints mechanisms function in a very similar manner to domestic legal proceedings, and are accompanied by more formal requirements than reporting procedures.

As a rule, they are not intended to serve as a first resort, but will only accept complaints where domestic remedies have been exhausted or it has not proved possible to obtain an adequate and sufficient remedy at the domestic level (where domestic remedies have been ‘exhausted’). The decisions adopted in the context

⁵⁶ UN Special Rapporteur on Torture, Model questionnaire, available at <http://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/model.aspx>.

of international complaint procedures are generally binding on States, but can be difficult to enforce.

The following information applies to all individual complaint procedures as a general rule. Any exceptions are noted when the relevant mechanism is discussed in Chapters C.4 to C.8.

Complaint procedures **can**:

- Address individual grievances;
- Create publicity for individual cases and expose structural deficiencies, including the lack of safeguards and appropriate mechanisms;
- Order or recommend provisional measures, including the non-expulsion of an individual to a country where he or she is at risk of torture;
- Engage in certain forms of fact-finding and investigation;
- Result in legally-binding decisions;
- Make findings of violation in individual cases;
- Award reparation to individuals.

Complaint procedures **cannot**:

- Adequately address a generalised problem, although they can serve as a tool in wider advocacy efforts for eradicating torture.

A State can be found to have violated its human rights obligations not only through its **actions** (e.g., the deliberate practice of torture), but also through its **omissions** (e.g., failing to take effective steps to prevent torture from occurring, or failure to investigate, prosecute and bring to justice those responsible). This means that an alleged violation can cover more than just the incident of torture itself, and may be demonstrated by the circumstances surrounding the incident.

It should be noted that while some of the treaties considered in this handbook are torture-specific, others are more general in nature and cover a wide range of human rights. Complaints brought under a general treaty can allege violations of more than one right. For example, if an individual was detained arbitrarily and

died in custody as a result of torture, it would be possible to allege violations of the right to liberty and security of person and the right to life as well as the right not to be tortured.

3.6.1. General requirements for submitting an individual complaint

Individual complaint procedures can examine complaints if the following general conditions are met:

- **State party to the treaty:** The allegation must concern a violation of a provision of the relevant treaty to which the State is a party.
- **State accepted the competence of the body:** The allegation must concern a violation committed by a State that has accepted the individual complaint procedure. Sometimes, it is also necessary for the State to separately accept the competence of the implementing body to examine individual complaints. For example, the competence of the Inter-American Court of Human Rights must be accepted expressly even though the individual complaint procedure under the American Convention on Human Rights applies to all parties (as a result, the Commission has competence even where the Court does not; see the section on the Inter-American system, below, for further details).
- **Jurisdiction of the State:** The allegation must concern a violation committed against an individual or group of individuals under the State's jurisdiction. Under international human rights law, States undertake to respect and protect the rights of all individuals under their jurisdiction. This means all individuals over which the State can exercise control. This includes all those within the State's territory (including foreigners, not just nationals of the State), but can also include those affected by the acts of State officials abroad, for example those who are effectively governed by the acts of a State's armed forces in another territory.
- **Admissibility requirements:** These will be dealt with in detail below.

3.6.2. Basic chronology

All individual complaint procedures are based on the same main chronological steps:

- **Receipt** of a complaint.
- **Initial consideration** to make sure that:
 - It concerns a State Party to the relevant convention that has also accepted the individual complaint procedure (and the specific competence of the body where applicable);
 - The facts complained of relate to the subject-matter of that treaty; and,
 - There is a genuine possibility that a violation of a specific treaty provision may have occurred.
- Assessment of the **admissibility** of the complaint, including an opportunity for both parties to submit their observations (this step is sometimes combined with the consideration of the merits - you will be informed if this is the case).
- Consideration of the **merits** of the complaint, including an opportunity for both parties to submit their arguments, and (depending on its exact powers) for the international body to collect information about the case that will help it to reach a decision. This may include oral and/or written pleadings, fact-finding, and consideration of expert evidence or *amicus curiae* briefs.
- A **decision** by the body on whether or not a **violation** has occurred, and, depending on the body's exact powers, what, if any, **remedies** should be awarded.

At any stage of the proceedings, some of the bodies that receive individual complaints can:

- Request or order the taking of **provisional measures**;
- Make themselves available to the parties in order to seek a **friendly settlement** (agreement on a solution which is satisfactory to both parties and which makes it unnecessary to continue with the case).

3.6.3. Admissibility requirements

The admissibility stage works as a threshold: if a case is declared admissible, it moves on to an examination of the merits, but if it is declared inadmissible, the case is rejected.

When a judicial body examines the admissibility of an application, it is essentially asking itself if it is allowed to consider the case. It does not examine whether or not the facts reveal a violation of international human rights law (this is what happens at the *merits* stage). Instead, it is asking if there are reasons preventing it from examining the case.

Each mechanism has its own reasons for declaring a case inadmissible, and these are indicated below in the mechanism-specific discussions. But, there are a number of reasons common to most of the individual complaint procedures. Procedural grounds are the most common reasons, meaning that they do not relate to the facts of the case but to the way in which the application has been made. You should check thoroughly the Rules of Procedure of the international body you are planning to submit to.

The principal grounds of inadmissibility are:

- **Exhaustion of domestic remedies:** Domestic remedies have not been exhausted. This is the most common ground for inadmissibility decisions.
- The application is **anonymous**.
- The applicant is **not the victim** and has **not obtained authorisation** from the victim or the victim's family to make a complaint.
- The application is about **events that occurred before the treaty entered into force** for the State concerned. For example, under Article 27 of the Convention against Torture, that treaty comes into force (becomes applicable) 30 days after a State has ratified it. This means that if State X ratifies the Convention against Torture (and accepts the individual complaint procedure) on 31 March 2015, it will come into force for that State on 30 April 2015. The Committee against Torture can then only examine complaints that are about events that occurred on or after 30 April 2015.
- The **time limit** for submission of an application has expired.

- As a general rule, the time limit begins to run from the time a final official decision is taken in the case. Usually this means the date of a decision not to prosecute, a court judgment, the lodging of a petition by the victim to which no response has been received, or some other such decision representing the final step in the process of seeking a remedy within the domestic system.
- If the authorities have not done anything to address the alleged torture, it is difficult to establish when the “clock” for submitting the complaint begins to tick. As a rule, the alleged victims must be as active as possible, demanding an investigation and pressing national authorities to react. Once it is clear that the effort is futile (because domestic remedies have been exhausted, or in exceptional cases have been delayed too long), the applicant should turn to the international body in the prescribed time. In rare cases, the time starts running from the date of the incident itself if no remedy has been sought because this was absolutely not possible.
- Many times it will be hard to catch a deadline as they are usually very short. When deciding on where to send your individual complaint, the time frame should be a decisive factor.
- Some international mechanisms do not set a fixed time limit for submitting an application (e.g. the African Commission and the Human Rights Committee), although this does not mean you can submit the application whenever you feel like it. There might be additional rules regarding that (such as “in reasonable time”), so it is important to always check the exact rules of the particular mechanism.
- The communication is **incompatible** with the provisions of the relevant treaty. The alleged violation must relate to a right that is protected by the treaty.
- The application is considered **manifestly ill-founded** or an **abuse of the right** of submission. This is the only ground of inadmissibility on which the judicial bodies can refer to the facts of the case. It is assessed on a case-by-case basis, and is applied where it is considered that the facts could not possibly reveal the violation alleged, i.e., an allegation without any basis or unsupported by any evidence.

- **Not being examined by another body:** The facts of the case have already been examined under this or another procedure of international settlement. Some bodies do not have this requirement so you should check carefully the wording of the particular treaty.

3.6.4. The Exhaustion of Domestic Remedies

If a victim of a human rights violation wants to bring a complaint before an international body, he or she must first have tried to obtain a remedy at the national level as the State should have the first opportunity to remedy alleged violations. If States provide genuine and effective remedies, they are not considered to have violated their human rights obligations. The remedies indicate that the individuals that acted on behalf of the State did not have the State's approval.

In order to exhaust domestic remedies, the State must have had the opportunity to investigate, which necessarily requires that it is on notice. As set out (in the section C.2 on National Mechanisms), the State can be put on notice of the allegations through court proceedings such as *habeas corpus*, a complaint to the police or otherwise.

As a general matter, provided the allegation of torture and other ill-treatment has been brought to the attention of the State at the national level, this will be sufficient to demonstrate that domestic remedies have been exhausted for the purposes of arguing a substantive violation of the prohibition of torture and other ill-treatment and, if the State failed to investigate or meet the standards of a full, thorough and independent investigation capable of identifying and punishing those responsible, a failure of the duty to investigate. Where torture or other ill-treatment is alleged, it includes a positive duty to carry out a full and thorough investigation capable of identifying and punishing those responsible. The issue of exhausting available civil and criminal remedies is discussed below.

The international bodies do recognise, however, that in many countries remedies may be non-existent or illusory. They have therefore developed rules about special circumstances where it might not be necessary to exhaust domestic remedies. However, international bodies appear to be getting stricter on this exception so particular care should be taken if you need to resort to this.

Before bringing a complaint to the international level, a complainant must have exhausted any remedy (whether judicial or administrative in nature) that is:

- **Available:** the remedies exist and the victim (or someone else on his or her behalf) is able to use them without restrictions;
- **Effective:** it is possible for the remedy to be used successfully;
- **Adequate:** the remedy is able to provide suitable redress for the complaint - for example, if an individual was about to be deported, a remedy which could not suspend the deportation would not provide suitable redress.

If the existing domestic remedies do not fulfil these criteria, a victim may not have to exhaust them before complaining to an international body. However, the victim needs to be able to show that the remedies do not fulfil these criteria in practice, not merely in the opinion of the victim or that of his or her legal representative. For example, it might be necessary to be able to show that no person alleging torture has ever been granted compensation before a particular national court or process.

Some international bodies are becoming stricter in considering whether there are exceptional circumstances allowing the applicant to successfully argue that he or she does not have to exhaust domestic remedies. Make sure you consult the latest jurisprudence of the body before which you intend to file the complaint.

Some of the special circumstances that have been recognised in the past as being able to dispense an obligation on the victim to exhaust domestic remedies are:

- Where application of the remedies is **unreasonably prolonged**, e.g., where court proceedings or the investigation of allegations are excessively long, not due to any fault of the victim.
- Where pursuing remedies would be **futile** as they objectively have no chances of success. Regarding this it should be noted that the international bodies have not considered remedies futile even when less than 5% applicants succeed. It is increasingly difficult to prove that using a remedy would provide no chances of success.
- Where **no independent judiciary exists**.
- Where there is a **general climate of intimidation** such that it is not possible to obtain legal representation or it is dangerous to attempt to use these remedies. However, a person might be obliged to exhaust remedies as soon as he is out of such danger.

The victim must do everything that is reasonably expected of him or her to exhaust the remedies that are available, effective and adequate. Failing to exhaust local remedies because the victim was not diligent enough (e.g. he or she failed to respect the deadline for making an appeal) will normally not be accepted as a justification for non-exhaustion of the remedy. Similarly, you must be fully informed of the potential domestic remedies available in any given case, as ignorance of the existence of available remedies is unlikely to be accepted as a justification for non-exhaustion.

If a victim wishes to argue that a particular remedy did not have to be exhausted because it is unavailable, ineffective or inadequate, the procedure is as follows:

- The victim argues, convincingly and with substantiation, that the remedy did not have to be exhausted because it is **ineffective, unavailable or inadequate**.
- The **burden of proof then shifts to the State**, which must demonstrate that the remedies are effective, available and adequate, but the victim failed to exhaust them.

Each case will be considered on its own facts; grounds that have been rejected in one case have sometimes been accepted in another. Therefore, make sure you know the jurisprudence of the particular international body and that your arguments are carefully made and corroborated with as much reliable, factual information you can provide.

Raising the issue in substance

The issue of the complaint must be raised in the substance in the complaint before the domestic authorities. The reason for this is to make sure that the State has been given an opportunity to provide redress for the specific complaint that is being brought before the international body. It is not necessary to invoke the precise wording of the international human rights provision before the national authorities, but the substance must be represented in the complaint at the domestic level.

Exhaustion of Criminal and Civil Remedies

If the victim wishes to argue that the State has failed to provide a remedy and reparation for the torture or ill-treatment, the question arises as to whether civil remedies also need to be exhausted. Here, there is no clear answer as it depends on the legal system and the relationship between criminal and civil remedies. In some States, individuals can only bring civil proceedings for compensation within the criminal process or after the outcome of the criminal proceedings have been determined. In such cases, international and regional (quasi)judicial bodies have tended to find a separate violation of the obligation to provide a remedy for the purposes of reparation without the victim having attempted to do so at the national level because of interconnectedness of a civil complaint with criminal proceedings. However, in other cases, where the victim could bring a civil complaint under domestic law without criminal proceedings having to be initiated or concluded, international (quasi)judicial bodies have found that the victim needed to pursue civil proceedings in order to claim a separate violation of the duty to provide a remedy for the purposes of reparation. Where

possible, it is advisable to lodge civil proceedings for compensation against the individual(s) allegedly responsible for the torture or other ill-treatment (where the identity is known) and the State agency (such as the police) in order to test the effectiveness of the remedy at the national level. This will help identify any barriers to compensation (such as immunities) that can then be challenged at the international level with a view to reform.

3.6.5. The content of individual communication

You need to think in terms of two components to your communication. The first is your cover letter, which must include a certain number of details. If these are not provided, you will be asked to supplement your application before it can be processed any further. In addition to the cover letter, many international courts have prepared an application form that the applicant will be required to fill out. This also prevents the applicants from forgetting to include important details. The second component of the individual communication is the supporting documentation.

Substance of Complaint

The complaint should always include the following information:

- Name, nationality, occupation, postal address and signature of the complainant, or the name and signature of any legal representative(s) or of any other person authorised by the alleged victim to act on his or her behalf. If you have means of verifying the complainant's identity (e.g. national identity card), a copy of this should be included as well;
- Name of the State Party against which the communication is directed;
- Provision or provisions of the treaty alleged to have been violated;
- An account of the act or acts alleged (See, Chapter 4 on Gathering Evidence for an indication of the details which should be included);
- An indication that the State is responsible either through action or inaction;

- Information on the efforts made to exhaust domestic remedies and their outcomes, including the judgment, whether there was an appeal, the date of any final judgment, or alternatively information on the impossibility of exhausting them;
- Indication of the extent to which the same matter is being examined under another procedure of international investigation;
- An indication of any part of the communication (including the complainant's name) that should remain confidential.

Supporting documentation

Always try to include as much supporting documentation as possible with your communication (see also, Chapter B.3 on Gathering evidence). This could include:

- A letter of authorisation - this must contain the signature of the victim, or else explain why the authorisation was given by the victim's family instead (this must **always** be included if the person sending the communication is neither the victim nor his or her family);
- Any petitions or complaints made to the authorities;
- Any domestic judicial and administrative decisions in the case. This includes decisions at all levels of the judiciary (first instance, appeal, supreme court), any administrative decisions (such as those of a police complaints authority), decisions of the prosecutor not to prosecute or otherwise pursue a case, decisions of incompetence to examine a case, and details of any penalties awarded against the perpetrator(s);
- Victim statements;
- Witness statements;
- Medical reports or certificates, including both physical and psychological assessments, if they exist;
- Autopsy reports;
- Photographs;
- Media reports; and

- General information indicating that there is a practice of torture, e.g., NGO reports.

Always send **copies** of the documents, not the originals, as they will not be returned to you. The originals should be kept by the NGO and supplied for review if there is ever a need.

Official documents can generally be submitted in their original language, but you should indicate what their relevance is - if possible, provide a translation or at least a short summary in a working language of the body.

3.6.6. *Amicus curiae* briefs / Third party interventions

'*Amicus curiae*' means 'friend of the court', and the purpose of such a brief (submission) is to assist the judicial body by providing information that will help it to reach a decision. It is a practice that has not yet been accepted in the context of the UN mechanisms, which does not necessarily mean that it will not be developed in the future, but has been resorted to on a fairly regular basis by the European and Inter-American Courts of Human Rights.

An *amicus* brief is a written submission made by an interested third-party to the proceedings (i.e., by an individual, an organisation, or even another State that is not a party to the proceedings) who can contribute something of importance to the proceedings. In general, these interventions will either be requested explicitly by the court, or the court may either accept or refuse a request for permission to submit a brief sought by the interested third party.

The content of the brief itself will vary from case to case, although it will normally address a particular point of law at issue in the case or provide another area of expertise such as country knowledge. A request for permission ('leave') to submit an *amicus* brief, however, should normally contain the following elements:

- Explain briefly who you are and what your organisation does;

- Explain why you or your organisation are particularly qualified to make an intervention, e.g., any special experience in the relevant field or in a particular country; a particular project carried out on a relevant topic etc.;
- Explain what your submission will add to the proceedings, i.e., summarise briefly what you wish to say and explain how this will be helpful to the court.

3.6.7. Provisional / interim measures

Where an individual complaint procedure allows for the adoption of *provisional measures*, it is possible, **at any stage of the proceedings** for the body to request or order the State Party to take steps to avoid possible **irreparable damage** to the relevant persons associated with the case. Adopting provisional measures has no bearing on the outcome of the case - it does not imply that the body has reached a decision on either admissibility or merits, but is merely a precaution to give it time to deliberate.

This feature is widely used in cases involving the imminent expulsion of an individual to a country where he or she is believed to be at risk of torture. There are three criteria that must be fulfilled when making an application for provisional measures in such cases:

- **Arguments** concerning the State's obligation of non-expulsion must have been made **before the domestic tribunals**.
- The complaint must show that the individual is **personally at risk** of being subjected to torture. It would be insufficient to argue that people in general are tortured in the country in question - it must be shown that there are grounds to believe that this particular individual would be tortured there.
- It must be shown that there is a **continuing risk** that exists in the present. It would not normally be enough to show that an individual was tortured sometime in the past. It would need to be shown that the risk subsists, for example because the name of this individual is on a list of targeted persons, or because family members still living in the country have recently been tortured, or perhaps because this individual is a particularly well-known opposition leader.

3.6.8. Practical tips

- Always do your best to respect the deadlines given to you by the international bodies. If you know that you will not be able to respect a deadline, always ask for an extension in plenty of time.
- Always state clearly which parts of the communication, if any, are confidential.
- Always state clearly on the front of your communication if urgent measures are required.
- All the international bodies have adopted 'Rules of Procedure' or 'Rules of the Court' which set out in great detail how they function and what measures they can take. They are usually quite technical, but they are the best source to consult if you want the answer to a very specific question about the procedure.
- If you are acting as a legal representative in the context of an individual complaint procedure, you must ensure that you remain in contact with the complainant at all times - it is often necessary to contact complainants for information requested by the international body at very short notice, and they should also be kept informed of the progress of their case.

4. UN MECHANISMS AND PROCEDURES

4.1. Introduction to the UN Human Rights System

The United Nations human rights mechanisms are all based at, and are run from, the Office of the High Commissioner for Human Rights (OHCHR) at the UN Office in Geneva. There are two general points of which you should be aware if you intend to submit information to the UN mechanisms. One relates to *languages*, the other to *distribution*.

Languages: The UN has six official languages (English, French, Spanish, Russian, Chinese and Arabic), but NGOs should submit information in one of the working languages for the relevant human rights body. Check the website of each body or ask the Secretariat to find out which working language(s) it accepts submissions in. In practice, the most widely understood language within the OHCHR is English.

Distribution: If you want your communication to be sent to more than one procedure at the OHCHR, the most reliable approach is to send directly one copy to each. There are two reasons for this. First, like any large organisation, it can sometimes happen that information is not passed on from one procedure to another within the OHCHR. Second, you will usually need to emphasise different points for the different procedures and tailor your submission to each procedure. As good practice, it is useful to highlight in your communication that you have sent the information, albeit with a different emphasis, to other procedures. Remember, though, that you usually cannot simultaneously pursue the same case via individual complaints to two treaty bodies.

Some information may be sent via email or fax, especially requests for urgent matters. Check information for each procedure or contact the secretariats or specially designated teams to ask for guidance.

4.1.1. The Human Rights Council

The Human Rights Council is the main (non-treaty) body responsible for questions relating to human rights within the UN system. It was established in 2006 with UN General Assembly Resolution 60/251 and replaces the former UN Commission on Human Rights. It is an inter-governmental body responsible for strengthening the promotion and protection of human rights. It is made up of 47 UN Member States elected by the UN General Assembly.

The Human Rights Council holds regular and special sessions. There are at least three **regular sessions** a year in March (for four weeks), June (for three weeks) and September (for three weeks). The Human Rights Council may also convene a **special session** to address human rights violations on the initiative of at least one third of its Member States.

There are four main procedures or activities of the Human Rights Council that an NGO may make use of to report on torture:

- Human Rights Council sessions;
- The Universal Periodic Review (UPR);
- The complaint procedure;
- Special procedures, such as Special Rapporteurs, Working Groups or Independent experts.

The Human Rights Council is especially suited for NGO participation and advocacy (see Chapter C.4.4), which is a very effective way of drawing attention to human rights violations in a country. Only NGOs with consultative status with ECOSOC can be accredited to participate in the Human Rights Council's sessions as observers. The benefits of being accredited as observers include:

- "Being able to submit written statements to the Human Rights Council ahead of a given session;
- Make oral interventions during all substantive items of the Human Rights Council's agenda;
- Participate in debates, interactive dialogues and panel discussions; and
- Organize side or parallel events on issues relevant to the work of the Human Rights Council".⁵⁷ This is an opportunity for NGOs to present their experiences, raise awareness of pressing issues and engage in discussions with other NGOs, State representatives, Special Rapporteurs and other stakeholders. An NGO with consultative status can book a room free of charge and is responsible for the organisation of the event and the content of the discussions.

If you do not get accredited with the ECOSOC, you may turn to an NGO that deals with similar issues, perhaps also an umbrella organisation, and ask them to present your information at the Human Rights Council session. See Appendix 3 for details of Geneva-based NGOs to contact for assistance and information on engaging with the Council.

BASIC FACTS ABOUT: The UN Human Rights Council

⁵⁷ UN, Essential Information for NGO Participants, available at http://www2.ohchr.org/english/bodies/hrcouncil/docs/HRC_NGO_EssentialInfo.pdf.

Origin	How was it created?	By UN General Assembly Resolution A/RES/60/251 from 3 April 2006.
	When did it become operational?	In 2007 after the adoption of the Human Rights Council Resolution 5/1 “Institution-building of the United Nations Human Rights Council.”
Composition	How many persons is it composed of?	The diplomatic representatives of 47 States.
	Are these persons independent experts or State representatives?	State representatives.
Purpose	General objective	To promote universal respect for the protection of all human rights and fundamental freedoms; to address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon; to promote the effective coordination and the mainstreaming of human rights within the United Nations system.

4.1.2. Treaty bodies (Committees)

The UN treaty bodies were created to supervise the implementation by States Parties of their obligations under a number of UN human rights treaties. They may, under certain conditions, also consider individual allegations of torture and issue decisions. The main committees to which allegations of torture may be made are the following:

Name	Abbreviation	The treaty it supervises
Human Rights Committee	HRC	International Covenant on Civil and Political Rights
Committee against Torture	CAT	UN Convention against Torture

Subcommittee on Prevention of Torture	SPT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
Committee on the Rights of the Child	CRC	UN Convention on the Rights of the Child
Committee on the Elimination of Discrimination against Women	CEDAW	UN Convention on the Elimination of Discrimination against Women
Committee on the Elimination of Racial Discrimination	CERD	UN Convention on the Elimination of Racial Discrimination
Committee on the Rights of Persons with Disabilities	CRPD	UN Convention on the Rights of Persons with Disabilities. The allegations of torture can be especially made with regard to detention on grounds of mental health and persons with disabilities in detention.
Committee on Enforced Disappearances	CED	International Convention for the Protection of all Persons from Enforced Disappearance

In addition to those, there is the Committee on Economic, Social and Cultural Rights (CESCR) and the Committee on Migrant Workers (CMW) can also be relevant to the prohibition of torture and other ill-treatment. For example, the CMW could receive complaints on the treatment of migrant workers which could be framed as other ill-treatment if the state has failed to prevent or protect their ill-treatment. CESCR could receive complaints or reports that relate to the right to health in detention, for example, the deprivation of which might also be framed as torture or other ill-treatment.

The Committee against Torture, which focuses solely on the subject of torture and ill-treatment, and the Human Rights Committee are the two bodies that deal with torture most frequently. Other committees are also very important as they may consider torture allegations concerning certain identifiable categories of

persons, namely children, women, racial groups, persons with disabilities. The choice as to which committee to report allegations of torture to is strategic and there are many factors that will influence this decision. You will find advice on selecting the most suitable body to report allegations in Chapter C.3.2 on Selecting the Right International Procedure.

The Committees' admissibility requirements for considering individual communications differ. You will have to consider carefully whether your communication meets these requirements. The Human Rights Committee is not able to examine the same matter that is pending before other bodies, but it may consider cases that have already been examined by other bodies. The Committee against Torture, on the other hand, cannot consider a matter that is being examined by another procedure or has already been examined.

The working methods of each of these bodies are similar. All have the power to examine and comment on State reports, and most are also able to receive individual complaints, or are in the process of developing such a procedure.

4.2. Human Rights Council Sessions

An NGO with consultative status with the ECOSOC may send written communications to the Human Rights Council prior to its session or give oral statements at the session itself. For more information see the OHCHR's practical guide on submission of NGO information: http://www.ohchr.org/Documents/HRBodies/HRCouncil/PracticalGuideSubmissionNGO_ws.pdf.

4.3. Human Rights Council Universal Periodic Review

The Universal Periodic Review (UPR) is a relatively new and unique mechanism, created by the UN General Assembly resolution 60/251. It became operational in April 2008 when the first cycle of State reviews began.

Through the UPR, the Human Rights Council reviews how and to what extent UN Member States respect their international human rights obligations on a regular basis. It is a political, inter-state, peer-review process that is based on an interactive dialogue between States as equals. The aim of the UPR is not to repeat or duplicate work or reviews done by other human rights bodies. The overall objective of the UPR is to improve the realisation of human rights on the ground in each State, encouraging:

- The fulfilment of the State's human rights obligations and commitments and assessment of developments and challenges;
- Enhancements in the State's capacity and technical assistance in the field of human rights;
- The sharing of best practice among States and stakeholders;
- Support for cooperation in the promotion and protection of human rights;
- The full cooperation between States and the Council, its mechanisms, other UN human rights bodies and the OHCHR.

To achieve this, the UPR is a highly participatory process that treats all States equally (regardless of which treaties they have ratified) and engages all relevant stakeholders, including NGOs and national human rights institutions.

Every State in the world is reviewed every four and a half years during the Human Rights Council's Working Group on the UPR session. It is best to imagine the UPR as a cycle with no beginning and no end, a spiral process that hopefully leads to the improvement of the human rights practices and situation in the world.

Starting with the second cycle in 2012, 42 States are reviewed per year during three sessions of the Working Group on the UPR, which is composed of all 47 members of the Council.

The Human Rights Council bases its review on the following:

- The UN Charter;
- The Universal Declaration of Human Rights;

- Human rights instruments to which a State is party, for example the ICCPR, UNCAT and others;
- Voluntary pledges and commitments made by States.

The interactive dialogue between the country under review and the Council takes place in the working group, which is composed of all members of the Council. However, three Rapporteurs (the troika) are appointed to facilitate each review, including with the preparation of the report of the working group. The OHCHR provides them with the necessary assistance and expertise.

The outcome of the review takes the form of a report, which includes a summary of the proceedings of the review process and conclusions and/or recommendations by the Working Group. Following this, the State may voluntarily commit to undertaking reforms.

4.3.1. The documents for the review

The documents which the UPR Working Group will base its review on are:⁵⁸

- **Information prepared by the State concerned** (maximum 20 pages). States are encouraged to prepare the information (which can take a form of a national report or any other relevant information) through a broad consultation process at the national level with all relevant stakeholders.
- **A compilation of UN documents prepared by the OHCHR** (maximum 10 pages). The Office of the High Commissioner on Human Rights gathers and summarises information in the reports of treaty bodies and special procedures, including observations and comments by the State concerned, and other relevant official UN documents.
- **A summary of stakeholders' reports prepared by the OHCHR** (maximum 10 pages). The Office of the High Commissioner on Human Rights prepares a document summarising **credible and reliable information** provided by other relevant stakeholders. Where appropriate, a separate section in this document

⁵⁸ Human Rights Council, Resolution 5/1 on Institution-building of the United Nations Human Rights Council, 18 June 2007.

will be reserved for contributions by the national human rights institution of the State under review that is accredited in full compliance with the Paris Principles. The relevant stakeholders contributing to the stakeholder report include NGOs, national human rights institutions, human rights defenders, academic institutions and research institutes, regional organizations, as well as civil society representatives.

4.3.2. The role of NGOs in the UPR process

The UPR mechanism is a three-stage process consisting of:

- National preparation and consultations;
- The review at the UPR Working Group in Geneva;
- The implementation of recommendations received during the Review.

NGOs and civil society organisations have a very important role to play in the UPR process.

National preparation and consultations

This stage is aimed at gathering information on the State's respect of human rights standards (including on the prohibition of torture) and comparing it to the voluntary pledges the State has made since the last review.

The State should include NGOs and other relevant stakeholders in a broad consultation process when preparing the National Report for submission to the Human Rights Council. This is a valuable time to encourage the State to include as full and precise information on the situation related to torture.

Aside from participating in the consultation process, NGOs may submit their written reports to the OHCHR with the aim to be included in the summary of stakeholders' reports.

- **Form of a written submission**

Written submissions to the OCHCR should not exceed **2815 words** in the case of individual submissions (additional documentation may be in annexes) and the submissions by coalitions of stakeholders (two or more organisations) should not exceed **5630 words**. Different stakeholders may thus provide joint submissions and this is, in fact, encouraged. Paragraphs and pages should be numbered.

- **Substance of a written submission**

The purpose of the submission is to provide information on the general situation of torture in a country. Even if referring to individual allegations of torture this should be used to demonstrate a general situation in a country (the same as with State reports and monitoring procedures).

NGOs are strongly encouraged to provide written submissions that:

- “Are specifically tailored to the UPR;
- Contain credible and reliable information on the human rights situation in the State under review, including information on the follow-up to the preceding review and on developments since the last review;
- Highlight main issues of concern and identify possible recommendations and best practice;
- Cover the period elapsed since the last review;
- Do not contain manifestly abusive language”.⁵⁹

The written submissions should touch upon these issues:

- Promotion and protection of human rights on the ground: implementation of international human rights, public awareness of human rights, cooperation with human rights mechanisms;
- Identification of achievements, best practices, challenges and constraints in relation to the implementation of accepted recommendations and the development of human rights situations in the State;

⁵⁹ OHCHR, Universal Periodic Review: information and guidelines for relevant stakeholders’ written submissions, available at <http://www.ohchr.org/Documents/HRBodies/UPR/TechnicalGuideEN.pdf>.

- “Expectations of the State concerned in terms of capacity building and requests, if any, for technical assistance and support received”.⁶⁰

It is important that the information you provide is as concise as possible and that you highlight the main issues. Remember that the OHCHR will prepare a 10-page summary of all stakeholders’ reports, so it is vital that your information is concise and it includes concrete recommendations.

- **Submitting the report**

For submitting information you need consultative status with the ECOSOC or to work with an NGO that has consultative status so that it can submit your joint report. The report needs to be submitted using the online UPR submissions system (<https://uprdoc.ohchr.org/Account/Login.aspx?ReturnUrl=%2f>). The deadline for submissions is set by the UNHCR for each session and is usually **more than 7 months before** the State is scheduled for the review. Late submissions are not considered.

For further advice, see the OHCHR Information and guidelines for relevant stakeholders’ written submissions (some of which are binding): <http://www.ohchr.org/Documents/HRBodies/UPR/TechnicalGuideEN.pdf>.

4.3.3. The review at the UPR Working Group in Geneva

NGOs may attend the review in the UPR Working Group. There are several ways in which NGOs can intervene:

- Give a statement at the adoption of the outcome report (NGOs are not allowed to speak during any other stage of the review process but may be present throughout the review). To be able to speak at the session, you need to sign up online for the speakers list;

⁶⁰ OHCHR, Universal Periodic Review: information and guidelines for relevant stakeholders’ written submissions, available at <http://www.ohchr.org/Documents/HRBodies/UPR/TechnicalGuideEN.pdf>.

- Hold side events and organise discussions that States, NGOs, and UN officials can attend. Several NGOs may organise a joint side event to ensure the greatest impact.
- Give public statements and organise press conferences.

There are a number of NGOs that facilitate and train other NGOs with preparing submissions, holding side events and speaking at the sessions. “UPR Info”, an NGO based in Geneva, is amongst the most active in the field.

Further reading and useful resources:

- UPR Info website, <http://www.upr-info.org> - useful information about engaging with the UPR
- UPR Info, Civil Society Follow-up Kit (2014), http://www.upr-info.org/followup/stable/Civil_society_kit.pdf
- UN, Information and guidelines for relevant stakeholders’ written submissions, <http://www.ohchr.org/Documents/HRBodies/UPR/TechnicalGuideEN.pdf>
- OHCHR, A Handbook for Civil Society (2008), pp. 137-152, http://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf

4.4. The Human Rights Council complaint procedure

The UN Economic and Social Council resolution 1503 (XLVIII) of 27 May 1970 established a complaint mechanism to examine complaints of **gross violations of human rights** in a country in order to identify **patterns of violation**. The procedure took the name after the ECOSOC resolution: the 1503 procedure. The most notable characteristic of the 1503 procedure was that it was confidential and those who submitted information were not informed of the outcome.

On 18 June 2007, the Human Rights Council, which replaced the Commission on Human Rights, adopted resolution 5/1 entitled “Institution-Building of the United Nations Human Rights Council.” This resolution established a new complaint procedure to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the

world and under any circumstances. The basis of the new procedure is the old 1503 procedure with only a few modifications.

The complaint procedure addresses communications submitted by individuals, groups, or NGOs that claim to be victims of human rights violations or that have direct, reliable knowledge of such violations. Although the communication may not be anonymous, the complainant may request that his or her identity be kept confidential. In this case, the identity will not be revealed to the State concerned.

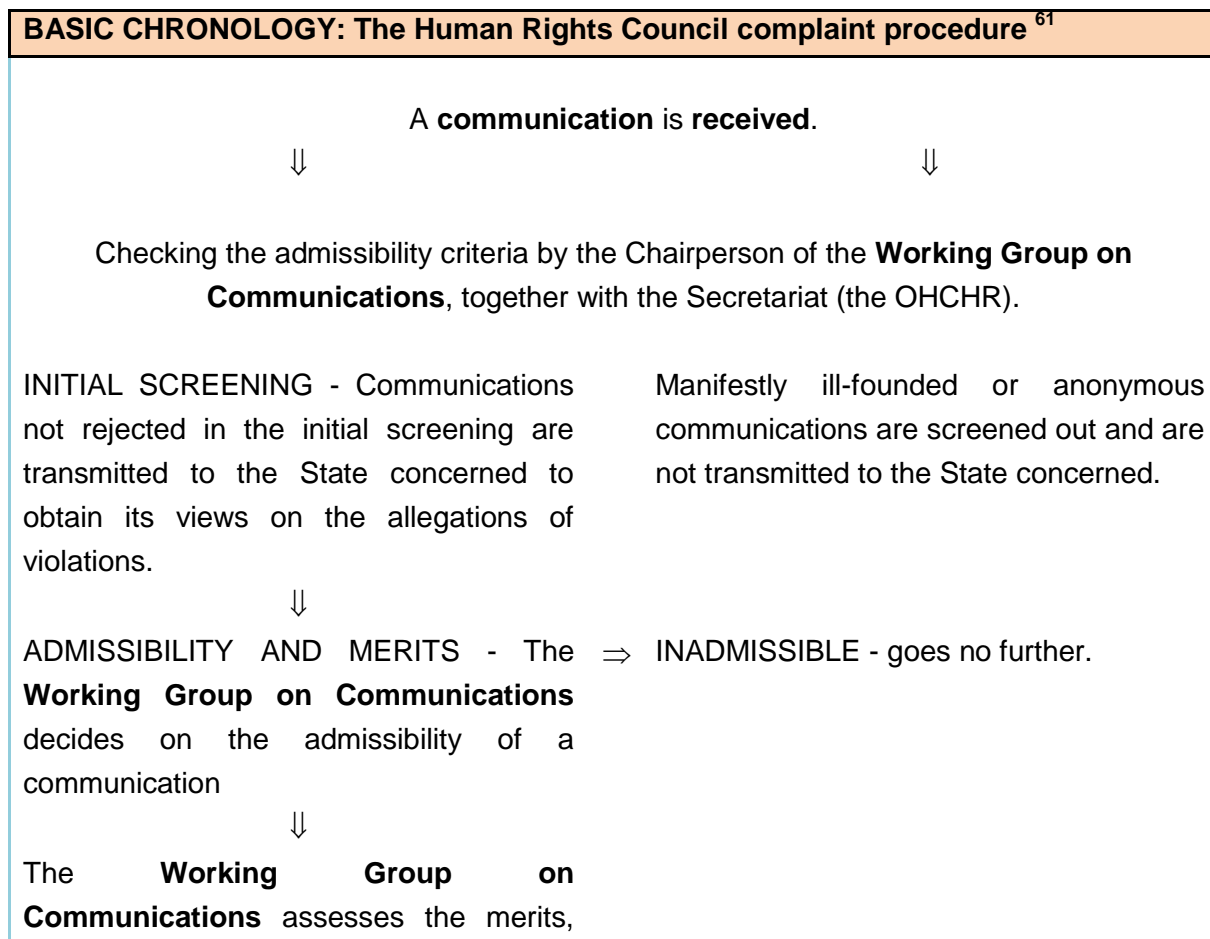
BASIC FACTS ABOUT: The Human Rights Council complaint procedure		
Origin	How was it created?	By a Human Rights Council resolution 5/1 of 18 June 2007 entitled "Institution-Building of the United Nations Human Rights Council."
	When did it become operational?	2007.
Composition		The Human Rights Council complaint procedure is implemented by the Human Rights Council, the Secretariat and its two working groups - Working Group on Communications and Working Group on Situations.
Purpose	General objective	Confidential examination of complaints of gross violations of human rights in a country in order to identify patterns of violations.
	Functions	Monitoring.

The communication is examined in two distinct working groups: the Working Group on Communications and the Working Group on Situations. These two groups were set up by the Human Rights Council resolution 5/1 with the mandate to examine the communications and to bring to the attention of the Council consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms. The Working group on Communications is a group of experts appointed by the Human Rights Council Advisory Committee. Its membership is five independent experts representing the five regional groups.

The Working Group on Situations is composed of five state members on the Human Rights Council, each appointed by the regional groups.

Each Working Group meets at least twice a year for five working days each session. The Council considers consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms brought to its attention by the Working Group on Situations as frequently as needed, but at least once a year.

States concerned should cooperate with the complaint procedure and make every effort to provide substantive replies to any of the requests of the Working Groups or the Council.



⁶¹ All of the below is taken from the advice on OHCHR's website but presented here in a flowchart form: <http://www.ohchr.org/EN/HRBodies/HRC/ComplaintProcedure/Pages/HRCComplaintProcedureIndex.aspx>

including whether the communication alone or in combination with other communications **appear to reveal a consistent pattern of gross and reliably attested violations of human rights and fundamental freedoms.**



The **Working Group on Communications** provides the Working Group on Situations with a file containing all admissible communications along with their recommendations.

⇒ The Working Group on Communications may decide to dismiss a case when:

- It does not appear to reveal a consistent patterns of gross and reliably attested violations;
- A solution has been found through a dialogue with the State concerned .The Working Group may request further information from the author of a communication or a third party.

When the Working Group on Communications requires further consideration or additional information, it may **keep a case under review until its next session** and **request such information** from the State concerned.



On the basis of the information and recommendations provided by the Working Group on Communications, the **Working Group on Situations:**

- Presents the Human Rights Council with a **report** on consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms and
- Makes **recommendations** to the Council on the course of action to take, normally in the form of a **draft resolution** or decision with respect to the situations referred to it.

⇒ The Working Group on Situations may decide to **dismiss a case**. Decisions to discontinue should be taken by consensus; if that is not possible, by simple majority of the votes.

When the Working Group on Situations **requires further consideration** or **additional information**, its members may **keep a case under review until its next session**.



The Council receives confidential files for consideration at least two weeks in advance from the Secretariat.



MEASURES:

- To keep the situation under review and request the State concerned to provide further information within a reasonable period of time.
- To keep the situation under review and appoint an independent and highly qualified expert to monitor the situation and report back to the Council.
- To recommend to OHCHR to provide technical cooperation, capacity building assistance or advisory services to the State concerned.
- To discontinue considering the situation when further consideration or action is not warranted.
- To discontinue reviewing the matter under the confidential complaint procedure in order to take up public consideration of the same.

4.4.1. Aims of submitting the complaint

The Human Rights Council procedure is confidential, which potentially poses obstacles to its effectiveness or suitability as an advocacy tool for NGOs. On the other hand, the confidentiality enables States to discuss the allegations more openly.

The Human Rights Council announces the names of the States under consideration, and indicates the ones that have been dropped from consideration. The confidentiality provided during consideration is therefore balanced by the fact

that the information that a State is under consideration becomes public knowledge.

A person or an NGO submitting a communication is informed of the key stages of the procedure, notably:

- When its communication is registered by the complaint procedure;
- When a communication is deemed inadmissible by the Working Group on Communications or when it is taken up for consideration by the Working Group on Situations; or when a communication is kept pending by one of the Working Groups or by the Council;
- At the final outcome.

This differs from the 1503 procedure, when those who submitted information were not informed of the outcome.

Even within the constraints of the confidential procedure, the mere transmission of a complaint to a Government may motivate it to investigate and rectify the situation complained of, or it may prompt the State to suspend or terminate a practice, in order to avoid drawing attention to itself and discourage referral of the complaint to the Working Group and later to the Council. The Working Group on Situations may require additional information from the State and the State may be kept under review for many sessions of the Council. The Council may also decide to keep the situation under review and appoint an independent and highly qualified expert to monitor the situation and report back to it or it may recommend that the OHCHR provide technical cooperation, capacity building assistance or advisory services to the State concerned.

The Human Rights Council complaint procedure **can be used to:**

- Raise awareness of a serious situation of gross violations of human rights, at least within the Human Rights Council;
- Make suggestions for ways to seek improvements to such a situation

This process is **not suitable** if you wish to:

- Obtain an immediate remedy for an individual.

4.4.2. The content of the communication

There are strict rules on what the communication must or must not contain. It **must:**

- Be **addressed to the OHCHR**, Human Rights Council Branch-Complaint Procedure Unit (see Appendix 2 for full contact details) in one of the six official languages of the UN.
- **Not be anonymous**. You may however request that your identity be kept confidential and your identity will not be revealed to the State concerned.
- **Not be manifestly politically motivated** and its object must be *consistent with* the UN Charter, the Universal Declaration of Human Rights and other applicable instruments in the field of human rights law.
- Give a **factual description** of the alleged violations, including an indication of the rights that were violated.
- Not contain **abusive language**.
- Not be exclusively based on reports disseminated by **mass media**.
- **Not be already being dealt with** by a special procedure, a treaty body or another UN or similar regional complaints procedure in the field of human rights.
- Demonstrate that **domestic remedies have been exhausted** or prove that such remedies would be ineffective or unreasonably prolonged.

As the Human Rights Council complaint procedure focuses on “situations which appear to reveal a consistent pattern of gross and reliably attested violations of human rights,” the following considerations should be taken into account when preparing a communication under resolution 5/1:

- The objective of such a communication is to draw attention to a **situation**, rather than to an individual case, and should help to establish a **pattern** of violations. This means that it is very helpful for individual cases to be compiled into one document rather than submitted one by one. Although an individual case combined with others can initiate consideration of a ‘situation’, it will rarely be sufficient on its own.

- The evidence should relate to **gross violations** of human rights (which includes torture).
- The evidence should be **consistent** over time and as between different sources of information. You should detail, in chronological order, the facts and circumstances of the alleged violations including dates, places and alleged perpetrators, and how you consider that the facts and circumstances described violate your rights or that of the concerned person(s).
- The evidence of the violation must be **reliable**. This means that you should avoid contradictions, provide evidence to support your allegations, and avoid vagueness.

When setting out your account of each allegation, you should follow the guidelines set out in Chapter C.3.4 on Submitting Information on General Situations of Torture - monitoring procedures. In addition, you should:

- Explain why you think there has been a violation and why you think the facts reveal a **consistent pattern of gross violations**.
- Provide as much supporting evidence as possible.
- Explain if any complaints have been lodged at the national level and if they have, the outcome.
- Include any suggestions you might have for an appropriate course of action, e.g., the appointment of an independent expert, or an investigation, or action by the UN to end the violations.

4.4.3. Specific tips on using the UPR

- You may send the communications by email and you may use the Human Rights Council Complaint Procedure Form.
- You should also note that:

Complaints may not be accepted :	Complaints may be accepted :
<ul style="list-style-type: none"> • If they concern a State that has accepted the right of individual petition under the ICCPR, the UNCAT, or the 	<ul style="list-style-type: none"> • If they concern a State that has accepted the right of individual petition under the Optional Protocol

<p>CERD, and the complaint relates to an individual violation of a right which is protected under one of those instruments;</p> <ul style="list-style-type: none"> • If domestic remedies have not been exhausted. 	<p>to the ICCPR, the CAT, or the CERD, but the complaint relates to general information about the State rather than an individual complaint <u>or</u> you are addressing substantially different violations.</p> <ul style="list-style-type: none"> • If domestic remedies have not been exhausted, but you can prove they are unavailable, ineffective or unreasonably prolonged.
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4.5. Special Procedures

The special procedures of the UN Human Rights Council are set up to monitor either specific subject-areas on a worldwide scale, or particular countries in relation to the full range of human rights. They are most commonly known as *Special Rapporteurs* or *Working Groups*, but other names include *Independent Experts* and *Special Representatives*. They are created by resolution of the Human Rights Council in response to situations that are considered to be of sufficient concern to require an in-depth study. The procedures report publicly to the Human Rights Council, and the majority also report to the UN General Assembly.

Each procedure has its own slightly different working method, but they are appointed in the same way, the basic considerations are the same with respect to preparing a communication. All the general principles discussed above in relation to writing to UN mechanisms also apply. The one you are most likely to wish to use in the context of torture allegations is the Special Rapporteur on Torture, who will therefore be used as the basic example. It is important to remember, however, that he is only one of a number of special procedures to which allegations of torture may be sent.

4.5.1. Thematic Rapporteurs and Working Groups

All thematic procedures should be approached in a similar way to that described below in relation to the Special Rapporteur on Torture. The important point to remember is that the different thematic mechanisms are not mutually exclusive, and may make either joint or separate interventions in connection with the same allegation. In general, where your allegation concerns treatment that appears to amount to torture or ill-treatment, you should send it to the Special Rapporteur on Torture. Where allegations of torture appear in particular context, such as counter-terrorism, immigration, violence against women, mental health institutions, you should also try to send it to all other relevant special procedures. The same is true when the facts you uncover documenting alleged torture reveal other possible human rights abuses.

An example of an allegation which could be distributed to more than one procedure would be the violent arrest and detention, including rape and beating with truncheons at the time of arrest, of a female journalist by State officials on account of her journalistic activities. Depending on the degree of detail available and the particular circumstances, this could potentially motivate action by the Special Rapporteurs on Torture, Violence against Women and Freedom of Expression, as well as the Working Group on Arbitrary Detention.

You can indicate in your letter to which special procedures you would like to have your submission distributed. Action by more than one Rapporteur or working group will often carry more weight and is likely to influence a State even more than where only one procedure expresses concern.

It is also possible that a case on which the Special Rapporteur on Torture decides he or she cannot take action is one that another special procedure can in fact pursue. It is important not to focus exclusively on one procedure where others may also be competent. For example, where the treatment experienced by a detainee does not fall within the mandate of the Special Rapporteur on Torture to intervene, the facts may still reveal a case of arbitrary detention, which the Working Group on Arbitrary Detention can follow up on.

As the Special Rapporteur on Torture must decide each case on its own facts, it is difficult to predict with certainty if he will be able to take action in a particular case. It is therefore better to maximise the chance that the allegation will be followed up by making sure that it reaches all relevant procedures, which may be competent to do so, rather than limiting the communication to one mechanism.

As the thematic procedures are dependent on the Human Rights Council for their mandates, it is possible for a particular Special Rapporteur or Working Group to be discontinued or a new one created from one year to the next. The table on the following page sets out the relevant thematic procedures in existence at the time of writing, along with any particular points of note.

RELEVANT THEMATIC PROCEDURES OF THE UN HUMAN RIGHTS COUNCIL	
Thematic Procedure	Comments
SR on torture and other cruel, inhuman or degrading treatment or punishment	See below.
WG on arbitrary detention	You must explain why you think the detention is <u>arbitrary</u> . The WG interprets this as meaning detention which 1) does not have a legal basis; 2) is a response to the exercise of fundamental rights, such as freedom of expression (e.g., the arrest of a journalist for the exercise of his profession); or 3) is rendered arbitrary because due process guarantees are not observed (e.g., if someone is not brought promptly before a judge). It is not enough to consider that the detention is 'unfair'. The WG will not normally examine a case once the individual has been released, unless it concerns a question of principle.
WG on enforced or involuntary disappearances	The WG acts only in clearly identified individual cases. You should indicate if you wish your communication to be confidential. If the person or organisation submitting the information is not a relative but is acting directly or indirectly upon the family's request, he or the

	organisation is required to maintain contact with the family at all times as any replies received are for the information of the relatives only.
SR on extra-judicial, summary or arbitrary executions	The SR can take action in cases where the following result from the actions of State officials or groups cooperating with or tolerated by the Government: 1) the death penalty, where there has been an unfair trial (for example where evidence obtained by torture was admitted), a breach of right to appeal, or it involves a minor, a mentally retarded or insane person, a pregnant woman or a recent mother; 2) death threats or imminent risk of extra-judicial execution; 3) deaths in custody owing to torture, neglect, use of force, or life-threatening conditions of detention; 4) deaths resulting from unnecessary or disproportionate use of force; 5) deaths in violation of ILAC; 6) expulsion to a country where there is a risk to life; 7) genocide; 8) a breach of the obligation to investigate, bring perpetrators to justice and provide adequate compensation. You should indicate if the information is confidential.
SR on the independence of judges and lawyers	Information can be received about judges, lawyers and court officials. The SR is essentially concerned with safeguards and the proper functioning of the justice system.
SR on violence against women	The SR examines cases of violence against women <u>on account of</u> their gender -- your communication must indicate why you believe that the woman involved was targeted <u>because of</u> her gender. A special feature of this mandate is that it looks at violence not only by State officials, but also where it is condoned by the State in the community and within the family. With respect to general information, you should note that the SR is particularly interested in examples of good practice that can be used as a basis for recommendations in other States. Communications are

	confidential.
SR on situation of human rights defenders	The SR was established as a support for implementation of the Declaration on human rights defenders, and to gather information on the actual situation of human rights defenders around the world.
SR on the promotion and protection of the right to freedom of opinion and expression	The SR's areas of interest include: persons exercising/promoting the exercise of the right, including professionals in the field of information; political opposition parties and trade union activists; the media (print and broadcast), including any threats to their independence; publishers and performers in other media; human rights defenders; obstacles to women's right to be heard; obstacles to access to information. You should indicate if you wish your communication to be confidential.
Other relevant thematic procedures	SR on the sale of children, child prostitution and child pornography; SRSG on children in armed conflict; SRSG on internally displaced persons; SR on the human rights of migrants; SR on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; SR on the question of religious intolerance; SR on the rights to freedom of peaceful assembly and of association.
KEY: SR = Special Rapporteur; SRSG = Special Representative of the UN Secretary-General; WG = Working Group	

4.5.2. Special Rapporteur on Torture

BASIC FACTS: The UN Special Rapporteur on Torture		
Origin	How was it created?	By a resolution of the UN Commission on Human Rights (now the Human Rights Council).
	When did it become operational?	1985.
Composition	How many persons is it	1.

	composed of?	
	Are these persons independent experts or State representatives?	Independent expert.
Purpose	General objective	To monitor and report to the Human Rights Council on the practice of torture worldwide.
	Functions	<ul style="list-style-type: none"> • Monitoring; • Fact-finding in country; • Allegation letters and urgent appeals.

The job of the Special Rapporteur is to present to the Human Rights Council as accurate a picture as possible of the practice of torture throughout the world. In order to do this, he or she relies on information received from a variety of sources, including NGOs, individuals, and governments themselves. On the basis of this information he or she:

- Engages governments in a **dialogue** about credible allegations brought to his attention;
- Carries out **fact-finding** visits in country;
- Deals with individual cases through **allegation letters** and **urgent appeals**;
- Examines **thematic** issues related to the prohibition of torture and other ill-treatment.

Dialogue

The Special Rapporteur's dialogue with a Government can begin in one of two ways. If he believes that allegations he has received are credible, he will either transmit an urgent appeal or raise the allegation in a standard communication.

- The **urgent appeal** procedure is designed to respond urgently to information reporting that an individual may be at risk of torture and is used to *prevent* possible incidents of torture. It will therefore be used only where information is very recent. It is a non-accusatory procedure, which means that it merely asks the Government to take steps to make sure that the person is not tortured,

without adopting any position on whether or not the fear of torture might be justified.

- **Standard communications** are transmitted to governments on a periodic basis and contain both allegations concerning individual cases (individual allegations) and those concerning general trends, patterns and special factors contributing to the practice of torture in a country (general allegations).

These communications are transmitted to the Government against which the allegations have been made in order to give that Government an opportunity to comment on them. Depending on the response received from the Government, the Special Rapporteur may inquire further or may make recommendations. All communications sent and received throughout the year are referred to in an annual report along with general comments, as appropriate, and further recommendations, including recommendations about measures that should be taken in order to eradicate torture.

Fact-finding in Country

The Special Rapporteur on Torture also carries out fact-finding visits to obtain first-hand information. He or she does not have a right to visit any country of his choice, but must first obtain an invitation from the Government to carry out a visit. There are some countries that issue standing invitations, and in such a case the Special Rapporteur only announces his or her visit without the need to wait for a specific invitation. During the visit, the Special Rapporteur meets with Government officials, NGO representatives and alleged victims, as well as visiting places of detention such as prisons and police stations. His or her objective is to get a good sense of what the actual situation on the ground is like. According to the Special Rapporteur's standard methodology for country visits (the "Terms of Reference"), Special Rapporteurs should have the right to conduct unannounced visits to detention centres and confidential and unsupervised contact with witnesses and other private persons, including detainees, and full access to all relevant documentation.

Following the visit, the Rapporteur produces a report in which he or she presents the conclusions reached about the scope of the problem, or lack of it, in that country. The report includes recommendations about any measures which could be taken to improve the situation.

Aims of Communications

The power of the Special Rapporteur lies with the Human Rights Council, and the public nature of the procedure. His or her conclusions are not legally binding and he or she has no powers of enforcement. Nonetheless, not many States are immune to public condemnation, and the publicity of his or her findings creates pressure for States to co-operate by introducing reforms or otherwise implementing his or her recommendations.

If you are seeking action in relation to a general situation, he or she **can** be used to:

- Publicise the practice of torture in a country, including any official tolerance of such a practice;
- Make recommendations to governments about improvements which should be made;
- Request a fact-finding visit in order to draw public attention to a specific situation.

If you are seeking action in relation to an individual case, the Rapporteur **can** be used to:

- Publicise individual incidents of torture;
- Make recommendations to governments in relation to individual incidents of torture, including recommending the prosecution of perpetrators;
- Seek to prevent the torture of individuals who are considered at risk, e.g. by requesting that an individual not be held incommunicado, or be granted urgent medical treatment;
- Seek to prevent the deportation of an individual to a country where there is a substantial belief that he or she will be at risk of torture.

He or she **cannot**:

- Visit countries without the consent of the Government in question. On a number of occasions, the Special Rapporteur has been unable to visit a country for this reason;
- Enforce the recommendations he makes to governments;
- Award reparation to individuals.

Content of the Communication

- If you would like the Special Rapporteur to take action concerning a **non-urgent individual incident** of torture, you should follow the guidelines set out in Chapter C.3.4 on Submitting Information on General Situations of Torture (monitoring mechanisms) for the content of a standard communication.
- If you would like the Special Rapporteur to use the **urgent appeal** procedure, you should follow the guidelines mentioned above as much as possible, but in addition bear in mind that:
 - If you do not have information that torture has occurred but there are reasons to believe that it will (previous experience, systematic torture found in specific facilities), the relevant date, time and location will generally be those of the taking into custody;
 - You must show that there is a risk that torture may occur. This means that you need to emphasise factors that show that this risk exists: e.g., the incommunicado or unacknowledged nature of the person's detention; the fact that this same person was tortured when arrested on a previous occasion; knowledge that persons arrested by this particular branch of the police are usually tortured, or that members of a particular group to which this person belongs are often tortured when arrested.
- There are no precise guidelines for submitting information for the Special Rapporteur to use in his or her **general allegations**. General allegations are those that are not limited to the case of one individual, or a single incident. They are, however, usually based on a collection of individual incidents. They are used to identify patterns of violation on the basis of consistent reports, and to express concern about specific factors facilitating the practice of torture in a country. Examples of the subjects of general allegations include:

- Widespread use of a particular method of torture, e.g., electric shocks;
- A law permitting the extended use of fetters on prisoners;
- A law permitting incommunicado detention for a long period;
- Consistent reports that persons prosecuted for torture are never convicted;
- Consistent reports that a specific police station or branch of the security forces practices torture;
- Consistent reports that members of a particular ethnic group are more likely to be tortured than others;
- Consistent reports that prisoners with life-threatening illnesses are refused medical treatment.

As you can see, the most important factor will be to establish a pattern. See Chapter C.3.4 for suggestions on how to do this. The more cases you can collect to support your general allegations the better, as they show that the practices you have identified are not merely isolated incidents, but are serious and widespread.

Thematic Submissions

Part of the Special Rapporteur on Torture's mandate is to identify and monitor torture and ill-treatment of specific groups of persons, specific settings or contexts. Especially for his or her reports to the General Assembly, the Special Rapporteur addresses issues of special concern, in particular overall trends and developments with respect to questions falling within his or her mandate.

The Special Rapporteur on Torture has so far focused particularly on anti-terrorism measures, solitary confinement, children, women, human rights defenders, persons with disabilities, impunity and many more issues.

You can find out what the Special Rapporteur is particularly focused on at a given time on the website of a particular Special Rapporteur or by contacting him/her via email. If you have information on the specific topics that the Special Rapporteur is working on, it is important to send it to him. Even if the Special Rapporteur is not focusing on a particular issue, you may send a thematic submission and alert him/her to the specific matter.

Specific Tips

- In order for the Special Rapporteur to take action in an individual case, it is necessary to submit the name of the alleged victim or victims to the Government concerned. The name of the alleged victim will become public once it is recorded in the annual report of the Special Rapporteur. If you specify that you do not wish the name or names to be made known to the Government, it will not be possible to investigate the case itself, but it may provide, in combination with other information, a basis for general allegations.
- Will you receive any feedback about your submission? You will not receive any acknowledgement of receipt of your submission. If your allegations are transmitted to the Government, any reply received from the Government will normally be sent to you in order to give you an opportunity to comment on its content. All cases transmitted to governments are summarised in the Special Rapporteur's annual report to the Human Rights Council, so this will also tell you if any action was taken on the basis of your allegations.

4.5.3. Working Group on Arbitrary Detention

Although their primary mandate is not to address allegations of torture, it is worth mentioning this special procedure for two main reasons. First, when individuals are arbitrarily detained and their right to a fair trial is violated, this represents a fertile ground for torture. Second, unlike any other special procedures, the Working Group has a quasi-judicial function and may consider individual complaints. When an individual communication is sent, the Working Group may send an urgent appeal or letter of allegations to the Government (like the SR on torture) or it may issue an opinion on the matter. Although such an opinion is not legally binding, it resembles a decision – the Working Group will declare, in what is called the “deliberations procedure,” whether it considers the detention arbitrary.

The opinions of the Working Group are published annually in an addendum to the report presented by the Working Group to the Human Rights Council.

Further reading

- Revised methods of work of the Working group on arbitrary detention, http://www.ohchr.org/Documents/Issues/Detention/WGAD_RevisedMethodsofWork.pdf

4.5.4. Country Rapporteurs

In addition to thematic rapporteurs and working groups, the Human Rights Council also appoints country-specific rapporteurs (or *independent experts* or *special representatives*) whose task is to report on the full range of human rights, including torture and inhuman treatment, in the specific country for which they are responsible. In general, such rapporteurs will be appointed in relation to countries that have particularly serious human rights situations, including those caused by conflict. The singling out of a country for such scrutiny is inevitably a politically sensitive matter and there must be sufficient agreement among States at the Human Rights Council for a country-specific rapporteur to be created.

Like the thematic rapporteurs, the objective of country-specific rapporteurs is to paint an accurate picture of a situation, but instead of it being a worldwide portrait of a specific phenomenon, it should be a far more comprehensive report on the human rights situation in a single country. Allegations of torture and inhuman treatment are of major relevance to such a rapporteur, who needs to be able to report on the phenomenon in the context of his or her country report. Where a special rapporteur exists for the country about which you wish to submit an allegation of torture, he or she should be included on the list of procedures to which the allegation should be circulated.

At the time of writing, country-specific mandates existed in relation to:

Belarus (SR)	Democratic People's	Occupied Palestinian
Cambodia (SR)	Republic of Korea	Territories (SR)
Central African	(SR)	Somalia (IE)

Republic (IE) Côte d'Ivoire (IE) Eritrea (SR)	Haiti (IE) Iran, Islamic Republic of (SR) Mali (IE) Myanmar (SR)	Sudan (IE) Syrian Arab Republic (IE) ⁶²
KEY: SR = Special Rapporteur; IE = Independent Expert		

4.6. Human Rights Committee

BASIC FACTS ABOUT: The Human Rights Committee		
Origin	How was it created?	By the 1966 International Covenant on Civil and Political Rights. Individual communication procedure was established by the Optional Protocol.
	When did it become operational?	The Committee became operational in 1976.
Composition	How many persons is it composed of?	18.
	Are these persons independent experts or State representatives?	Independent experts.
Purpose	General objective	To supervise the implementation by States of their obligations under this treaty.
	Functions	<ul style="list-style-type: none"> • Examination of State reports (Article 40, ICCPR); • Inter-State complaints (Article 41, ICCPR) (has never been used); • Individual complaints (optional) (First Optional Protocol to the ICCPR).

⁶² Will start once the mandate of the commission of inquiry ends.

The Committee is responsible for making sure that States Parties comply with their obligations to respect and to ensure to all individuals the rights contained in the ICCPR, including the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 7) and the right of all persons deprived of their liberty to be treated with humanity and dignity (Article 10). It does this in two ways:

- 1) It examines and comments on reports submitted to it by States Parties at regular intervals;
- 2) It examines allegations submitted to it by individuals about specific incidents of violation.

4.6.1. State reporting

See Chapter C.3.4 on Submitting Information on General Situations of Torture for a description of how the State reporting procedure works, suggestions as to what can be achieved in the context of the State reporting procedure, and what a communication should contain.

The Committee sets a date for the State Party to submit its report on the implementation of the Covenant. The State's report is published on the Committee's website and the NGO may submit its "shadow" or "alternative" report, ideally commenting on the State Party's report.

List of Issues

The Committee prepares and adopts the so-called Lists of Issues asking the State Party to clarify, add additional information to its report, or update the Committee on any changes since it received the report. The aim of the Lists of Issues is to allow the dialogue that takes place at the review session to focus on (but not be limited to) the topics raised in the List of Issues.

The List of Issues is usually drafted six to eight weeks before the session where the Committee adopts the List. An NGO that wants to influence the topics that will be discussed in the State report and in the constructive dialogue with the State

should send its report to the Committee before it starts drafting the List of Issues. On the website you can find out when the Committee will adopt a List of Issues for a specific country, and you should send the information at least **10 weeks before** that date.

Besides the general guidance on submitting information to a State reporting procedure, which you should follow, try to provide the exact wording of the question(s) you want the Committee to ask the State if you want a Committee to include your concern of the List of Issues. You need to be as precise as possible to get your concern heard.

Simplified Reporting Procedure (List of Issues Prior to Reporting)

The Human Rights Committee decided to adopt an optional simplified reporting procedure, by which the List of Issues would be adopted prior to receiving the State's report and the State's answers to these Lists of Issues would constitute its report. This procedure basically replaces the standard periodic reporting of States and it increases the effectiveness of consideration of State reports. The procedure is optional, but many States have accepted it. It is also mainstreamed by the OHCHR in its document on Strengthening the United Nations human rights treaty body system:

<http://www2.ohchr.org/english/bodies/HRTD/docs/HCREportTBStrengthening.pdf>.

The State report would therefore consist of two sections:

- 1) "General information on the national human rights situation, including new measures and developments relating to the implementation of the Covenant⁶³;
- 2) "Responses to the questions organized according to clusters of provisions as in the standard list of issues, highlighting specific issues depending on the situation of the concerned State party and the information available to the

⁶³ UN Human Rights Committee, Focused reports based on replies to lists of issues prior to reporting (LOIPR): Implementation of the new optional reporting procedure (LOIPR procedure).

Committee. Follow-up information since the last concluding observations should also be provided by the State”.⁶⁴

As with standard List of Issues, NGOs have the opportunity to try to influence the List of Issues Prior to Reporting in this simplified reporting procedure. The Committee will inform the public on when to submit their contributions.

Specific Tips

- The Human Rights Committee can ask States Parties to submit a special report if the circumstances appear to require it although it seldom happens. Potentially, such a request could be made in response to information of serious violations. States that have been asked to produce such reports include those of the Former Yugoslavia in the period following their independence.
- You need to send your report online and provide 25 hard copies of your report, which will be distributed to the Committee members.

4.6.2. Individual complaints

BASIC CHRONOLOGY: Individual Complaint Procedure – Human Rights Committee		
Receipt and registration of your communication. (Additional information may be requested by the Secretariat – the OHCHR)		
⇓		
A member of Human Rights Committee is appointed as rapporteur to decide if it should be transmitted to the Government		
⇓		
The communication is transmitted to the Government for comments. It is given:		
⇓		⇓
EITHER 2 months to request the		OR 6 months to comment on

⁶⁴ UN Human Rights Committee, Focused reports based on replies to lists of issues prior to reporting (LOIPR): Implementation of the new optional reporting procedure (LOIPR procedure).

declaration of inadmissibility		admissibility and merits
⇓		⇓
The government's comments are sent to the complainant who is given:		
⇓		⇓
A specified time to respond to comments on admissibility		A specified time to comment on admissibility and merits
⇓		⇓
HRC adopts a decision on admissibility		
⇓		⇓
Government may send its comments on the merits		
⇓		⇓
Government's comments transmitted to the complainant , who may respond		
⇓		⇓
HRC considers all the information before it and adopts its view on the case, and on whether or not there has been a violation .		
	⇓	
These are sent to the complainant and the State Party , who may be invited to inform the HRC of the steps it takes to comply with the HRC's view		
	⇓	
A summary of the case is published in the Human Rights Committee annual report		

Remember the basic conditions that need to be met in order for you to be able to submit a complaint:

- The State is a party to the treaty;
- The State accepted the competence of the body;
- The State has the jurisdiction;
- Admissibility requirements are met.

Admissibility requirements

A communication will be declared **inadmissible** if:

- The communication is anonymous;
- The communication is an abuse of the right of submission;
- The communication is incompatible with the provisions of the Covenant;
- The same matter is *being* examined under another procedure of international investigation;
- Domestic remedies have not been exhausted, except where the remedies are unreasonably prolonged;
- The communication appears “insufficiently substantiated” on facts or law (this has been developed in the jurisprudence of the Committee)
- Excessive delay may be considered an abuse of the right of petition (see Rule 96(a) of the Rules of Procedure).⁶⁵

Under this procedure, a communication is declared inadmissible if it is *being examined* under another procedure of international investigation - this means that a case that *has been* considered under another procedure and has since been concluded may still be admissible. It may be possible, therefore, to attempt to seek a remedy through another international procedure first, and subsequently to bring the case before the Human Rights Committee. However, many States Parties have made reservations preventing the Committee from examining cases that have already been examined by other bodies. You should therefore check the reservations to see if this applies in your case.

PRACTICALITIES OF USING THE INDIVIDUAL COMPLAINT PROCEDURE: Optional Protocol to the International Covenant on Civil and Political Rights	
Who can bring a case under this procedure?	Individuals claiming to be victims of a violation of the ICCPR. Communications are accepted from close family, or from an <u>authorised</u> representative (There <u>must be</u> a letter of authorisation from the victim or his or her

⁶⁵ Optional Protocol to the International Covenant on Civil and Political Rights, 23 March 1976, Article 5.

	family). An explanation should be given where victims do not take action themselves.
Is there a time limit for bringing an application?	No, but where there is no justification for a long delay, this may lead the Committee to declare the case inadmissible.
Can you bring a case under this procedure if you have already brought one under another procedure concerning the same set of facts?	Yes, but only if the State Party concerned has not made a reservation in this respect.
Do you need legal representation?	No.
Is financial assistance available?	No.
Are amicus briefs accepted?	No.
Who will know about the communication?	The State Party will always be informed of the identity of the complainant in order for it to reply to the allegations, but the Committee will not make the applicant's name public if asked not to do so. The complainant and the State Party concerned are entitled to publish information concerning the procedure, unless there is a request from the complainant or State Party for confidentiality.
What measures, if any, can the mechanism take to assist it in reaching a decision?	The whole procedure is based on written pleadings from the parties - there is no possibility of other measures.
How long does the procedure take?	Normally between two and five years, although this may be reduced to one year in urgent cases.
Are provisional or urgent measures available?	Yes

4.7. Committee against Torture

BASIC FACTS: The Committee Against Torture

Origin	How was it created?	By the 1984 UN Convention Against Torture.
	When did it become operational?	1988.
Composition	How many persons is it composed of?	10.
	Are these persons independent experts or State representatives?	Independent experts.
Purpose	General objective	To ensure that States respect their obligations under this treaty to prevent and punish torture.
	Functions	<ul style="list-style-type: none"> • Examination of State reports (Article 19, UNCAT); • Fact-finding through confidential inquiry procedure (Article 20, UNCAT); • Inter-State complaints (Article 21, UNCAT); • Individual complaints (optional) (Article 22, UNCAT) (See Part III, Chapter 4.3.1).

The Committee is responsible for monitoring the extent to which States respect their obligations to implement the Convention against Torture, i.e., to prevent, prohibit and punish torture. The main ways in which it does this is through:

- The **examination of reports** submitted by States at regular intervals;
- Undertaking a **confidential inquiry** into allegations of a systematic practice of torture in a State Party (although some States Parties may not allow this);
- In relation to States that have accepted the **individual complaint procedure**, it examines allegations submitted to it by individuals about specific incidents of torture, including cases involving the imminent expulsion of individuals to a country where they are believed to be at risk of torture.

4.7.1. State reporting

See Chapter C.3.4 on Submitting Information on General Situations of Torture (State reporting), for suggestions about what can be achieved in the context of the **State reporting procedure**.

List of Issues and List of Issues Prior to Reporting (Simplified Reporting Procedure)

The Committee against Torture adopts the List of Issues, on which the constructive dialogue in consideration of the State report will focus. It was also the first Committee to adopt and mainstream an optional procedure under which a List of Issues is transmitted to States parties prior to the submission of their periodic reports (List of Issues Prior to Reporting or the Simplified Reporting Procedure). The answers to this List of Issues replaces the standard periodic report, but only if the State agrees to this optional procedure.

For more information on how to adapt your report to these two procedures see the section on reporting to the Human Rights Committee (Chapter C.4.6).

The content of the submission

See Chapter C.3.4 for general guidelines on what a communication in the context of the State reporting procedure should contain.

The Convention against Torture creates very specific obligations, many of which States Parties are required to implement through legislative and other measures. A State Party will generally set out in a very comprehensive manner the formal legal situation in relation to each of these obligations. Your main objective should be to describe what actually happens in *practice*, giving as many examples as possible. Never simply state that something is ineffective without explaining *why*. Give examples of where legislative, administrative, judicial or other measures have worked/not worked.

Types of information useful to include are:

- If torture is a criminal offence under the national law, are any officials actually prosecuted or convicted under this law and what kind of penalties do they receive? Give examples of any prosecutions and decisions not to prosecute, as well as any convictions and penalties.
- Does the State investigate allegations of torture and other ill-treatment, and if it does, what is the result of such investigations? For example, do public prosecutors take them seriously; do they ever result in the perpetrator being prosecuted; what methods are used to investigate?
- Do victims of torture ever receive compensation or any other kind of redress? If compensation is granted, give examples of the amounts awarded.
- Can an individual be convicted on the basis of a statement made as a result of torture? For example, if a judge knows that a confession or other incriminating statement has been made under torture, can he or she still convict the person?

4.7.2. The inquiry procedure

The inquiry procedure is a confidential procedure to investigate allegations of a *systematic practice* of torture in a State Party to the Convention. An inquiry can be initiated when 'reliable information' is received that 'appears to contain well-founded indications that torture is being systematically practised'.⁶⁶ The bulk of this information will originate from NGOs and it is possible to expressly request an inquiry if you think you have enough information to establish a systematic practice, although you should not expect to be told if your request has been acted upon. If a State Party agrees, the inquiry can involve a fact-finding visit to the country. In such cases, the Committee will make contact with local NGOs, on the understanding that they will maintain the highest respect for the confidential nature of the visit.

The strength of the inquiry procedure, in spite of its confidential nature, is the very negative implications of such an inquiry being initiated against a country. It will only happen in cases where the situation is considered extremely serious, and for

⁶⁶ UNCAT, Article 20.

a State to be identified as tolerating a systematic practice of torture is a very weighty measure. Although the proceedings remain confidential throughout the inquiry, a summary of the findings may be made public, including a possible affirmative finding that a systematic practice exists. There have only been nine inquiries in two decades.

Even in cases where findings are not made public by the Committee, or are not made public until long after the inquiry has taken place, the procedure can be useful. The mere fact that the Committee has the potential to make its findings public may create pressure for a State to take steps to amend legislation or prevent certain practices, in order to discourage the Committee from following this course of action.

If you wish to request a confidential inquiry, the objective is two-fold: (1) to demonstrate the existence of a *systematic practice* of torture in the country, and (2) to explain the *context*, particularly the legal context.

Systematic practice: The Committee has formulated some general criteria that it considers indicative of whether a systematic practice is taking place. It considers that torture is practised systematically when:

- It is apparent that the torture cases reported have not occurred fortuitously in a particular place or at a particular time, but are seen to be *habitual, widespread and deliberate* in at least a *considerable part of the territory* in question.

In addition, it considers that:

- This need not necessarily result from the direct intention of a Government but may be the consequence of factors which the Government has difficulty in controlling, and its existence may indicate a discrepancy between policy as determined by the central Government and its implementation by the local administration.
- Inadequate legislation that in practice allows room for the use of torture may also add to the systematic nature of the practice.

NGOs should provide information about a large number of incidents of torture, and be well-organised in their presentation of these incidents in order to use them to best demonstrate the systematic nature of the practice. This means that it is not enough to be reporting on a few isolated incidents - there must be a geographical concentration of incidents, or a multiplication of allegations linked, for example, to a specific law.

Context. In order for the Committee to gain a sense of whether or not a systematic practice may exist in a country, it helps for them to familiarise themselves with the context, particularly the legal context. This is particularly important in helping the Committee to identify possible causes of a systematic practice, especially inadequate legislation. NGOs should provide information about any anti-terrorism laws that may be applicable in the country, and draw the Committee's attention to any laws which appear to be causing problems, for example any laws permitting the extension of incommunicado detention, or protecting officials from prosecution for torture.

Ultimately, the Committee will reach a conclusion as to whether or not a systematic practice of torture exists. This conclusion, along with any appropriate recommendations, will be transmitted to the State Party. The proceedings remain confidential, but once they have been concluded, the Committee may, following consultation with the State Party, decide to include a summary account of their results in its annual report.

Specific tips

- States are entitled to make a declaration that they do not recognise the Committee's competence to carry out a confidential inquiry under Article 20. This means States Parties are assumed to consent to the procedure unless they specify otherwise. If you wish to request an inquiry, you will first need to check that the State in question has not made such a declaration.
- NGOs may ask for this procedure to be initiated, but as it is a strictly confidential procedure, they should not expect to receive any feedback. Do not underestimate the importance of the confidential nature of the procedure - if

you are approached for information in the context of such an inquiry, including in the case of a fact-finding visit, you must respect the confidentiality of the investigation if you ever want your organisation to be consulted again.

4.7.3. Individual complaints

Basic chronology

The basic chronology for the individual complaint procedure of the CAT is similar to that of the Human Rights Committee (see Chapter C.4.6).

Complaints examined by the CAT

The Convention against Torture obliges States Parties to not only refrain from torture, but also to take preventive and remedial steps against torture. As a result, you can bring a complaint against a State Party not only because of the incident of torture itself, but also in connection with the State Party's other obligations under the Convention. The principal obligations include (see Articles 2 to 16 of UNCAT for complete list):

- An obligation **to not expel, return or extradite** a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to torture (Article 3).
- An obligation to **investigate** promptly and impartially an allegation of torture, and to protect a complainant and witnesses from any intimidation as a result (Article 13).
- An obligation to ensure that the legal system grants **redress** to a victim of torture, as well as a right to fair and adequate **compensation** for him or herself, or in the event of his or her death as a result of the torture, his or her descendants (Article 14).
- An obligation to ensure that any statement established to have been made as a result of torture is not invoked as **evidence in proceedings**, except against a person accused of torture (Article 15).

Admissibility requirements

A communication will be declared **inadmissible** if:

- The communication is anonymous;
- The communication is an abuse of the right to submit an individual communication;
- The communication is incompatible with the provisions of the Convention;
- The same matter has been or is being examined by another procedure of international investigation;
- Domestic remedies have not been exhausted, except where the remedies are unreasonably prolonged or unlikely to bring effective relief to the victim. If the State does not initiate any proceedings or decide upon the complaint for a prolonged period of time, despite the fact that it was informed of the alleged torture and there was no reasonable justification for the lack of State's involvement, the complainant can refer to the Committee. This is also possible if you are able to prove that the remedy is ineffective.⁶⁷

Specific tips

- Check that the State is a party to the Convention against Torture and has accepted the individual complaints procedure under Article 22.
- Remember that you can complain of a violation of any provision of the Convention against Torture, not only about the incident of torture itself. Most of the cases that have come before the Committee, apart from deportation cases, have concerned the provisions on redress, namely the duty to investigate and/or provide reparation. If your complaint is about these provisions, you will need to emphasise the facts relating to the State Party's failure to provide redress.
- When your communication is based on the premise that no investigation was carried out, you should describe in detail what steps were taken to inform the State of the alleged torture in order to trigger its obligation to investigate. Submit any documents you have on the communication with State authorities in this regard. If no medical examination was carried out after the alleged victim complained about torture in detention, you may emphasise this as it

⁶⁷ CAT, Article 22.

may show the Committee that the State did not take steps to investigate the allegations. If this is the basis of your complaint, try to submit any evidence or statement that proves that the investigation was not prompt, impartial and effective.

- The Committee and its Secretariat take the confidentiality of the proceedings very seriously. This means that they will not release information about a case to anyone except the author of the communication and his or her representative expressly named in a letter of authorisation. It also means that the author of the communication and his or her representative should not disclose any information about the proceedings themselves to the public. If in doubt, always check with the Secretariat about what information may be made public, and what should remain confidential.
- If you wish to make a complaint concerning the imminent deportation of an individual (under Article 3 of UNCAT), try not to leave your application until the last minute. The wisest approach would be to contact the Secretariat as soon as a date has been given for deportation, even if you are still appealing the decision. Explain the situation and warn them that in the event that the appeal is refused you will apply for interim measures from the Committee. This means that they can prepare for the possibility of a last minute intervention, rather than being caught unprepared. The jurisprudence of the Committee may advise you on how the Committee applies the provision of Article 3 on UNCAT. The person must satisfy the threshold that he or she personally risks being tortured if deported to a particular country.

PRACTICALITIES OF USING THE INDIVIDUAL COMPLAINT PROCEDURE: UN Convention against Torture

Who can bring a case under this procedure?	Any individual who claims to be a victim of a violation of the Convention, his or her relatives, a designated representative, or others where the victim is unable to make the submission in person and the author of the communication can justify taking action on the victim's behalf.
Is there a time limit for bringing an application?	No, but the alleged violation must have occurred after the State Party's declaration accepting the procedure has come into force.
Can you bring a case under this procedure if you have already brought one under another procedure concerning the same set of facts?	No.
Do you need legal representation?	No.
Is financial assistance available?	No.
Are amicus briefs accepted?	Not provided for but not excluded.
Who will know about the communication?	The author of the communication and his or her representative, the Committee and its Secretariat, and the State Party. The identity of the author is only made public if the Committee finds that a violation has occurred, and may remain confidential at the request of the author even in such cases.
How long does the procedure take?	Normally about one year, though can be longer.
What measures, if any, can the mechanism take to assist it in reaching a decision? E.g. fact-finding hearings; on-site visits;	Written pleadings

written pleadings; oral hearings; other.	
Are provisional or urgent measures available?	Yes.

4.8. Subcommittee on Prevention of Torture

The OPCAT established a special treaty monitoring body called the Subcommittee on Prevention of Torture (SPT). It is a unique international body tasked with advising and assisting in the establishment of National Preventive Mechanisms (NPMs) and liaising with them in their work as well as visiting places of detention itself, much like its older regional counterpart, the European Committee for the Prevention of Torture.

BASIC FACTS: The Subcommittee on Prevention of Torture		
Origin	How was it created?	By the 2002 Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.
	When did it become operational?	2007.
Composition	How many persons is it composed of?	25.
	Are these persons independent experts or State representatives?	Independent experts.
Purpose	General objective	To prevent torture and other cruel, inhuman or degrading treatment or punishment by regular visits to places of detention and advising and assisting in the establishment of NPMs and liaising with them in their work.
	Functions	<ul style="list-style-type: none"> • Visit the places of detention; • Make recommendations to States

		Parties concerning the protection of persons deprived of their liberty; <ul style="list-style-type: none"> • Advise, assist, offer training and technical assistance, make recommendations, etc., in regard to the establishment and working of national preventive mechanisms.
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Country visits

The SPT visits places of detention and makes recommendations to States Parties concerning the protection of persons in detention (**regular visits**). These are not surprise visits; each year, the SPT establishes a programme of regular visits to States Parties and notifies a State Party in advance in writing of when it intends to make the visit. States Parties must make necessary practical arrangements to enable the visits. A State may only **object to a visit to a particular place of detention** on urgent and compelling grounds of national defence, public safety, natural disaster or serious disorder. This objection **temporarily prevents** the carrying out of such a visit to a particular place of detention. The mere existence of a declared state of emergency is not a valid reason to object to a visit.

Before the visit, the SPT also notifies the State Party in writing of who will form the delegation: the names of the SPT members (at least two members); if used, external experts of demonstrated professional experience and knowledge in the fields covered by the OPCAT; the members of the Secretariat assisting the SPT. The SPT requests from the State all relevant information it needs in advance of the visit in the form of a list of official information requested from States Parties.

The SPT will meet with the relevant authorities, responsible for law enforcement and for any places where people are deprived of liberty (pre-trial detention, prison, military detention, immigration detention, psychiatric or social care institutions). The SPT may also meet with national human rights institutions (NHRIs), NGOs and with anyone who can provide information relevant to the SPT's mandate.

At the end of the visit, the SPT delegation may present any preliminary observations at a final meeting with the senior officials of the competent authorities and will engage in a confidential discussion concerning any issues that arose during the visit that require immediate attention. It will then issue a brief press release which can contain issues of substance in relation to the visit in addition to details about the visit, the members of the visiting delegation, the organisations the delegation met and the places of detention it visited.

After the visit, the SPT issues a report with recommendations which it communicates **confidentially** to the State Party and, if relevant, to the national preventive mechanism. The State Party should respond to these recommendations and to any further requests for information. The report then forms the basis for an ongoing confidential dialogue between the SPT and the State Party on the implementation of the recommendations. In principle, the report is confidential but may be published if:

- A State Party requests that it is published together with any comments the State may make;
- The State Party makes part of the report public. In this event, the SPT may publish the report in whole or in part;
- The State Party refuses to cooperate with the SPT or take steps to improve the situation in the light of the recommendations made by the SPT. In such a situation, the SPT may request that the Committee against Torture publishes the report and/or makes a public statement on the matter. The Committee can take such action through a majority decision of the Committee, after hearing the views of the State Party.

Many country reports and States' replies are publicly available on the website http://tbinternet.ohchr.org/_layouts/TreatyBodyExternal/CountryVisits.aspx.

After a regular visit, the SPT may propose to conduct a short **follow-up visit**. Such a visit will enable the SPT to learn of developments in the State Party and to see how its recommendations have been implemented. During such visits the SPT will meet with the national authorities, the National Preventive Mechanism,

representatives of civil society in addition to visiting places where persons are deprived of their liberty. After a follow-up visit, the SPT will prepare a follow-up report, which will be communicated to the State Party confidentially and will be published only with the permission of the State. As with the report on the regular visits, this report forms the basis for a confidential dialogue between the SPT and the State Party on the implementation of the recommendations.

Advisory role regarding NPMs

In addition to visiting places of detention itself, the SPT has a strong advisory role and it is tasked with:

- Providing advice and assistance to States Parties on the establishment of the NPMs;
- Keeping a direct contact with NPMs, advising them on their work, offering training and technical assistance to strengthen their capacity;
- Making recommendations and observations to the States Parties regarding the capacity and work of the NPMs.

The main way in which the SPT fulfils this part of its mandate is through direct and ongoing contact with the state authorities and NPMs. It can also conduct NPM advisory visits and OPCAT advisory visits.

- **Advisory visits to NPMs:** These visits are aimed at supporting the NPM's mandate by reinforcing its effective functioning and building its capacity. The SPT engages in a broad consultation with the NPM and with other national institutions and civil society to learn more about its work in practice. When the State Party to the OPCAT has not yet established a NPM, the SPT will meet with all relevant stakeholders – the State authorities, NHRIs, civil society and others – to eliminate this deficiency. After the visit, the SPT adopts two confidential visit reports, one to the NPM and the other to the State Party. The reports may be published if the addressee so chooses.
- **OPCAT advisory visit:** An OPCAT advisory visit is devised to help States Parties in fully implementing their obligations set out in the Optional Protocol to the OPCAT. They will include high-level talks with senior government officials, as well as civil society representatives and others.

Guarantees for the SPT's work

In order for the SPT to be able to comply with its mandate, the States Parties must:

- Receive the SPT in their territory;
- Provide unrestricted access to all information relating to the number of persons deprived of their liberty, number of places of detention and their location, the treatment of persons and the conditions of detention;
- Grant unrestricted access to places of detention and their installations and facilities and the liberty to choose which place they want to visit;
- Allow the SPT to conduct private interviews with persons deprived of their liberty and choose the persons the delegation wishes to interview;
- Allow the SPT to interview any other person the delegation believes may be able to supply relevant information, which includes civil society (see below);
- Encourage and facilitate contacts between the SPT and NPMs;
- Examine SPT's recommendations and enter into dialogue with it.

Cooperation between the SPT and NGOs

An important aspect of the SPT's mandate for the prevention of torture is cooperation with all relevant stakeholders. The OPCAT empowered the SPT to cooperate with the relevant UN organs and mechanisms as well as with the international, regional and national institutions or organizations working towards the strengthening of the protection of all persons against torture and other cruel, inhuman or degrading treatment or punishment.

“The SPT is guided by the principles of confidentiality, impartiality, non-selectivity, universality and objectivity”.⁶⁸

Importantly, the OPCAT aims at protecting the individuals and organisations that communicate with the SPT (in the same way as with the NPMs). Therefore, whoever communicates information to the SPT, whether it is true or false, should

⁶⁸ UN SPT website, <http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/OPCATIntro.aspx>.

not fear any repercussions (being sanctioned or prejudiced in any way) by the State.

The nature of the SPT’s work is designed to be inclusive. Therefore, you may:

- Send information on the conditions in the places of detention;
- Propose a meeting with the SPT delegation when they conduct a country visit;
- Propose persons to be interviewed by the SPT – both persons deprived of liberty and any other person that might give relevant information to the SPT;
- Use the information by the SPT in your other submissions, for example to the Committee against Torture.

Further reading

- OHCHR, SPT guidelines in relation to visits to States parties, <http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/Outline.aspx>
- SPT, Policy of the Subcommittee on Prevention of Torture on Reprisals in relation to its Visiting Mandate: <http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/OPCATIntro.aspx>

4.9. Other Committees

Aside from the Human Rights Committee, Committee against Torture and the Subcommittee on Prevention of Torture, there are six other committees of experts that monitor the implementation of the core UN human rights treaties. All except for the Subcommittee on Prevention of Torture consider State reports at specified intervals and some of them are able to consider individual communications if a State recognised its competence to do so.

Name of the treaty body	State reports	Individual communications
Human Rights Committee (HRC)	Yes	Yes
Committee against Torture (CAT)	Yes	Yes
Subcommittee on Prevention of Torture (SPT)	No	No
Committee on the Elimination of Racial	Yes	Yes

Discrimination (CERD)		
Committee on Elimination of Discrimination against Women (CEDAW)	Yes	Yes
Committee on the Rights of Persons with Disabilities (CRPD)	Yes	Yes
Committee on the Rights of the Child (CRC)	Yes	Yes
Committee on Enforced Disappearances (CED)	Yes	Yes
Committee on Migrant Workers (CMW)	Yes	No
Committee on Economic, Social and Cultural Rights (CESCR)	Yes	Yes

You may submit information (shadow reports) in the State reporting procedures of all the existent treaty bodies if your resources allow it. You should refer to Chapter C.3.4 on Submitting Information on General Situations of Torture for a description of how the State reporting procedure works, suggestions as to what can be achieved through such a procedure, and guidelines on how to prepare a submission in the context of this procedure. It is important to be aware that the committees' State reporting procedures work on the basis of the so-called list of issues. You can send your response to the State report, and additional information, before the adoption of the list of issues.

With regard to individual complaints, you are usually prohibited from submitting a complaint to various bodies simultaneously. The State might not have recognised the competence of all the committees to receive individual communications. Even if it had, the majority of the committees that hear individual complaints will not accept petitions that are pending or have already been examined by another procedure of international investigation or settlement. A notable exception to this rule is CERD, which does not have this prohibition and may hear a case even if it is pending or has been examined by another international body. For the purposes of this Handbook, the basic characteristics and essential procedural rules for submitting individual communications to CERD, CEDAW and CRC are described below. For other committees you are advised to examine the information on their respective websites and in the treaties and protocols that establish such procedures.

4.9.1. Committee on the Elimination of Racial Discrimination (CERD)

BASIC FACTS: The Committee on the Elimination of Racial Discrimination		
Origin	How was it created?	By the 1965 International Convention on the Elimination of all Forms of Racial Discrimination.
	When did it become operational?	1969.
Composition	How many persons is it composed of?	18.
	Are these persons independent experts or State representatives?	Independent experts.
Purpose	General objective	To supervise the implementation by States Parties of their obligations under the CERD.
	Functions	<ul style="list-style-type: none">• Examination of State reports;• Inter-State complaints (never used);• Individual complaints.

Admissibility requirements

A communication will be declared **inadmissible** if:

- The communication is anonymous;
- The communication is an abuse of the right of submission;
- The communication is incompatible with the provisions of the Covenant;
- Domestic remedies, including those before a designated national body, have not been exhausted, except where the remedies are unreasonably prolonged;
- It is not submitted within six months after all available domestic remedies have been exhausted, except in the case of proven exceptional circumstances.⁶⁹

Specific tips

⁶⁹ CERD, Article 14.

- Check that the State is a party to the CERD and has accepted individual complaints under Article 14.
- Although the CERD is a very widely ratified treaty, few States Parties have accepted the individual complaints procedure.
- The CERD provides that States Parties having accepted the individual communication procedure may establish or indicate a national body competent to examine such complaints at the national level. Only if no remedy is obtained from that body should individuals make an application to the CERD Committee.
- The CERD Committee may declare a communication admissible even if it is being considered under another international procedure.
- The CERD Committee does not reveal the identity of the complainant without their express consent.

4.9.2. Committee on the Elimination of Discrimination against Women (CEDAW)

BASIC FACTS: The Committee on the Elimination of Discrimination against Women		
Origin	How was it created?	By the 1979 UN Convention on the Elimination of Discrimination against Women. The communications procedure was made available by the 1999 Optional Protocol to the CEDAW.
	When did it become operational?	1981.
Composition	How many persons is it composed of?	23.
	Are these persons independent experts or State representatives?	Independent experts.
Purpose	General objective	To supervise the implementation by States Parties of their obligations under the CEDAW.

	Functions	<ul style="list-style-type: none"> • Examination of State reports (Article 18, CEDAW) • Individual complaint procedure. In relation to torture, CEDAW may be used both for the problem of gender violence amounting to torture by State actors, but also for failing to protect women against violence by non-state actors, and to sanction and redress these private acts of torture or ill-treatment (e.g. in the case of domestic violence).
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Admissibility requirements

A communication will be declared **inadmissible** if:

- The communication is anonymous;
- All available domestic remedies have not been exhausted unless they are unreasonably prolonged or unlikely to bring effective relief;
- The communication is manifestly ill-founded or not sufficiently substantiated;
- The communication is an abuse of the right to submit an individual communication;
- The communication is incompatible with the provisions of the Convention;
- The facts presented occurred before the State party ratified the Protocol;
- The same matter has been or is being examined under another procedure of international investigation or settlement.⁷⁰

Specific tips

- Check that the State ratified the Optional Protocol to the CEDAW and thus accepted the competence of the Committee to receive individual complaints.
- There is no deadline for submission of individual complaints after domestic remedies have been exhausted unlike with other treaty bodies.

⁷⁰ CEDAW, Articles 3 and 4.

- The Committee may contact the State Party with an urgent request that the State Party take steps to protect the alleged victim or victims from irreparable harm after receiving the communication and prior to its final decision.
- The Committee developed its own rules of procedure when dealing with communications, so you are advised to review them.

4.9.3. Committee on the Rights of the Child

BASIC FACTS: The Committee on the Rights of the Child		
Origin	How was it created?	By the 1989 UN Convention on the Rights of the Child. The communications procedure was made available by the 2011 (Third) Optional Protocol to the Convention on the Rights of the Child.
	When did it become operational?	The Committee became operational in 1991. The communications procedure became available in 2014.
Composition	How many persons is it composed of?	10.
	Are these persons independent experts or State representatives?	Independent experts.
Purpose	General objective	To supervise the implementation by States Parties of their obligations under the CRC
	Functions	<ul style="list-style-type: none"> • Examination of State reports (Article 44, CRC); • Examination of individual complaints.

Admissibility requirements

A communication will be declared **inadmissible** if:

- The communication is anonymous;
- The communication is not in writing;

- The communication is an abuse of the right to submit an individual communication;
- The communication is incompatible with the provisions of the Convention and/or its Protocols;
- The same matter has been or is being examined under another procedure of international investigation or settlement;
- All available domestic remedies have not been exhausted unless they are unreasonably prolonged or unlikely to bring effective relief;
- The communication is manifestly ill-founded or not sufficiently substantiated;
- The facts presented occurred before the State party ratified the Protocol unless those facts continued after that date;
- The communication is not submitted within one year after the exhaustion of domestic remedies, unless it can be demonstrated that it had not been possible to submit it within that time limit.⁷¹

4.9.4. Committee on Enforced Disappearances (CED)

BASIC FACTS: The Committee on Enforced Disappearances		
Origin	How was it created?	By the 2006 International Convention for the Protection of All Persons from Enforced Disappearance
	When did it become operational?	2010
Composition	How many persons is it composed of?	10
	Are these persons independent experts or State representatives?	Independent experts.
Purpose	General objective	To supervise the implementation by States Parties of their obligations under the International Convention for the Protection of All Persons from Enforced Disappearance

⁷¹ CRC, Article 7.

	Functions	<ul style="list-style-type: none"> • Examination of State reports; • Inter-State complaints; • Individual complaints.
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Admissibility requirements

A communication will be declared **inadmissible** if:

- The communication is anonymous;
- The communication is an abuse of the right of submission;
- The communication is incompatible with the provisions of the Covenant;
- Domestic remedies, including those before a designated national body, have not been exhausted, except where the remedies are unreasonably prolonged or are ineffective or inaccessible;
- The complaint is currently or has been considered by another international or regional procedure.

Specific tips

- Check that the State is a party to the CED and has made a declaration that the Committee can receive individual complaints against it under Article 31.
- An individual can submit a complaint on behalf of a person whose rights are alleged to have been violated under the Convention. The author of the complaint must disclose his or her identify and the identity of the victim (where different) but they can request that their identity is not disclosed in the Committee's findings in the case.
- The CED Committee may declare a communication inadmissible if it has already been heard by an international procedure of the same nature (e.g. another treaty body).
- The Committee may contact the State Party with an urgent request that the State Party take steps to protect the alleged victim or victims from irreparable harm after receiving the communication and prior to its final decision.
- The communication should not be longer than 30 pages (excluding annexes).⁷²

⁷² Committee on Enforced Disappearance, 'Guidance for the submission of an individual communication or complaint to the Committee' CED/C/5 (29 April 2014) at para. 5.1.

- The Committee has its own form which should be used when submitted a complaint.⁷³

5. THE AFRICAN SYSTEM OF HUMAN AND PEOPLES' RIGHTS

5.1. Introduction to the African System

The African system for the protection of human rights is based on the African Charter on Human and Peoples' Rights, adopted under the auspices of the then Organization of African Unity, which was then reorganised and renamed the African Union (AU). The Charter is binding upon 54 states excluding Morocco and South Sudan. Article 5 of the Charter sets out the prohibition of torture. Similar to the Inter-American system, discussed further below, the African human rights system encompasses both a Commission and the Court.

As with many other mechanisms, the African regional human rights system can be used to report on general situation of torture as part of wider advocacy efforts, request urgent actions and litigate individual cases of torture and other ill-treatment.

For general guidance on submissions, see Chapters C.3.5 to C.3.8.

Further reading

- OMCT, The Prohibition of Torture and Ill-Treatment in the African Human Rights System: A Handbook for Victims and their Advocates, OMCT Handbook Series Vol. 3, 2nd edition (2014), http://www.omct.org/files/2014/11/22956/v3_web_african_en_omc14.pdf
- REDRESS, Reaching for Justice: The Right to Reparation in the African Human Rights System (2013), <http://www.redress.org/downloads/publications/1310Reaching%20For%20JusticeFinal.pdf>

⁷³ This is available in the document referred to in the preceding footnote.

5.2. African Commission on Human and Peoples' Rights

The African Commission is an expert human rights body of the African Union with the goal of promoting human and peoples' rights and ensuring their protection in Africa.⁷⁴ It sits in Banjul, The Gambia and meets twice a year for ordinary sessions and, when necessary and specifically called for, in extraordinary sessions. Key functions include the examination of State party reports on compliance with the African Charter and the work of Special Rapporteurs, Working Groups and Committees, including a Special Rapporteur on Prisons and Conditions of Detention and the Committee for the Prevention of Torture in Africa. The Commission is also a quasi-judicial body mandated to examine complaints (communications) alleging violations of the African Charter and other instruments ratified by the relevant State party, and to issue decisions and recommendations to State parties on how to remedy violations, if any.

Languages: The official languages of the Commission are Arabic, English, French and Portuguese, but in practice the Secretariat works principally in English and French. If a party wishes to make a presentation in another language, it should arrange for translation.

BASIC FACTS: The African Commission on Human and Peoples' Rights		
Origin	How was it created?	By the 1981 African Charter on Human and Peoples' Rights.
	When did it become operational?	1987.
Composition	How many persons is it composed of?	11.
	Are these persons independent experts or State representatives?	Independent experts.
Purpose	General objective	To promote and protect human and peoples' rights in Africa.

⁷⁴ For further information, see the website of the African Commission: <http://www.achpr.org/>

	Functions	<ul style="list-style-type: none"> • Examination of State reports (Article 62, ACHPR) • Monitoring (Article 45, ACHPR) • Promotion (Article 45, ACHPR) • Fact-finding (Articles 45 and 58, ACHPR) • Receiving communications, including from States (Article 47, ACHPR) and from individuals (automatic) (Article 55, ACHPR)
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5.2.1. Reporting on general situation of torture

The reporting functions of the African Commission include:

- Examining periodic State reports (Article 62, ACHPR);
- Undertaking research and studies, including through promotion and fact-finding missions (Article 45(1)(a), ACHPR). Notably, the vast majority of the Commission’s missions to date have been promotional rather than fact-finding;
- Conducting an in-depth study, and engage in active investigation, where it receives communications indicating the existence of a series of serious and massive violations of human rights (Article 58, ACHPR).

Every two years, States must submit their reports on the measures taken for giving effect to the rights and freedoms in the African Charter. NGOs are a vital part of this process through the submission of shadow reports on the situation in the State and also whether or not the State has implemented the recommendations made by the Commission in previous Concluding Observations on the State concerned. However, they are not permitted to participate in the oral examination of the State report itself. These act as a check and balance on the information contained in the State report (See Chapter C.3.4 on Submitting Information on General Situations of Torture (State reports) for general guidance on preparing shadow reports). Under Rule 74(2) of the Commission’s Rules of

Procedure⁷⁵, shadow reports must be submitted to the Secretariat of the Commission, at least 60 days before the Commission examines the State Party's Report.

Observer Status

Any NGO, whether African or non-African, can apply for observer status with the African Commission. It is not necessary to have observer status in order to send communications. However, observer status entitles the organisation to attend and participate in public meetings, deliver a statement on specific human rights issues or situations in specific countries during each Ordinary Session and thereby bring these issues directly to the Commission's attention, to receive documents and publications by the African Commission and to request that an item be placed on the Commission's agenda. Any request for the introduction of an agenda item should be made at least 10 weeks before the opening of the session.

An application for observer status should be submitted in writing and should include: the organisation's constitution, and information on its structure, leadership, finances, membership and activities. It would be useful also to include copies of any publications or activity reports. A rapporteur is assigned to the application and makes a recommendation to the African Commission on whether or not to grant the status.

5.2.2. Special Rapporteur on Prisons and Conditions of Detention in Africa

BASIC FACTS: The Special Rapporteur on Prisons and Conditions of Detention in Africa		
Origin	How was it created?	By a 1996 resolution of the African Commission on Human and Peoples' Rights.
	When did it become	1996.

⁷⁵ Rules of Procedure, 2010 <http://www.achpr.org/instruments/rules-of-procedure-2010/#ch2.2>

	operational?	
Composition	How many persons is it composed of?	1.
	Are these persons independent experts or State representatives?	Members of the Commission
Purpose	General objective	To examine the situation of persons deprived of their liberty within the territories of States Parties to the ACHPR.
	Functions	<ul style="list-style-type: none"> • Monitoring • Promoting • Fact-finding

The Special Rapporteur on Prisons is able to exercise its functions in relation to all States Parties to the ACHPR. He or she can:

- Engage in monitoring with a view to identifying problem areas and making recommendations for their improvement;
- Make recommendations in individual cases;
- Recommend urgent action in individual cases;
- Seek and receive information on cases and situations falling within his or her mandate;
- Carry out fact-finding or promotional visits with the consent of States Parties. Reports of such visits are presented orally to the African Commission in a public session, and although the Charter itself suggests that reports should only be made public by a decision of the AU Assembly of Heads of State and Government, in practice the Commission makes it public without reference to the AU.

Main areas of concern to the Special Rapporteur on Prisons include:

- Prison conditions;
- Health issues in detention contexts;
- Arbitrary or extra-legal detention or imprisonment;
- Treatment of persons deprived of their liberty;

- Conditions of detention for especially vulnerable groups, such as refugees, persons suffering from physical or mental disabilities, or children.

Other relevant Rapporteurships and Working Groups in Africa include:

- The Special Rapporteur on Extra-Judicial, Summary and Arbitrary Executions in Africa;
- The Special Rapporteur on the Rights of Women in Africa;
- The Special Rapporteur on Human Rights Defenders;
- The Working Group on the Death Penalty and Extrajudicial, Summary or Arbitrary Killings in Africa.

The Special Rapporteurs and the Committee for the Prevention of Torture in Africa play an important role in situations where victims face a high risk of (further) torture and/ or ill-treatment, and can receive requests for urgent actions/ urgent appeals calling on the relevant State party to uphold a victim's rights under the Charter.

5.2.3. Committee for the Prevention of Torture in Africa

The African Commission established a Follow-up Committee to promote the implementation of the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa ('the Robben Island Guidelines'). The follow-up Committee was named The Robben Island Guidelines Committee and later renamed the Committee for the Prevention of Torture in Africa (CPTA). It was established to help the African Commission deal effectively with the question of torture in Africa and is composed of three Commissioners and three experts, including from civil society.

Although the CPTA acts as a monitoring body, it does not oversee the implementation of a treaty; it supervises the adherence to a soft law instrument, the Robben Island Guidelines. It is mandated to:

- “To organise, with the support of interested partners, seminars to disseminate the Robben Island Guidelines to national and regional stakeholders;
- To develop and propose to the African Commission strategies to promote and implement the Robben Island Guidelines at the national and regional levels;
- To promote and facilitate the implementation of the Robben Island Guidelines within member states and;
- To make a progress report to the African Commission at each ordinary session.”⁷⁶

The Committee may represent a good platform for the cooperation between the African Commission and civil society organisations. In addition to the NGO representatives sitting on the Committee, NGOs working in the field of torture may provide valuable input into the CPTA’s strategy on the rights of victims and on various aspects of torture prevention. The readiness of the CPTA to collaborate with NGOs will in part depend on the current membership of the Committee and its willingness to make the NGOs a partner in their effort to combat torture.

5.2.4. Individual complaints

BASIC CHRONOLOGY: Individual Complaint Procedure - ACHPR	
<p>Communication received from an individual, NGO or people (see, Article 55 of the Charter and Rule 93 of the Rules of Procedure) Further information may be requested by the Secretariat</p>	
↓	↓
<p>If there is sufficient information, the communication is transmitted to the Government - the name of the author is not disclosed if anonymity has been requested</p>	<p>If there is insufficient information to indicate that a possible violation may have occurred, the communication may not be transmitted to the Government at all.</p>

⁷⁶ African Commission on Human and Peoples’ Rights, ‘About the CPTA’: <http://www.achpr.org/mechanisms/cpta/about/>

↓	↓
Both parties are invited to submit their comments on admissibility	↓
↓	↓
The Commission considers the admissibility of the case. If one of the parties requests it, an oral hearing may be held. If declared admissible, the Commission proceeds to consideration of the merits	
↓	
The Commission makes itself available to the parties to assist in reaching a friendly settlement	
↓	
In order to examine the merits , both parties must provide their observations on the matter. This may involve an oral hearing before the Commission	
↓	
The Commission reaches a decision on whether or not there has been a violation of the Charter. If the Commission finds a violation of the Charter has taken place, it makes specific recommendations to the State on how to remedy the violations.	
↓	
The Commission continues to work with the parties to assist with implementation under Rule 112 of the Rules of Procedure, this includes the monitoring of implementation of the recommendations by the Rapporteur for the Communication, a report on which he or she presents at each Ordinary Session. Under Rule 112(8), non-compliance is brought to the attention of the Sub-Committee of the Permanent Representatives Committee and the Executive Council on the Implementation of Decisions of the African Union.	

Admissibility requirements

A communication will be declared **inadmissible** under Article 56 of the Charter if:

- It does not indicate the names of the authors (although they can request that their anonymity be protected by the Commission);
- The communication is incompatible with the provisions of the Charter of the OAU/Constitutive Act or with the African Charter;
- The communication is written in insulting language directed at the State concerned;
- The allegations are based exclusively on mass media reports; domestic remedies have not been exhausted, except where the remedies are unreasonably prolonged (but see ‘Specific Tips’ below);
- The communication has not been submitted within a reasonable time after the exhaustion of local remedies;
- The application deals with matters already settled by the States involved in accordance with the principles of the UN and OAU Charter/Constitutive Act.⁷⁷

PRACTICALITIES OF USING THE INDIVIDUAL COMPLAINT PROCEDURE: African Commission on Human and Peoples’ Rights	
Who can bring a case under this procedure?	Any person or NGO who can provide sufficiently precise details of an incident to enable its investigation. A person submitting the case, however, does need to show the consent of the alleged victim(s).
Is there a time limit for bringing an application?	The application should be made within a reasonable time from the time of exhaustion, or the time the applicant has or should have become aware that there are no remedies at national level. As there is no fixed time, you will need to consult the jurisprudence of the Commission on how the term ‘reasonable time’ is interpreted. More recently, the jurisprudence appears to suggest that if the complaint is not

⁷⁷ ACHPR, Article 56.

	brought within six months, compelling reasons will need to be shown. ⁷⁸
Can you bring a case under this procedure if you have already brought one under another procedure concerning the same set of facts?	No.
Do you need legal representation?	No, but it is permitted.
Is financial assistance available?	Rule 104 of the Rules of Procedure provides that the 'Commission, may either at the request of the author of the communication or at its own initiative, facilitate access to free legal aid to the author in connection with the representation of the case'. It further provides that it will only be 'facilitated' where 'it is essential for the proper discharge of the Commission's duties, and to ensure equality of the parties before it' and the 'author ... has no sufficient means to meet all or part of the costs involved'.
Are amicus briefs accepted?	They have been accepted by the Commission but they are not provided for in the Rules of Procedure or Charter.
Who will know about the communication?	The identity of the author will be communicated to the State in order to enable it to respond to the allegations but a request for the identity of the author or victim to be kept anonymous in public documents and hearings.
What measures, if any, can the mechanism take to assist it in reaching a decision? E.g. fact-finding hearings; on-site visits; written pleadings; oral hearings; other.	Written pleadings; oral hearings including hearing witnesses; on-site visits in some cases involving groups of complainants.
Are provisional or urgent	Yes.

⁷⁸ See for example, Michael Majuru v. Zimbabwe (308/05) African Commission on Human and Peoples' Rights (2008).

Specific tips

- When thinking about submitting a complaint of torture and/or other ill-treatment to the Commission, make sure to consult the Commission's Rules of Procedure (available on its website) and in particular Rule 93 setting out the requirements a complaint must meet for the Commission to be seized of the complaint/ communication. All complaints should be submitted to the Secretariat and Executive Secretary of the Commission.
- Following the submission of your complaint to the Secretariat of the Commission, make sure to request an acknowledgment of receipt. If no acknowledgment is received, follow up by phone to ensure that the Commission has received your complaint.
- The Commission will usually be strict on time limits and it is important for complainants to ensure that all submissions are submitted within the time limits set out in the Commission's Rules of Procedure.
- The Commission will proceed to an examination of a communication even if the State Party does not respond to the allegations.
- In addition to the basic details, you should indicate if the communication refers to serious or massive violations of human and peoples' rights.
- In cases of serious and massive violations, and where complaints involve large numbers of individuals or long-standing violations, the Commission has in practice not required the exhaustion of domestic remedies, on the ground that this would be impractical and/or undesirable. It is important, however, to set out in the complaint and/ or admissibility submission the scale of the violations and explain how this renders exhaustion impractical/undesirable.
- In situations of urgency and where victims face a serious risk of harm, any complaint should include a detailed request for provisional measures as set out in the Commission's Rules of Procedure.
- The Commission requires the authors of the communication to provide their names and addresses. Where the circumstances make it impractical (e.g., where there is a large number of victims) it may not be necessary to name all

the victims involve; however, the information should be sufficiently precise to make it possible to carry out an inquiry.

- Much of the procedure for individual complaints has been developed through the Commission's rules of procedure and practice - do not be surprised if you do not find much information about the procedure in the Charter itself.

Further reading

- Egyptian Initiative for Personal Rights and others, Filing a Communication before the African Commission on Human and Peoples' Rights: A complainant's manual (2013), <http://www.redress.org/downloads/publications/1307%20Manual%20to%20the%20African%20Commission.pdf>
- FIDH, Practical Guide: NGOs and the African Commission for Human and Peoples' Rights, <https://www.fidh.org/IMG/pdf/cadhpmmanuelen.pdf>

5.3. The African Court on Human and Peoples' Rights

The African Court on Human and Peoples' Rights was established by Member States of the African Union to ensure the protection of human and peoples' rights in Africa. The Court complements and reinforces the protective function of the African Commission. It is tasked with strengthening the human rights protection system in Africa and ensuring respect for and compliance with the African Charter on Human and Peoples' Rights.

A Protocol signed in 2008 merged the ACtHPR with the Court of Justice of the African Union (non-operational) into one single Court, the African Court of Justice and Human Rights (Protocol on the Statute of the African Court of Justice and Human Rights). This Protocol was then overtaken by an Amendment to the Protocol on the Statute, adopted in May 2014 which provides for a single merged Court which not only has jurisdiction in cases on human and peoples' rights but also international law and trying individuals for international crimes. It requires fifteen ratifications to come into force.

The Court's functions are two-fold: it has a contentious jurisdiction in individual complaints cases and it can issue advisory opinions. The Court can issue binding decisions.

BASIC FACTS: The African Court on Human and Peoples' Rights		
Origin	How was it created?	By 1998 Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights.
	When did it become operational?	2004.
Composition	How many persons is it composed of?	11.
	Are these persons independent experts or State representatives?	Independent experts (jurists of high moral character and of recognized practical, judicial or academic competence and experience in the field of human and peoples' rights).
Purpose	General objective	To complement and reinforce the protective function of the African Commission.
	Functions	<ul style="list-style-type: none"> • Receiving communications submitted by the African Commission, a State Party or African Intergovernmental Organizations; • Receive communications from individuals and NGOs provided relevant ratification/ declaration under Article 34 (2); • Issuing advisory opinions on any legal matter relating to the Charter or any other relevant human rights instruments at the request of a Member State of the AU, the AU,

		<p>any of its organs, or any African organization recognized by the AU.</p> <ul style="list-style-type: none"> • Submitting a report on its work to each regular session of the Assembly.
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5.3.1. General characteristics

The contentious jurisdiction of the Court extends to all cases and disputes submitted to it concerning the interpretation and application of the African Charter, the Protocol on the establishment of the African Court and any other applicable and ratified human rights instrument.

Individuals can only bring cases before the Court if the State against which the complaint is made has made a declaration accepting the competence of the Court to receive such cases. The following entities have an automatic access to the Court and may submit a case against a State that has ratified the Protocol establishing the Court:

- The African Commission;
- “The State Party which had lodged a complaint to the Commission;
- The State Party against which the complaint has been lodged at the Commission;
- The State Party whose citizen is a victim of human rights violation”;
- African Intergovernmental Organizations.⁷⁹

The official languages of the Court are the official languages of the African Union - Arabic, English, French, Portuguese, Spanish, Kiswahili and any other African language. The working languages of the Court are Arabic, English, French and Portuguese. The Court may also permit “any person appearing before it to use a language of his or her choice if it is shown that he or she does not have sufficient knowledge of any of the official languages of the Court”.⁸⁰

⁷⁹ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights, Article 5.

⁸⁰ African Court on Human and People's Rights, Rules of the Court, Rule 18(3).

5.3.2. Admissibility requirements

A communication will be declared inadmissible if:

- It is anonymous;
- It does not comply with the Constitutive Act of the Union and the Charter;
- It contains disparaging or insulting language;
- It is based exclusively on news disseminated through the mass media;
- Local remedies, if any, are not exhausted unless it is obvious that this procedure is unduly prolonged;
- It is not filed within a reasonable time from the date local remedies were exhausted or from the date set by the Court as being the commencement of the time limit within which it shall be seized with the matter; and
- It raises a matter or an issue previously settled by the parties in accordance with the principles of the Charter of the United Nations, the Constitutive Act of the African Union, the provisions of the Charter or of any legal instrument of the African Union.⁸¹

PRACTICALITIES OF USING THE INDIVIDUAL COMPLAINT PROCEDURE: African Court on Human and Peoples' Rights

Who can bring a case under this procedure?

- The African Commission;
- The State Party which had lodged a complaint to the Commission;
- The State Party against which the complaint has been lodged at the Commission;
- The State Party whose citizen is a victim of human rights violation;
- African Intergovernmental Organizations;
- Individuals and relevant NGOs with observer status before the Commission if the State made a declaration accepting the competence of the Court.

⁸¹ Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights, Article 6(2) in conjunction with ACHPR, Article 56.

Is there a time limit for bringing an application?	No but see Article 56 (6) – applications must be brought within a reasonable time, and only in relation to alleged violations committed after the State party to the protocol ratified the Charter.
Can you bring a case under this procedure if you have already brought one under another procedure concerning the same set of facts?	No.
Do you need legal representation?	No, but it is permitted.
Is financial assistance available?	Yes, the Court may, in the interest of justice and within the limits of the financial resources available, decide to provide free legal representation and/or legal assistance to any party.
Are amicus briefs accepted?	Yes.
Who will know about the communication?	Everyone unless the applicant asks for anonymity of his application, explains reasons why he seeks anonymity, and indicates the preferred reference by initial, such as “Mr X” or “Ms Y”.
How long does the procedure take?	Can take more than two years.
What measures, if any, can the mechanism take to assist it in reaching a decision? E.g. fact-finding hearings; on-site visits; written pleadings; oral hearings; other.	Written pleadings; oral hearings.
Can the Court help clarify standards pertaining to torture?	Yes. The Court can issue advisory opinions at the request of Member State of the AU, the AU, any of its organs, or any African organization recognized by the AU.
Are provisional or urgent	Yes.

Specific tips

- As the Court's jurisdiction is subject to ratification of the Protocol, it is important to verify whether the State concerned has ratified the Protocol establishing the Court and if the State has made a declaration accepting complaints filed by individuals and NGOs with observer status.
- All communications from any representative to the Court shall be channelled through the Registrar of the Court.
- There are no fees for filing a case to the Court.
- The application should contain a cover sheet indicating the parties and indicating whose submission it contains.
- There should be an executive summary of the application, which should not be longer than 3 pages. The summary should address the facts, the nature of the complaint, evidence of exhaustion of local remedies, the alleged violation(s), the admissibility and the remedy requested from the Court.
- The application should contain clear headings.
- If you do not want your identity to be revealed, you should clearly state that.
- The Court will set deadlines for receiving pleadings from the parties. The parties should respect these deadlines or else the Court might consider pleadings as not being sent at all. If you cannot meet the deadline set by the Court because of some justifiable reason, you should request an extension (as a rule, before the deadline has passed) and explain the reason for failing to meet the deadline.
- The Court issued specific tips on filing a complaint - Practice Directions as a Guide to Potential Litigants.

Further reading

- African Court on Human and Peoples' Rights, Rules of the Court (2010), <http://www.african-court.org/en/index.php/documents-legal-instruments>
- African Court on Human and Peoples' Rights, Practice Directions as a guide to potential litigants, <http://www.african-court.org/en/index.php/documents-legal-instruments>

- International Justice Resource Centre website, <http://www.ijrcenter.org/regional/african/>

6. THE EUROPEAN SYSTEM OF HUMAN RIGHTS

A number of international organisations exist within the European region: the Council of Europe (CoE), the Organisation for Security and Co-operation in Europe (OSCE) and the European Union (EU). While the Council of Europe had set up formal procedures to deal with allegations of torture and other forms of ill-treatment, the EU deals increasingly with the question of applications for refugee status. The OSCE is also active in the field of human rights.

Within the Council of Europe, three bodies exist which are of relevance to this handbook: the European Committee for the Prevention of Torture, the European Court of Human Rights and the Commissioner for Human Rights.

6.1. The European Committee for the Prevention of Torture

BASIC FACTS: The European Committee for the Prevention of Torture		
Origin	How was it created?	By the 1987 European Convention for the Prevention of Torture.
	When did it become operational?	1989.
Composition	How many persons is it composed of?	As many members as there are States Parties to the Convention (all 47 Council of Europe Member States).
	Are these persons independent experts or State representatives?	Independent experts.
Purpose	General objective	To improve the protection of persons deprived of their liberty by working to prevent torture and inhuman or degrading treatment or punishment.
	Functions	<ul style="list-style-type: none"> • Monitoring;

6.1.1. The work of the CPT

The function of the Committee is preventive and in this context its mandate is very strong. The CPT carries out visits to places of detention in Member States in order to examine the treatment of persons deprived of their liberty. It prepares a report of its findings and recommendations, which it transmits to the State concerned.

This CPT report is confidential, but may be made public with the consent of the State (and in practice, most reports have been made public). In exceptional circumstances, where a State Party fails to co-operate with the CPT or refuses to implement its recommendations, the Committee may decide to issue a public statement on that country.

The objective of the overall process is not to condemn States but to identify areas of concern and make suggestions for improving the protection of persons deprived of liberty from torture and inhuman or degrading treatment or punishment.

Characteristics of the Committee's visits

What is particularly significant about the Committee's visits when compared to those carried out by other mechanisms is that:

- They can take place at any time;
- They can be to any place within the jurisdiction of the State Party concerned where persons are deprived of their liberty in some way by State officials or public order. This includes not only locations commonly recognised as places of detention, such as police and *gendarmerie* stations, prisons, pre-trial and administrative detention facilities, but also such institutions as military installations, psychiatric hospitals, immigration detention centres, airport transit zones, and children and elderly care homes;

- The Committee is entitled to travel throughout the country and move within institutions without restriction;
- The Committee is entitled to carry out interviews in private with persons deprived of liberty;
- The Committee is entitled to communicate freely with anyone it believes can supply relevant information.

In other words, once a State has accepted obligations under the Convention, the Committee's activities does not depend on the consent of the State Party.

Modalities of the Committee's visits

The Committee's visits are mainly of two types: periodic visits and *ad hoc* visits. Periodic visits take place on a regular basis to all States Parties. *Ad hoc* visits take place in response to serious and consistent allegations of an urgent problem in a particular State Party and can be carried out at any time. In addition, the Committee may carry out follow-up visits in relation to situations that have previously been investigated, where circumstances appear to require it.

In practice, although precise notice of visits is not specifically required, the Committee has developed a notification procedure in relation to **periodic visits** which involves:

- Announcing at the beginning of the year which countries it intends to visit;
- Notifying the State in question of the proposed dates of the visit about two weeks prior to the visit;
- Providing the State with a list of some of the broad types of places or locations the delegation wishes to visit a few days before the start of the visit. During the visit, the delegation will also make unannounced visits to locations it has not previously indicated.
- This practice of notification does not generally apply to ***ad hoc visits***, which can be carried out at extremely short notice; a broad notification of the fact of the visit may happen a day or so before the visit commences.

States do have the possibility of invoking a limited list of exceptional reasons (national defence; public safety; serious disorder in places where persons are deprived of their liberty; or that an urgent interrogation relating to a serious crime is in progress) in order to postpone a visit - however, this may only be used for postponement, and not to prevent a visit indefinitely.

6.1.2. Aims of submitting information to the CPT

General aims

The confidential nature of the Committee's work means that, although information sent to the Secretariat is always acknowledged (you will receive a letter to tell you that your communication has been received), it is not able to express any opinion regarding the quality or substance of the material, or indicate if or how it will be used. To the NGO sending such information, the process may appear somewhat like throwing a stone into a very deep well and hearing a little 'plink' that tells you it has reached the bottom, but not being able to see where it has landed. It is very important not to be discouraged by this. From the Committee's standpoint, your information is essential if it is to make the most of its functions, and it is important that you view your potential achievements from a longer-term perspective.

Your information can help the Committee to:

- Focus on the most serious problems in a country relating to the treatment of persons deprived of their liberty and the risks of torture or ill-treatment, and identify what the sources of those problems might be;
- Identify a possible need for an *ad hoc* visit;
- Plan its visits, identifying the institutions which should be visited and the areas of concern which need to be examined most closely;
- Understand the social and legal context of a country;
- Assess the extent to which its recommendations are being implemented, especially with regard to safeguards, within the on-going dialogue which takes place between it and governments as part of the co-operation process;
- Monitor on-going developments in a State Party, both positive and negative.

From your perspective, this means that by submitting information, you are contributing to the identification of serious problems relating to the treatment of persons deprived of their liberty and, even more importantly, to the identification of the causes of those problems, and the development and implementation of measures to prevent them.

For the individual

Unlike many of the other mechanisms, the Committee for the Prevention of Torture does not deal with individual cases for their own sake. In the European region, this is the domain of the European Court of Human Rights, which deals almost exclusively with individual allegations and will be considered below. The Committee for the Prevention of Torture is far better placed and equipped to contribute to a longer-term improvement in the overall protection of persons in official custody, and to prevent, rather than remedy, incidents of torture. However, just because the Committee does not provide distinct remedies for individuals as one of its functions does not mean that individuals cannot benefit both directly and indirectly from its activities.

First of all, it is important to recall that it is through individual allegations that patterns can be identified, and that those individuals gain from the elimination of bad practice. If, for example, a significant number of allegations are received about abuses taking place in a children's group home, and the Committee investigates and makes recommendations to eliminate the causes, this will be of immediate benefit to the individuals in the institution.

Furthermore, interventions on behalf of individuals are not envisaged in their own right, but do happen in the context of the Committee's general activities. They are used as a form of case studies in order to investigate a particular practice or general allegation. For example, the Committee has acted in cases of individuals detained under anti-terrorism legislation in order to test allegations concerning a practice of ill-treatment of such persons. Interventions may also occur where an

urgent situation is brought to the attention of a delegation during a country visit, and the Committee has even carried out an *ad hoc* visit in response to the detention of a public figure alleged to be especially at risk. The important point to remember is that although the Committee's intervention in such cases is not intended to provide an individual remedy, it can in practice have equivalent effects.

6.1.3. The communication

You should refer to the general guidelines in Chapter C.3.4 on Submitting Information on General Situations of Torture to a reporting mechanism. In addition, you should bear in mind the following guidelines:

Language of the communication

The official languages of the CPT are English and French, as with the entire Council of Europe.

Characteristics of the information

The content of your information will be guided to some extent by the particular purpose you have in mind. For example, if you feel that an *ad hoc* visit might be desirable, you will want to emphasise the urgency and extreme nature of a situation.

Above all else, however, the information must be objective, authoritative and corroborated (see Chapter B.2.3 on Standards of Documenting for suggestions on how to achieve this) and **capable of verification** by the Committee. This means that:

- The allegations being made should be as **recent** as possible;
- The details given should be as **precise** as possible;
- The focus of the information should be on establishing **evidence of a pattern or 'situation'**.

Providing recent and precise information is essential if the Committee is to be in a position to verify the information. The recent nature of the allegations is also important for the Committee to be able to identify current problems. Do not forget that corroborative evidence will support and confirm the details of your allegations, particularly medical evidence that is consistent with the allegations.

Providing evidence of a pattern or 'situation' is important because the Committee's work is designed to investigate and improve the general situation throughout Member States. If you submit a single individual case, this can be useful as part of a greater body of information received from other sources (and should certainly be sent), but it is not normally sufficient to establish that there is a generalised problem. If you can present a series of cases, you are much closer to establishing a pattern, and are more likely to stimulate the Committee into further investigation of the situation.

Subject-matter

Do not limit yourself to the more obvious custodial institutions like prisons or police stations. These are certainly a primary source of concern to the Committee, but there are other institutions in which persons are deprived of their liberty by State officials that also fall within the mandate of the Committee. Examples include military establishments, immigration detention centres, children and elderly care homes, and psychiatric institutions. This should not be considered an exclusive list. Relevant institutions should have two characteristics:

- They should house persons who are not free to leave the establishment at will, and
- The deprivation of liberty should be the result of action taken by a public authority.

You should also bear in mind that the Committee takes an interest in all aspects of the treatment of persons deprived of liberty. This extends not only to incidents of torture in an institution, but to all of the factors contributing to the creation of an inhuman or degrading environment within the institution, including cell size and

occupancy, hygiene and sanitation, opportunities for exercise, health care, solitary confinement and restrictions on contacts with the outside world. It can make recommendations not only about the material and social conditions of detention, but also from a longer-term perspective it can address such issues as legislative safeguards or the training of personnel.

6.1.4. Specific tips

- The Committee for the Prevention of Torture will never name individuals in its reports unless their cases are already well-known and identifiable within the public domain. If the NGO wishes, it will also not name an NGO with which it meets when on visits and from which it receives information.
- Will you receive any feedback about your submission? As the procedure is based on the principle of confidentiality, you will not receive any direct feedback about your submission.
- Make sure that the State about which you are sending the information is a party to the European Convention for the Prevention of Torture.
- With respect to information submitted in connection with a periodic visit, it can be very helpful when provided during the visit, but is even more useful if received in advance so that there is time to consider its contents. Check to see which countries the Committee will be visiting during the year (the Committee issues a press release with this information towards the end of the previous year), so that you can prepare and send your information in advance. It is important to note that the periodic visit could take place any time that year, and you will not know when until it happens.
- You should not wait for a periodic visit to be scheduled to send information about a country. Dialogue between the Committee and States Parties continues in between visits, and the Committee needs to stay in touch with developments. Your information may even provide the basis for the identification of a need for an *ad hoc* visit.
- The Committee usually meets with national NGOs on the first day of its visit to a country and this gives you an opportunity to provide it with recent information and possibly to have an impact on the places it chooses to visit.

6.2. The Commissioner for Human Rights

The Commissioner for Human Rights is an independent and impartial non-judicial institution established in 1999 by the Council of Europe to promote awareness of and respect for human rights in the member States.

The aim of the Commissioner is to:

- Promote the protection, education and awareness of human rights in member States;
- Advise and inform on the protection of human rights and the prevention of human rights violations;
- Co-operate with human rights structures in the member States or encourage their establishment;
- Facilitate the activities of national ombudsperson institutions and other human rights institutions;
- Identify shortcomings in the law and practice concerning human rights in member States, and promote effective implementation of human rights standards where they are lacking;
- Inform the Committee of Ministers or the Parliamentary Assembly of specific human rights matters in his or her report; and
- Submit an “annual report to the Committee of Ministers and the Parliamentary Assembly”⁸².

The Commissioner’s activities include:

- Country visits and dialogue with national authorities and civil society;
- Thematic reporting and advising on human rights systematic implementation; and,
- Awareness-raising activities;
- Third party interventions before the European Court of Human Rights.⁸³

⁸² Resolution (99) 50 on the Council of Europe Commissioner for Human Rights, May 1999, Article 3.

⁸³ See for example, third party intervention before the European Court of Human Rights on the situation on freedom of expression and association in Azerbaijan: <http://www.coe.int/en/web/commissioner/-/azerbaijan-commissioner->

The Commissioner may issue annual, thematic, and other reports, recommendations, non-binding opinions, press releases and other documents commenting on the state of play of particular human rights issues concerning his or her mandate. The Commissioner never deals with individual complaints.

BASIC FACTS ABOUT: Commissioner for Human Rights		
Origin	How was it created?	By Resolution (99) 50 on the Council of Europe. Commissioner for Human Rights, adopted by the Committee of Ministers on 7 May 1999 at its 104th Session.
	When did it become operational?	1999.
Composition	How many persons is it composed of?	1.
	Are these persons independent experts or State representatives?	Independent expert.
Purpose	General objective	To promote education in, awareness of and respect for human rights, as embodied in the human rights instruments of the Council of Europe.
	Functions	<ul style="list-style-type: none"> • Foster the effective observance of human rights, and assist member States in the implementation of Council of Europe human rights standards; • Promote education in and awareness of human rights in Council of Europe member States; • Identify possible shortcomings in the law and practice concerning human

[muiznieks-intervenes-in-leyla-and-arif-yunus-case-before-the-european-court-of-human-rights?inheritRedirect=true&redirect=%2Fen%2Fweb%2Fcommissioner%2Fnews](#)

		rights; <ul style="list-style-type: none"> • Facilitate the activities of national ombudsperson institutions and other human rights structures; • Provide advice and information regarding the protection of human rights across the region.
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Reporting as advocacy

One of the Commissioner’s functions is monitoring human rights. To this effect, information provided by NGOs has proven invaluable. As part of reporting on torture for advocacy purposes, an NGO may send the Commissioner reliable information both on patterns of torture and individual instances demonstrating such patterns. The Commissioner will be able to approach such allegations and information from a broader perspective, engage in discussions with national authorities and draw conclusions. These conclusions will never be binding and will not explicitly deal with an individual allegation, but with broader challenges, such as the lack of effective legislation and appropriate safeguards.

Aside from the information you provide to the Commissioner, his or her Office may conduct its own investigations. Member States are obliged to facilitate the independent and effective performance of Commissioner’s functions. In the past, the Commissioner has visited and interviewed people in prisons, immigration detention centres, centres for victims of domestic violence, and psychiatric institutions. In this respect, you may send the Commissioner information that might initiate his or her investigations.

You can submit information to the Commissioner at any time and there is no prescribed form of such information. However, as the Office’s resources are limited, you are advised to submit information prior to the Commissioner’s scheduled country visit or to enquire whether the Commissioner is drafting a thematic report that would benefit from the information you can supply.

Urgent action

The Human Rights Commissioner has a mandate to intervene in respect of concrete human rights violations although he or she never issues a binding decision. Upon receiving information that requires urgent action from the Commissioner, he or she may intervene with the authorities by any appropriate and necessary means. Human rights defenders at risk for their safety and security are a particular area of concern for the Commissioner.

Nevertheless, do not mistake such intervention with dispute resolution or (quasi)-judicial functions. The Commissioner cannot decide upon individual complaints or force the State to do anything. His or her intervention is of a diplomatic, non-binding, and non-enforceable nature.

Litigation

Because the Commissioner is not a judicial or quasi-judicial body, it never acts upon individual complaints so you are highly discouraged from sending such petitions as they will not be solved. As mentioned, you can inform the Commissioner about individual cases, but only as part of a wider reporting strategy.

Under Protocol 14 to the European Convention on Human Rights, the Commissioner may submit written comments and take part in hearings in all cases before a Chamber or the Grand Chamber of the European Court of Human Rights. The Commissioner might possibly get involved by intervening in a case before the European Court, if the case concerns the thematic areas that this institution has been working on before.

6.3. The European Court of Human Rights

The European Court of Human Rights is responsible for the largest number of decisions issued at the international level concerning human rights. Struggling to

handle all the cases coming before it, the Court has undergone some important changes, implemented through the Protocols to the European Convention on Human Rights, amendments to the Rules of the Court and its practice as such.

The majority of applications sent to the Court will not meet the stringent admissibility requirements so you check the admissibility requirements carefully and ensure that the case meets all of these requirements before submission. To achieve the best possible results in a given situation, it is important to help the Court process your application in various ways:

- Use the application form and read the instructions on the Court’s website;
- Despite the fact that you are litigating an individual case, make sure to describe the general situation in a country where relevant (for example, if you claim that domestic remedies are ineffective, or if violation occurred in a conflict situation, or if you are requesting interim measures);
- The Court adopted a Priority Policy that ranks the types of cases it decides first. If your case fits with any of these priorities, make sure to highlight this clearly in the application;

BASIC FACTS: The European Court of Human Rights		
Origin	How was it created?	By the 1950 European Convention on Human Rights, revised by the subsequent protocols to the Convention.
	When did it become operational?	1998 under the revised system.
Composition	How many persons is it composed of?	As many judges as there are States Parties to the treaty.
	Are these persons independent experts or State representatives?	Independent experts.
Purpose	General objective	To examine complaints of violation of the ECHR
	Functions	<ul style="list-style-type: none"> • Inter-State complaints (compulsory) (Article 33, ECHR).

		<ul style="list-style-type: none"> • Individual complaints (compulsory) (Article 34, ECHR). • Fact-finding (in the context of individual complaints only, and is an optional step in the procedure). • Advisory opinions (Protocol 16 to the ECHR,⁸⁴ which is not yet in force, provided for the possibility of Member States to request an advisory opinion on the interpretation of the ECHR in the context of a specific case at domestic level).
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6.3.1. The application to the Court

Language of communication with the Court

The Council of Europe official and working languages are English and French. Individual applications may be lodged in one of the Court’s official languages (English and French) or in an official language of one of the Contracting Parties, meaning in any of the official languages of the 47 States Parties of the Council of Europe.

After notice of an application has been given to a Contracting Party, and in respect of any hearings, all communications must be made in English or French unless the President of the Chamber grants leave for the continued use of the official language of a Contracting Party.

Application form

Applicants should send to the Registry a completed and signed application form, together with all the accompanying documents. The form is available on the Court’s website. The compulsory information which should be included in the application form include:

⁸⁴ Enters into force after the 10th ratification.

- A brief summary the facts and your complaints;
- An indication of which Convention rights you think have been violated;
- An indication of the remedies you have used;
- A list of the official decisions in your case, including the date of each decision, who it was made by, and an indication of what it said, and attaching a copy of each of these decisions;
- The applicant's signature or the signature of his or her representative.

Admissibility requirements

A communication will be declared **inadmissible** if:

- The applicant cannot claim to be a victim of a violation of the Convention;
- Domestic remedies have not been exhausted, except where the remedies are ineffective or unreasonably prolonged.
- The communication is anonymous;
- The communication has not been submitted within six months of the date of the final decision in the case by the domestic authorities;
- The application is incompatible with the provisions of the Convention or the Protocols, manifestly ill-founded, or an abuse of the right of petition;
- The application is “substantially the same as a matter that has already been examined by the Court or has already been submitted to another procedure of international investigation, and contains no new relevant information;
- The applicant has not suffered a significant disadvantage, unless respect for human rights as defined in the Convention and the Protocols thereto requires an examination of the application on the merits and provided that no case may be rejected on this ground that has not been duly considered by a domestic tribunal.”⁸⁵

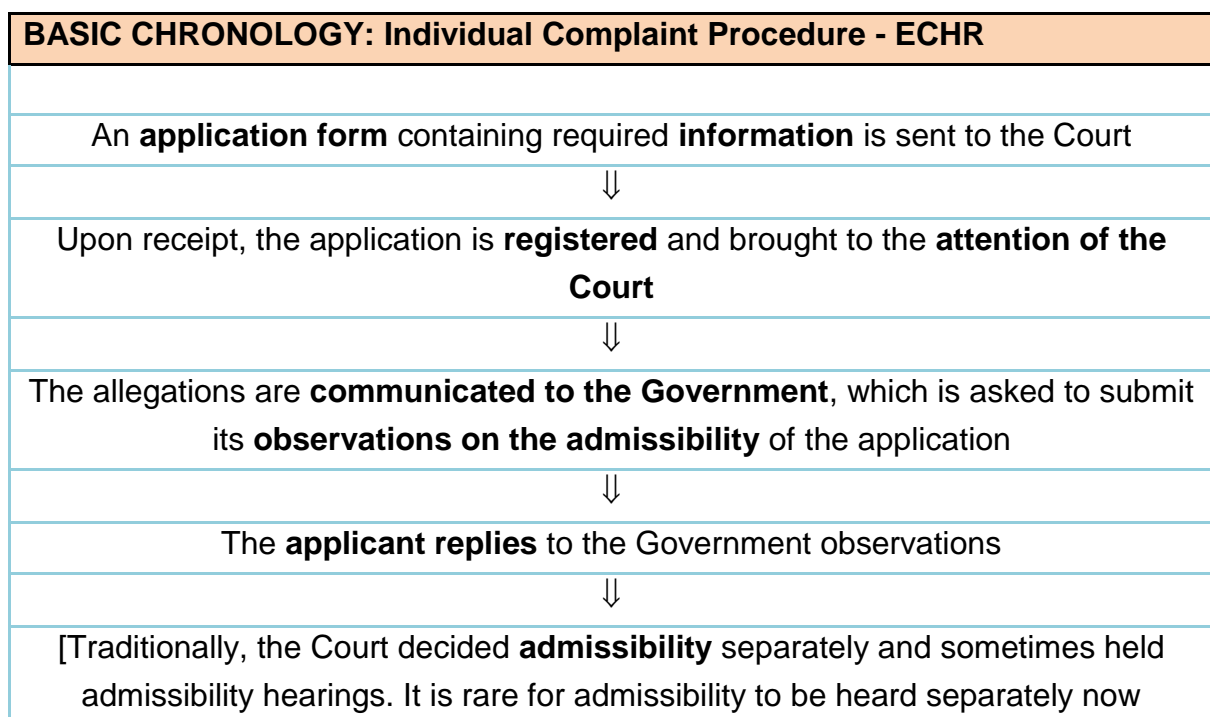
PRACTICALITIES OF USING THE INDIVIDUAL COMPLAINT PROCEDURE: European Convention on Human Rights	
Who can bring a case under this procedure?	Individuals, NGOs and groups of individuals claiming to be a victim of a human rights violation. A case can be brought by a close

⁸⁵ ECHR, Articles 34 and 35.

	relative of the victim when the victim cannot do so in person, e.g., where he or she is disappeared or dead. Family members of tortured or disappeared individuals can be considered as victims of violation themselves.
Is there a time limit for bringing an application?	Six months from the date of the final decision taken in the case by the State authorities. ⁸⁶
Can you bring a case under this procedure if you have already brought one under another procedure concerning the same set of facts?	No.
Do you need legal representation?	It is not necessary at the time of the application, but is required for proceedings after a case has been declared admissible, unless exceptional permission is given by the President of the Court for the applicant to present his or her own case.
Is financial assistance available?	Yes, but only if the application is communicated to the Government, not at the time of the application. You will need to fill out a statement of your means signed by your domestic legal aid board, as legal aid is only granted where there is a financial need.
Are amicus briefs accepted?	Yes, with permission (Rule 61, Rules of the Court)
Who will know about the communication?	In principle, the proceedings are public unless the President of the Chamber decides otherwise. In exceptional cases, where an applicant does not wish his or her identity to be made public and submits a statement explaining the reasons for this, anonymity may be authorised by the President.

⁸⁶ Protocol 15 to the ECHR reduced the time-limit from six to four months after the final domestic decision has been made. The Protocol enters into force after all States Parties to the ECHR (Council of Europe member states) ratify it.

How long does the procedure take?	Several years.
What measures, if any, can the mechanism take to assist it in reaching a decision? E.g. fact-finding hearings; on-site visits; written pleadings; oral hearings; other.	Fact-finding hearings; expert evidence; written pleadings; oral hearings.
Are provisional or urgent measures available?	Yes, but it is a practice which has been developed by the Court and has no basis in the convention. It is applied only in very specific cases, mainly immigration/deportation cases where there is a 'real risk' if a person is returned. (Rule 39, Rules of the Court) although the Court is increasingly applying it to detainees considered to be at risk (for example, detainees requiring medical assistance or transfer to a specialist hospital etc).



although in theory possible. It is extremely rare for the Court to hold an admissibility hearing.]
⇓
Parties are asked to submit any further observations on admissibility and the merits or supply additional evidence .
⇓
Court considers the admissibility and merits and adopts a judgment , possibly after an oral hearing . At any time, the parties may reach a friendly settlement .
⇓
The Court usually decides the question of just satisfaction at the same time, but could choose to do so at a later date
⇓
The State Party must execute the judgment under the supervision of the Committee of Ministers of the Council of Europe

6.3.2. Interim measures

Where there is a real risk of serious, irreversible harm, you may request the Court issue interim measures. This is especially useful for allegations of torture, where detainees are considered at risk (see above) and can also be used in deportation and extradition cases. You may request urgent measures for the duration of the proceedings before the Court or for a more limited period of time.

You should clearly highlight in your application that it is urgent – state in bold letters “Rule 39. Urgent”. Rule 39 refers to Article 39 of the Rules of the Court on Interim Measures. The application should be substantiated: describe the grounds on which fears are based, the nature of the alleged risks and the articles of the Convention that you allege have been violated. You should also attach supporting documents, in particular any evidence and relevant domestic decisions. In cases concerning extradition or deportation you should also provide date and time of the expected removal. The request for interim measures should be sent as soon as possible upon receiving the final domestic decision. It should be communicated by post or fax, not e-mail.

6.3.3. Specific tips

- Before 1998, the initial stages of the case took place before the European Commission on Human Rights. If you are researching a particular topic under the Convention case law, remember to search for reports by the Commission as well as for Court judgments.
- The Court prepared an application form for submitting an individual complaint to the Court. Use that and examine the Rules of the Court for detail explanation on how the procedure works.
- If you do not wish your identity to be disclosed, inform the Court immediately and explain reasons for that. The President of the Court will determine whether this request is justified.
- For the purpose of respect for deadlines given by the Court, it is the date of posting not the date of receipt that the Court considers determinative. However, it is advisable to at least notify the Court on the day of the deadline that the submission has been posted. This can be done by faxing a copy of the cover letter to the Court, or via email or telephone.
- The Court may, on its own initiative or at the request of one of the parties, obtain any evidence it considers useful to the case, including by holding fact-finding hearings, although it rarely does so. Where such measures are requested by one of the parties, that party will normally be expected to bear the resulting costs, although the Chamber may decide otherwise. If you do not wish to bear such costs, it is advisable to word your letter carefully - suggest to the Court that it might wish to exercise its discretion to take measures to obtain evidence.
- The application may be declared inadmissible at all stages of the process, but the single judge is the first to examine the admissibility of the application. If the single judge does not declare the application inadmissible, he or she forwards the application to a Committee or to a Chamber for further examination.
- The Court carries out most of its regular work in Chambers of 7 judges. Where a case is considered to raise a serious issue or might involve a change in the views of the Court regarding a particular subject, it can be referred to a Grand Chamber of 17 judges. Where a case has been considered by a Chamber and

a judgment delivered, it is possible, in exceptional cases, to request within three months of the judgment for the case to be referred to the Grand Chamber for reconsideration. (Rule 73, Rules of the Court)

- It is possible to request the interpretation of a judgment within one year of its delivery (Rule 79, Rules of the Court). It is also possible to request, within six months of the discovery, the revision of a judgment where important new facts are discovered that might have influenced the Court's findings (Rule 80, Rules of the Court).

Further reading

- European Court of Human Rights, The Practical Guide on Admissibility Criteria (2014), http://www.echr.coe.int/Documents/Admissibility_guide_ENG.pdf
- European Court of Human Rights, Fact sheets on different issues, <http://www.echr.coe.int/Pages/home.aspx?p=press/factsheets>
- OMCT, Article 3 of the European Convention on Human Rights: A Practitioner's Handbook, OMCT Handbook Series Vol. 1, 2nd edition (2014), http://www.omct.org/files/2014/11/22956/v1_web_europeen_handbook_en_omc14.pdf

7. THE INTER-AMERICAN SYSTEM OF HUMAN RIGHTS

The Organisation of American States (OAS) is the regional organisation in the Americas, comprising North, Central and South America and the Caribbean with 35 member states. It was created “to achieve an order of peace and justice, to promote their solidarity, to strengthen their collaboration, and to defend their sovereignty, their territorial integrity, and their independence” (Article 1 of the OAS Charter).

The Inter-American System of Human Rights sits within the OAS and is comprised of a series of mechanisms and structures designed to protect and promote the rights of individuals and groups within the jurisdiction of its member states.

A number of human rights instruments have been adopted by OAS that are relevant to the prohibition of torture and other ill-treatment, including the American Declaration on the Rights and Duties of Man, the American Convention on Human Rights, the Inter-American Convention to Prevent and Punish Torture, the Inter-American Convention on the Forced Disappearance of Persons, and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.

There are two mechanisms that are responsible for the implementation of these human rights instruments: the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights.

The Commission is the main human rights body of the OAS, mandated to promote and protect human rights through three main functions: the individual petition system; the monitoring of the human rights situation in member states; and work on thematic areas of human rights. It can accept individual petitions against States that have ratified the American Convention. If a State has not ratified the American Convention, it can still accept individual petitions alleging a violation(s) of the American Declaration of the Rights and Duties of Man. It can only refer a case to the Inter-American Court of Human Rights where a State has expressly recognised the Court's jurisdiction. 25 states have recognised the Court's jurisdiction to date.⁸⁷

The Commission may create country-specific and thematic special rapporteurs who, with the exception of the Special Rapporteur on Freedom of Expression⁸⁸, are typically drawn from sitting Commissioners. The mandate of the special rapporteurs is linked to the fulfilment of the Commission's functions of promotion

⁸⁷ Argentina, Barbados, Bolivia, Brazil, Colombia, Costa Rica, Chile, Dominica, Ecuador, El Salvador, Granada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Dominican Republic, Suriname, Trinidad and Tobago, Uruguay and Venezuela. Trinidad and Tobago denounced the American Convention on Human Rights, by a communication addressed to the General Secretary of the OAS on May 26, 1998. Venezuela denounced the American Convention on Human Rights, by communication to the General Secretary of the OAS, on September 10, 2012

⁸⁸ <http://www.oas.org/en/iachr/mandate/composition.asp#tab3>

and protection of human rights and include a Special Rapporteur on Persons Deprived of Liberty. The thematic and special rapporteurs perform their activities in coordination with the country rapporteurs. All rapporteurs present their work plans to the plenary of the Commission for approval. Their mandates are evaluated periodically and are “subject to review, renewal, or termination at least once every three years”.⁸⁹

The Inter-American Commission on Human Rights has paid particular attention to the situation of persons deprived of their liberty. In one of its resolutions, the OAS General Assembly recommended that the Commission continues to “give priority to adoption of the necessary measures to remedy the situation of persons held in custody awaiting trial and the overcrowding of prisons.”⁹⁰ In addition to the creation of a dedicated Special Rapporteur on the topic, it has conducted a number of visits to member states; held thematic hearings on detention and treatment in detention⁹¹; as well as producing thematic reports on the topic.⁹²

Languages: The official languages of the Commission and Court are Spanish, French, English and Portuguese. The Court and Commission select their working language(s) in accordance with the languages spoken by their members. In the context of the individual complaint procedure, the Court may decide to work in the language of one of the parties to a particular case, as long as that language is also an official language.

7.1. Inter-American Commission on Human Rights

BASIC FACTS: The Inter-American Commission on Human Rights		
Origin	How and when was it	By a resolution of the OAS Foreign

⁸⁹ Rules of Procedure of the Inter-American Commission on Human Rights, entered into force August 2013, Article 15(3).

⁹⁰ OAS General Assembly, Resolution AG/RES. 1404 (XXVI-O/96), available at <http://www.oas.org/en/iACHR/pdl/docs/pdf/AGRes1404-96.pdf>.

⁹¹ For examples on hearings on the theme of ‘The Rights of Persons Deprived of Liberty’ see: <http://www.oas.org/es/cidh/audiencias/TopicsList.aspx?Lang=en&Topic=14>

⁹² Inter-American Commission, ‘Report on the Human Rights of Persons Deprived of their Liberty in the Americas’ (31 December 2011): <http://www.oas.org/en/iachr/pdl/docs/pdf/PPL2011eng.pdf> and ‘Report on Pre-Trial Detention in the Americas’ (December 2013): <http://www.oas.org/en/iachr/pdl/reports/pdfs/Report-PD-2013-en.pdf>

	created?	Ministers in 1959 for the purpose of furthering respect for the American Declaration on the Rights and Duties of Man.
Composition	How many persons is it composed of?	7.
	Are these persons independent experts or State representatives?	Independent experts.
Purpose	General objective	To promote respect for and defence of human rights.
	Functions	<ul style="list-style-type: none"> • Monitoring (Article 41, ACHR); • Fact-finding (Article 41, ACHR); • Inter-State complaints (optional) (Article 45, ACHR); • Individual complaints (compulsory) (Article 44, ACHR).

7.1.1. Reporting on general situation of torture or other ill-treatment in a state

All OAS Member States

In relation to all OAS Member States (whether or not party to the American Convention on Human Rights), the Inter-American Commission is empowered to develop awareness of human rights, make recommendations to governments, prepare studies and reports, urge governments to supply it with information regarding human rights, and serve as an advisory body regarding human rights. This includes investigating the human rights situation in particular countries, based on a combination of fact-finding visits (where consent is given by the Member State in question), expert evidence, and information received in various forms including individual petitions.

States Parties to the Inter-American Convention to Prevent and Punish Torture

Under Article 17 of the Inter-American Convention to Prevent and Punish Torture, the Commission can receive information from States Parties on measures adopted to implement the Convention. It can also analyse the situation in OAS Member States regarding the prevention and elimination of torture in its annual report (Article 17). No states have submitted such a report to the Commission. NGOs and other interested parties are not able to submit their own reports in absence of a State report.

The aim of communications to the Commission

Supplying information to the Commission on the practice of torture and other ill-treatment in a state or on any deficiencies in measures to ensure that the prohibition of torture and other ill-treatment is upheld, can assist the Commission in identifying situations that require its attention. Where the Commission is preparing for a fact-finding visit to a specific country, information can provide the Commission with essential background information for its trip and assist with its planning, focus and agenda.

For suggestions on how to submit individual and general information to a reporting body, see Chapter C.3.4 on Submitting Information on General Situations of Torture.

7.1.2. The Rapporteur on the Rights of Persons Deprived of Liberty

Before the Office of the Rapporteur on the Rights of Persons Deprived of Liberty was established, the Inter-American Commission examined detention conditions in the Americas through a working group composed of three Commissioners. When the Office of the Rapporteur was established in 2004, the OAS General Assembly encouraged member States to invite the Special Rapporteur to visit their countries and to consider additional funding to the Commission to support the Special Rapporteur's mandate.

The Special Rapporteur conducts working visits, organises seminars and discussions and provides technical assistance in the processing of petitions, cases, provisional and precautionary measures, and other matters related to the deprivation of liberty.

Functions

The mandate of the Rapporteur is to:

- Receive reliable information about the situation of persons deprived of their liberty.
- Conduct country visits and compile information on the situation of persons deprived of their liberty and the conditions in which they are being held.
- Visit detention centres and juvenile detention facilities including without prior notice.
- Interview, freely and in private, individuals who are detained or in prison; correctional staff and authorities.
- Interview relatives of individuals in custody, individuals who have been incarcerated as witnesses, members of NGOs; any staff member, authority, or individual.
- Film, record, take photographs, gather documents, or use any other appropriate means to learn about the situation of persons deprived of liberty.
- Prepare reports and recommendations for the Commission on the situation in a particular detention centre, country, region, etc.
- Issue recommendations to the Member States regarding detention or incarceration conditions, and follow up on compliance with the recommendations.
- Conduct promotional and educational human rights activities.
- Promote action or urge States to meet their international obligations in serious cases involving people in custody.
- Promote legislative, judicial, administrative, or other types of measures to guarantee the rights of persons deprived of liberty and their families.
- Coordinate promotional activity with NGOs or other international institutions for the protection of human rights; coordinate actions with ombudsmen and/or national human rights institutions.

- Take any other action or step deemed necessary to protect persons deprived of liberty, within the mandate of the Commission.

During country visits (one of the main tasks of the position), the Rapporteur works in three main areas:

- 1) Visiting jails, penitentiaries, police holding cells, precincts and other places of deprivation of liberty;
- 2) Developing a dialogue with the authorities in charge of penitentiary policy and prison administration;
- 3) Meeting with civil society organizations working on the rights of persons deprived of liberty.⁹³

Another key area of the Rapporteur's work is to give advice to the Commission in processing petitions and individual cases where a violation of the human rights of persons deprived of liberty is alleged.

7.1.3. Individual complaints

Whether or not an NGO can submit an individual complaint or case to the Commission depends on whether the State is party to the American Convention on Human Rights. Not all Member States of the OAS are parties to the ACHR. If the State is not a party to the ACHR, an individual complaint can still be made based on the American Declaration.

The aim of using the complaint procedure

- Adopt conclusions in an individual case in the form of a report;
- Make public its report where a State does not take adequate measures to comply with its recommendations;
- Request that the Government take precautionary measures in cases where irreparable harm to persons is likely;

⁹³ OAS, Functions of the Rapporteurship on the Rights of Persons Deprived of Liberty, available at <http://www.oas.org/en/iachr/pdl/mandate/Functions.asp>.

- Confidentially request the Government to provide information as to the whereabouts of allegedly disappeared persons.

Admissibility requirements

A communication will be **inadmissible** if:

- Adequate and effective **domestic remedies have not been exhausted**. There are primarily three exceptions to the rule on the exhaustion of domestic remedies: (1) where domestic laws do not provide due process to protect the rights allegedly violated; (2) when the alleged victim has not been allowed access to domestic remedies or has been prevented from exhausting them⁹⁴; or (3) if there is delay in the issuance of a final decision in the case with no valid reason;
- The case has not been submitted **within 6 months** of notification of the final decision in the case, or within a reasonable time in cases where domestic remedies cannot be exhausted;
- A case addressing the same facts has **already been, or is currently being, examined** by the Commission or another international tribunal, except where that case was brought by a third party without the authorisation of the victim or the victim's family, and the present case is being brought by the victim, a family member or an authorised representative;
- The communication is **anonymous** or lacks certain details about the petitioner;
- The communication does not contain facts appearing to **reveal a violation** of rights;
- The communication is **manifestly groundless** (ill-founded).

The content of communication

The following information should be included in the communication:

- 'Personal information of the alleged victim(s) and that of his or her next of kin;

⁹⁴ This includes where an individual is unable to secure legal representation due to the unwillingness of lawyers to accept the case out of fear. *See*, Inter-American Court of Human Rights, Advisory Opinion OC-11/90, para. 34-35.

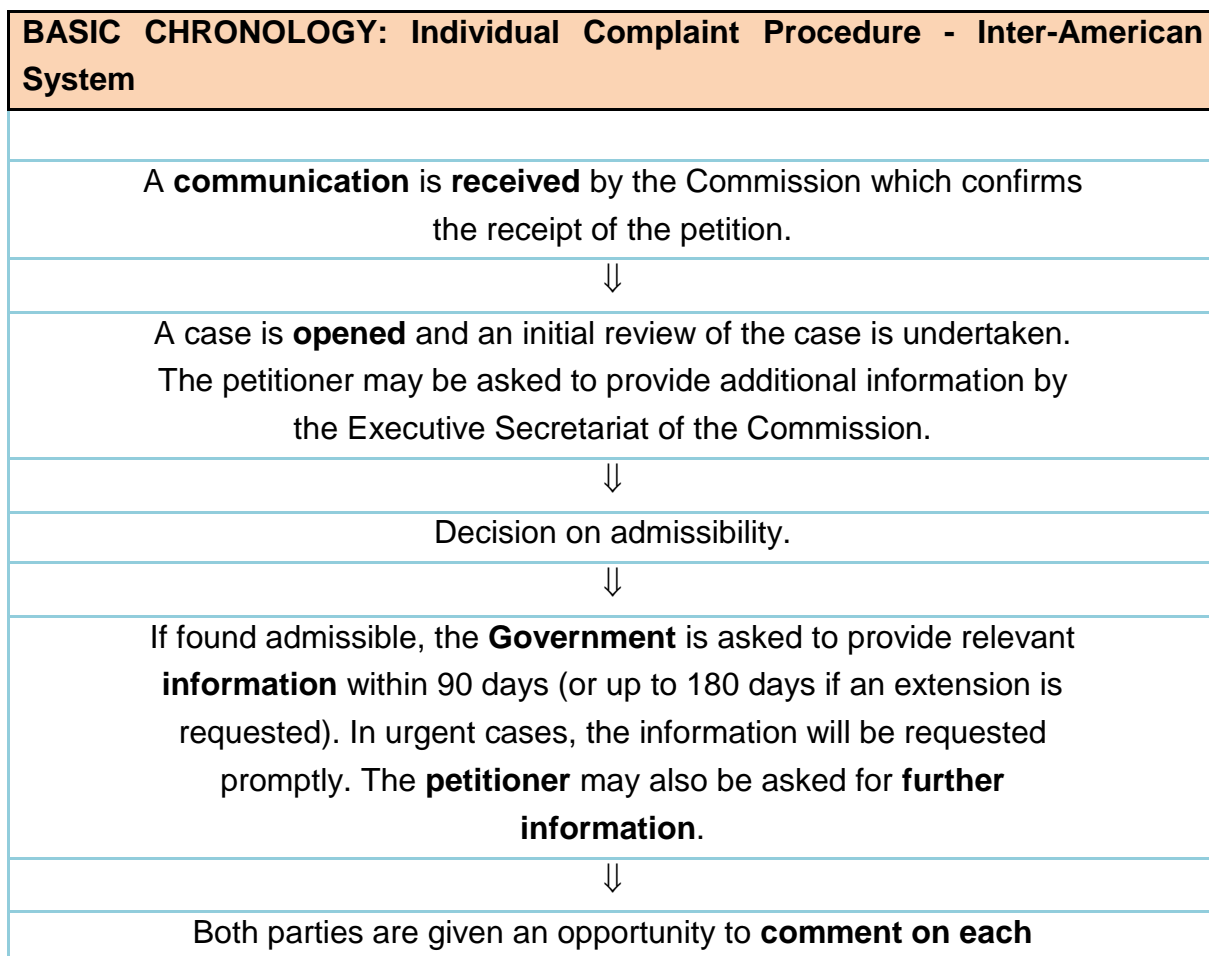
- Personal information on the petitioner(s), such as complete name, phone number, mailing address, and email;
- A complete, clear, and detailed description of the facts alleged, including how, when, and where they occurred, as well as identification of the State considered responsible;
- An indication of the State authorities that are considered responsible;
- The rights believed to be violated, if possible;
- The judicial bodies or authorities in the State to which one has turned to remedy the alleged violations;
- The response of the State authorities, especially of the courts of justice;
- If possible, uncertified and legible copies of the principal complaints and motions filed in pursuit of a remedy, and of the domestic judicial decisions and other annexes considered relevant, such as witness statements; and
- An indication as to whether the petition has been submitted to any other international organization competent to resolve cases.⁹⁵

⁹⁵ Inter-American Commission on Human Rights, Informational brochure on filing a petition and <https://www.oas.org/en/iachr/docs/pdf/HowTo.pdf>

**PRACTICALITIES OF USING THE INDIVIDUAL COMPLAINT PROCEDURE:
Inter-American System**

Who can bring a case under this procedure?	Any group or person, or any NGO entity legally recognised in one or more Member State, either on own behalf or on behalf of a third person. It is not necessary to have contact with victim. The Commission can also become aware of a case motu proprio.
Is there a time limit for bringing an application?	Six months from the final decision in the case where domestic remedies have been exhausted, or within a reasonable time of the facts alleged where exhaustion of domestic remedies is not possible.
Can you bring a case under this procedure if you have already brought one under another procedure concerning the same set of facts?	No - unless the case was brought by a third party without the authorisation of the victim or his or her family.
Do you need legal representation?	Not necessarily, but it is advisable.
Is financial assistance available?	Not during the admissibility stage. However, once the case has been declared admissible, the petitioner can apply for support from the Legal Assistance Fund to pay for expenses related to the case such as evidence or appearing before the Commission. To be eligible, the victim or petitioner will have to demonstrate that he or she lacks sufficient means to pay for case-related expenses.
Are amicus briefs accepted?	Yes.
How long does the procedure take?	Usually years.
What measures, if any, can the mechanism take to assist it in	Fact-finding hearings, on-site visits, expert evidence, written pleadings, oral hearings,

reaching a decision? E.g. fact-finding hearings; on-site visits; written pleadings, oral hearings, other.	working meetings and case hearings.
Are provisional or urgent measures available?	<p>Yes, precautionary and provisional measures.</p> <ul style="list-style-type: none"> • The <u>Commission</u> may request that a State adopts precautionary measures in serious and urgent situations that pose a risk of irreparable harm to persons. • The <u>Court</u> may order appropriate provisional measures in case of extreme gravity and urgency.⁹⁶



⁹⁶ Rules of Procedure of the Inter-American Court of Human Rights, November 2009, Article 27.

other's submissions.	
⇓	
The Commission may also gather information itself , through an on-site visit, a hearing or any other means necessary.	
⇓	
The Commission offers its services to assist in reaching a friendly settlement.	
⇓	
If no friendly settlement is reached, the Commission prepares a confidential report with its conclusions and recommendations , and transmits it to the State.	
⇓	
If the Member State does not comply with the recommendations, and is:	
⇓	⇓
<u>Not</u> party to the ACHR or is a party but has not accepted the jurisdiction of the Court , the Commission can prepare a second report which it usually makes public . This is the end of the matter.	A party to the ACHR <u>and</u> has accepted the jurisdiction of the Court , the case can be referred to the Court by the Commission or the State Party, <u>not</u> the petitioner. The victim and his or her legal representatives ⁹⁷ have standing to present the full pleadings before the Court. Where they choose to do so, the Commission appears before the Court as the guardian of the public interest.
	⇓
	The Court gathers information about the case through written and oral hearings and any other means necessary.
	⇓
	The Court adopts a judgment stating

⁹⁷ Where a victim does not have a legal representative, Article 37 of the Inter-American Court of Human Rights' Rules of Procedure enable the Court to appoint a lawyer for the victim.

	whether or not there has been a violation(s) and makes findings on reparations.
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Precautionary measures

In serious and urgent situations that pose a risk of irreparable harm to persons or to the subject matter brought before the Commission or the Court, the Commission may, on its own initiative or at the request of a party, request that a State adopt precautionary measures. A ‘serious situation’ refers to a grave impact that an action or omission can have on a protected right or on the eventual effect of a pending case before the Commission or the Court. An ‘urgent situation’ is one where there is an imminent risk or threat that requires immediate preventive or protective action. ‘Irreparable harm’ refers to injury to rights that are not susceptible to reparation, restoration or adequate compensation. In practice, it will be very rare that the Commission will act on its own initiative.

A person or organisation may file a request for precautionary measures. The request should contain:

- Information that enables identification of the beneficiaries;
- “A detailed and chronological description of the facts that motivate the request and any other available information; and
- The description of the measures of protection requested”.⁹⁸

The Commission considers the situation and may request relevant information from the State concerned. In considering the request for precautionary measures, the Commission takes into account the context and whether:

- The situation was brought to the attention of the State;
- The individuals or the group that need protection are identifiable;
- Whether there is consent from the beneficiaries to request such measures, or alternatively the absence of consent is justified.

⁹⁸ Rules of Procedure of the Inter-American Commission on Human Rights, entered into force August 2013, Article 25.

The Commission periodically evaluates whether to keep the precautionary measures in force. The State may petition the Commission to lift the measures, after which the Commission consults the beneficiaries.

Importantly, the Commission may take follow-up measures, such as requesting relevant information from the interested parties, timetables for implementation, hearings, working meetings, and visits for follow-up and review.

Further reading

- Inter-American Commission on Human Rights, Informational brochure on filing a petition (2010), <https://www.oas.org/en/iachr/docs/pdf/HowTo.pdf> - includes a form for submitting a petition
- Inter-American Commission on Human Rights, Rules of Procedure, 2013, <http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp>
- OMCT, The Prohibition of Torture and Ill-Treatment in the Inter-American Human Rights System: A Handbook for Victims and their Advocates, OMCT Handbook Series Vol. 2, 2nd edition (2014), http://www.omct.org/files/2014/11/22956/v2_web_guide_interamricain_en_omc14.pdf

7.2. The Inter-American Court

The Inter-American Court has two functions – contentious and advisory. This Handbook focuses on the contentious jurisdiction of the Court.

BASIC FACTS: The Inter-American Court of Human Rights		
Origin	How was it created?	By Article 33 of the 1969 American Convention on Human Rights.
	When did it become operational?	1979.
Composition	How many persons is it composed of?	7.

	Are these persons independent experts or State representatives?	Independent experts.
Purpose	General objective	To supervise the implementation of the American Convention on Human Rights.
	Functions	<ul style="list-style-type: none"> • Individual complaints (optional) (Articles 61-62, ACHR); • Advisory function.

It should first be emphasised that individuals and NGOs do not have direct access to the Inter-American Court. The case needs to be referred either by a State Party or by the Commission. The case may only be referred to the Court after it has been concluded by the Commission. Once the case is before the Court, however, the victim and his or her legal representatives can represent themselves and argue the case.

Unlike the individual petitions before the Commission, where a State does not need to be a party to the American Convention on Human Rights, the complaints can only be referred to the Court if they concern a State that:

- Is party to the American Convention on Human Rights; and
- Has accepted the jurisdiction of the Court.

The Court may examine the complaints that:

- Allege a violation of the American Convention on Human Rights for which the State may be considered responsible;
- Relate to a State Party to the American Convention on Human Rights which has accepted the jurisdiction of the Court;
- Has first been examined by the Commission;
- Has been referred to the Court by either a **State Party** or the **Commission**.

7.2.1. The aim of using the complaint procedure

The Inter-American Court of Human Rights can:

- Adopt a legally binding judgment, including a finding of violation(s);
- Order the State to carry out an investigate and punish those responsible;
- Award a range of other measures of reparation including compensation, rehabilitation, restitution, satisfaction and guarantees of non-repetition;
- Order provisional measures of protection in urgent cases where irreparable harm to persons is likely.

7.2.2. Provisional measures

At any stage of proceedings involving cases of **extreme gravity and urgency**, and when necessary to avoid irreparable damage to persons, the Court may order appropriate provisional measures:

- On its own motion;
- At the request of the Commission with respect to matters not yet submitted to the Court. When deciding on whether to request provisional measures, the Commission takes into account the position of the beneficiaries and their representatives. The reasons for requesting such measures may be that the State has not implemented the Commission’s precautionary measures; that they have not been effective; that the precautionary measure is connected to a case submitted to the Court; or when the Commission considers it pertinent for the efficacy of the requested measures;
- At the request of the victims or alleged victims, or their representatives in contentious cases before the Court in matters related to the subject matter of the case.

The Court may require the “State, the Commission, or the representatives of the beneficiaries to provide information on a request for provisional measures before deciding on the measure requested.”⁹⁹ “Under Article 27 of the Rules of Procedure of the Court, the “request may be submitted to the Presidency, to any Judge of the Court, or to the Secretariat, by any means of communication”.¹⁰⁰

⁹⁹ Rules of Procedure of the Inter-American Court of Human Rights, November 2009, Article 27.

¹⁰⁰ Rules of Procedure of the Inter-American Court of Human Rights, November 2009, Article 27.

8. OTHER REGIONS

In certain other regions, notably in Asia and in the context of the League of Arab States, new regional bodies capable of considering allegations of human rights violations are being established or might be established sometime in the future. These bodies have more limited mandates than those provided to the regional courts in Africa, the Americas, and Europe. Where such a body does not exist or is not yet fully developed, an NGO should not be discouraged from reporting allegations of torture to those bodies that are available. Most notably, UN bodies are not subject to geographical limitations. If the State is not a party to any human rights treaty relevant for torture reporting, there are options to report to non-treaty bodies, such as the Human Rights Council and its Special procedures.

8.1. ASEAN Intergovernmental Commission on Human Rights

The ASEAN Intergovernmental Commission on Human Rights (AICHR) is an intergovernmental organization, a consultative body of the Association of Southeast Asian Nations (ASEAN). As provided for in Article 14 of the 2007 ASEAN Charter, AICHR was established in 2009 with its aims, principles, functions and role defined by Terms of Reference (TOR) adopted by ASEAN Foreign Ministers. The TOR describe AICHR as “the overarching human rights institution in ASEAN with overall responsibility for the promotion and protection of human rights in ASEAN.”¹⁰¹ However, unlike other international or regional human rights bodies it is not independent, comprised of the State representatives of ten participating States.

The functions of the AICHR are mainly promotional: it is tasked with developing strategies for the promotion and protection of human rights and fundamental freedoms; enhancing public awareness of human rights; promoting capacity building for the effective implementation of international human rights treaty obligations; encouraging ASEAN Member States to consider acceding to and ratifying international human rights instruments; and promoting the full

¹⁰¹ ASEAN Secretariat, ASEAN Intergovernmental Commission on Human Rights (Terms of Reference), Jakarta, 2009, Article 6.8

implementation of ASEAN instruments related to human rights. It may and should cooperate with other ASEAN bodies and national, regional and international institutions and entities concerned with the promotion and protection of human rights. As mandated by the TOR, in 2012, the AICHR formulated the ASEAN Human Rights Declaration.

The TOR also provide for the obligation of the AICHR to obtain information from ASEAN Member States on the promotion and protection of human rights; develop common approaches and positions on human rights; and prepare studies on thematic issues of human rights. The ASEAN Secretary General may, under general powers to facilitate and monitor the implementation of ASEAN agreements and decisions, draw relevant issues to the attention of AICHR. Most notably, AICHR should submit an “annual report on its activities, or other reports if deemed necessary, to the ASEAN Foreign Ministers Meeting”.¹⁰²

While the AICHR has no mandate to investigate and consider allegations of human rights violations, some NGOs do in practice report on general situations of torture to this intergovernmental body. The AICHR is mandated to cooperate with civil society and keep the public periodically informed of its work and activities. The cooperation between NGOs and the AICHR is not systematised and the AICHR has been criticised for a lack of transparency and openness toward civil society.

The TOR provides for a review of its provisions at the end of the first five years. The review is expected to be completed during 2015.

Four of the ten ASEAN member states, namely, Brunei, Malaysia, Myanmar and Singapore are not party to the UN Convention against Torture and Other Inhuman, Cruel or Degrading Treatment or Punishment.

8.2. Arab Human Rights Committee

¹⁰² Terms of Reference of ASEAN Intergovernmental Commission on Human Rights, July 2009, Article 4.

In 2008, the revised Arab Charter on Human Rights came into force (the first dates back to 1994), and established a new monitoring body, the Arab Human Rights Committee. The Committee became operational in 2009 and represents the first treaty body of independent experts to oversee a treaty in the system of the League of Arab States.¹⁰³

Some of the main tasks of the Arab Human Rights Committee, according to the Arab Charter on Human Rights and the Rules of Procedure the Arab Human Rights Committee, are:

- To receive and consider the reports submitted by the State Parties (an initial report after a year of the Charter entering into force for the state party, and periodic reports every 3 years) and issue its observations and concluding recommendations to the State Party;
- To interpret the Charter to ensure the optimal implementation of its provisions;
- To hold events on issues related to human rights in the context of performing its tasks to further the Charter's goals and objectives;
- To cooperate with other League of Arab States institutions;
- To submit an annual report to the League of Arab States Council of Ministers of Foreign Affairs on its activities that covers, inter alia, the states reports it considered, its observations and concluding recommendations on the reports of the State Parties. The annual report should include a list of the State Parties and their reporting status. The Annual report of the Committee is normally published on the webpage of the Committee at the League of Arab States website.
- To develop guidelines for reports submitted to it on the preparation of States Parties, as well as civil society organizations working on human rights of.

The Committee may only consider State reports and is not mandated to receive individual petitions. In the State reporting procedure, there is room for interaction between NGOs and the Committee. The NGOs may submit their shadow reports (for general guidelines on how to prepare a report for the State reporting

¹⁰³ Amnesty International, <http://www.amnesty.org/en/library/asset/IOR65/001/2008/en/8a6d438e-386d-11dd-a7d1-851179bc648e/ior650012008eng.html>.

procedures see Chapter C.3.4 on Submitting Information on General Situations of Torture (State reports)). However, submission of shadow reports is not limited to organisations with observer status with the League of Arab States. NGOs with consultative status with the UN, the African Union and the Organisation of Islamic Conference are also allowed to submit shadow reports. The Committee's sessions are open and any organisation who is interested to attend may be invited to observe the deliberations. The Committee, in its consideration of state reports, also utilises other available information including from the UN system.

A process to reform the human rights system of the League of Arab States, including through the establishment of the Arab Court of Human Rights, is currently underway.

A proposal for the establishment of the Arab Court of Human Rights was made by Bahrain in January 2012. The Statute of the Court was adopted by the Council of Ministers of Foreign Affairs in September 2014. According to Article 16 of the Statute, the subject matter of the Court is the Arab Charter on Human Rights and other human rights treaties of the League of Arab States. Many concerns have been raised about the Statute including the fact that Article 19 restricts access to the Court to member states only, and gives member states the option of permitting NGOs to present cases on behalf of individuals, at their discretion. It does not grant individuals the right to access the Court directly.

The Statute was opened for ratification in November 2014. It requires seven ratifications to enter into force.

9. FURTHER INFORMATION

9.1. Possible sources of help

Formal procedures before international mechanisms set up for the sole purpose of assessing whether or not States are respecting their obligations under international law are not by any means the only form of help to which you may

turn in response to allegations of torture. There are a number of reasons why you may wish to seek assistance from a different source, either in addition to, or instead of, resorting to a formal procedure.

- In certain circumstances, you may be reluctant to turn to the international mechanisms at all. Perhaps you have concerns for your own safety, or you find the process intimidating. In cases where you are in possession of information which can help an individual to obtain a remedy, or even save his or her life, or which may otherwise be of significance to the international bodies, you should at least consider a course of action which does not necessarily involve you personally, but ensures that the information is not wasted. A possible solution would be to pass on the information to another organisation or group that may be in a better position to follow it up. There are also organisations to which you can turn in order to obtain support and guidance, and which may advise you about the best course of action.
- It is important to remember that whether or not any formal procedure(s) is being used to seek a remedy, it may well be that the best assistance you can provide to a victim of torture is support and rehabilitation. Again, there are organisations specialising in this area that you may wish to contact.
- An extremely effective and generally speedier complement to using the formal procedures is lobbying, particularly of the UN Human Rights Council, but also of a variety of political bodies.

TYPE OF HELP	POSSIBLE SOURCE (See Appendix 2 for further details)
Organisations which may take action themselves on the basis of your information	<ul style="list-style-type: none"> • International Committee of the Red Cross • UN High Commissioner for Refugees • More experienced international or national NGOs • Field missions, such as those of the OSCE, the UN High Commissioner for

	<p>Human Rights, or large international NGOs</p> <ul style="list-style-type: none"> • UN peacekeeping missions¹⁰⁴ • Victim-specific organisations, such as ILO conferences or the IPU
Organisations which may be able to provide advice and support	<ul style="list-style-type: none"> • More experienced or specialised international or national NGOs • Professional organisations and networks
Organisations which may be able to help with victim support and rehabilitation	<ul style="list-style-type: none"> • UN Voluntary Fund for the Victims of Torture • International and national rehabilitation NGOs
Organisations or bodies where active lobbying may be effective	<ul style="list-style-type: none"> • UN Human Rights Council.

9.1.1. Specific sources of help

International Committee of the Red Cross

The International Committee of the Red Cross (ICRC) is a neutral and independent organisation that acts primarily in the context of armed conflict, but also in situations of violence and political unrest. Its mandate is envisaged in the Geneva Conventions, its headquarters are in Geneva, Switzerland, but it has field delegations in many countries where its activities are required, usually through an agreement with the governing authorities. One of its functions in these contexts is to act as a neutral intermediary between detainees and their detaining authorities. Its representatives carry out visits to places of detention where persons are held in connection with the conflict or unrest, record identity of detainees and examine the conditions of detention and treatment and interview detainees about their experiences in detention. It requires access to all places of detention where detainees falling within their field of activity are kept, as well as the opportunity to interview the detainees themselves in private and

¹⁰⁴ In conflict situations, UN peacekeeping missions, such as the UN Mission in Liberia (UNMIL) have also undertaken this function. See <http://thinkafricapress.com/international-law-africa/torture>.

without witnesses. In return, it maintains absolute confidentiality about what it observes during such visits. Because of its special mandate and methods of work, the ICRC is often able to gain access to places of detention that others cannot visit.

The ICRC functions independently of other organisations and has its own network and personnel. Nonetheless, it is willing to receive information about patterns of violation or enquiries about specific detainees or missing persons that it may be in a position to follow up on. It prefers to receive such information directly from relatives, but will accept it from NGOs on the understanding that the confidentiality protecting its work means that the NGO should not expect to receive feedback on any action taken. In the case of missing or disappeared persons, it may send a response to the family. In general, it will seek to make direct contact with the family before it decides to take action. Its guiding principle is that any action it takes is on behalf of and in the name of the detainees themselves.

If information is passed on to the ICRC, it should be as detailed as possible about the arrest and detention. As a general rule, the ICRC will tend to act more readily in cases indicating a pattern than in individual cases.

UN High Commissioner for Refugees

The UN High Commissioner for Refugees (UNHCR) acts to protect and provide assistance to persons who have fled their country because of a well-founded fear of persecution and cannot or do not want to return (refugees), as well as other groups in similar situations, such as persons displaced within their own countries (IDPs) and victims of civil war.

One of the ways in which it carries out these functions is through a network of personnel throughout the world, based in diverse locations where persons falling within their mandate may be found, including capital cities, remote refugee or IDP camps, and along border areas. Their purpose is essentially to protect and

minimising the risk of attacks on refugee and IDP groups and camps, and to identify and address the causes of displacement in specific situations. In this context, it is extremely relevant to inform them of: 1) any ill-treatment of refugees and IDPs in their place of origin or during transit, and 2) any ill-treatment of refugees and IDPs within their camps.

Field missions and visits

Both intergovernmental organisations, such as the OSCE and the UN, and international non-governmental organisations may establish field missions or carry out field visits. These may be either standing (on-going) or *ad hoc* (in response to a specific event or situation). Most are designed to monitor and collect information about the situation, and rely heavily on the supply of information from various sources.

International and national or local NGOs, and other support organisations

The range of international and national NGOs is enormous. An initial point of contact could be a large national NGO with experience. This is often the best way to find out basic information about domestic remedies or the treaties to which a State is party. International NGOs can provide invaluable assistance, either by taking responsibility for transmitting allegations or by advising you on how to go about it. A particularly useful form of an international NGO is the 'umbrella organisation'. These are NGOs that act as a central point of contact for a network of smaller national NGOs. In general, in order to apply to become part of a network, national NGOs will be asked to explain their objectives, working methods etc., and should be able to show that both they and their information are reliable. See Appendix 3 for examples of such organisations.

Assistance and support can also be obtained from professional organisations and support networks. See Appendix 3 for examples of such organisations.

UN Voluntary Fund for the Victims of Torture

The UN Voluntary Fund for the Victims of Torture was set up for the purpose of distributing funding to NGOs providing medical, psychological, legal, social, financial, humanitarian and other assistance to victims of torture and their families. Any NGO wishing to set up such a project can apply to the fund for a grant. An application form must be completed providing detailed information about the proposed project, and the organisation will be expected to report back on the use to which the grant was put. Applications are due in by 31 December each year and the funds are distributed approximately six months later. See Appendix 2 for details.

9.2. Advocacy

Information you receive when documenting torture may not only be used for litigating a specific case of alleged torture or shedding the light on a general situation of torture in a country. It may also be used for advocacy purposes, aimed especially at the prevention of torture and eradicating the root causes of torture. A particularly effective way of using the information is by establishing patterns in a specific context (such as ill-treatment in mental health institutions, discrimination, police brutality etc.) and lobbying for a change.

At the national level, you can successfully use information gathered through documenting allegations of torture, or as a result of strategic litigation to advocate for changes in government practices or in society as a whole. You can use information to substantiate your arguments when pressuring governments to change their policies and legislation, include safeguards that you see as most important to end torture, to effectively train officials, change training materials and curricula etc. All information gathered through documenting may be used to substantiate your arguments.

At the international level, some of the most important lobbying takes place in Geneva during sessions of the Human Rights Council. Lobbying State representatives and members can make the difference between an agenda item

being dropped or a resolution condemning a State being adopted. If you would like to be involved, you are advised to contact a Geneva-based NGO that will be able to help you and provide information on applying for permission to attend the sessions and how to make a written or oral submission. There are some specialised NGOs dealing exclusively with supporting other NGOs to engage with different mechanisms, for example with the UPR. See Appendix 3 for contacts. Even if you do not have accreditation to attend relevant sessions of the Council, you can utilize many other options to stay engaged. For example, NGOs can sign up to deliver a video statement at the adoption of a State report in the Working Group on UPR.

Other fora where active lobbying on human rights issues takes place include the political organs of international organisations, e.g., the European Parliament, and governmental representatives (not necessarily your own), diplomatic missions, particularly those of influential States. The EU, for example, has a wide diplomatic network and is also a large donor for human rights related projects. Importantly, the EU adopted guidelines on how it will strive to work effectively towards the prevention of torture and other ill-treatment within its common foreign and security policy (Guidelines to EU Policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment, http://eeas.europa.eu/human_rights/guidelines/torture/docs/20120626_guidelines_en.pdf).

10. SUMMARY OF PART C

1. Introduction to the Mechanisms and Possible Courses of Action

There are two main courses of action:

- **Redressing individual victims of torture** – litigation of individual cases;
- **Wider advocacy activities at the national and international level**, such as reporting on the general situation of torture, alerting the international community to the general situation or specific cases of torture, pushing for the prevention of torture and ending impunity.

If you intend to litigate a case at the international level, you will first need to exhaust domestic remedies. There are no such requirements for reporting on general situation of torture, but there might be other limitations (such as whether a State ratified a particular treaty).

2. National Mechanisms

Possible remedies at the national level might include: challenging the legality of detention, criminal proceedings, civil and other proceedings for reparations, proceedings before National Human Rights Institutions / Ombudspersons, claims for refugee status, National Preventive Mechanisms, and other.

Again, the choice of the national mechanism will depend on whether an NGO and the victim intend to pursue litigation or have wider advocacy goals. Some national mechanisms need to be pursued as a prerequisite for litigation at the international level.

3. International Mechanisms in General

When selecting a course of action at the international level, you should consider:

- The **availability** of the mechanism: is it open to you?
- The **suitability** of the mechanism: is it suited to your objectives?

REPORTING MECHANISMS

An international reporting mechanism is one that receives and/or seeks out information in order to report or comment on whether States are respecting their obligations under international human rights law. The information it receives can concern both individual and general allegations, but the ultimate objective is to obtain an accurate picture of the general situation and make recommendations.

The most common ways in which international reporting mechanisms carry out their functions are through:

- Monitoring;
- The examination of State reports;
- Fact-finding visits.

The content and form of your submission will vary according to the functions of the mechanisms (see main text for suggestions), but all communications should be:

- Accessible;
- Balanced and credible;
- Detailed.

INDIVIDUAL COMPLAINT MECHANISM

An international complaint procedure involves a formal judicial-style process in which an individual or group of individuals make a complaint to an international judicial body alleging that their individual rights have been violated in a specific case. A complaint under such a procedure may also be referred to as an *application*, a *petition* or a *communication*.

When considering an individual complaint, the relevant body asks two main questions:

- **Is the body allowed to examine the complaint?** This is the question of *admissibility*. If the body finds that the case is *inadmissible* (that it is not allowed to examine the complaint), the case is over and the facts are not examined. (See main text for reasons why a complaint might be declared *inadmissible*)
- **Do the facts indicate that a violation of the State's obligations has occurred?** This is called consideration of the *merits* of the case, and only happens if the case is found to be *admissible*.

A communication under an international complaint procedure should always include:

- A **cover letter** setting out a minimum number of details (see main text for suggestions) – a body might have prepared an application form which you are advised or required to use;
- As much **supporting documentation** as possible (see main text for suggestions)

4. United Nations' Mechanisms and Procedures

Relevant **reporting mechanisms** and procedures within the United Nations system are:

- The Human Rights Council sessions;
- The Human Rights Council Universal Periodic Review;
- The Human Rights Council complaint procedure;
- The Human Rights Council Special Procedures: Thematic and Country Rapporteurs;
- The Human Rights Committee;
- The Committee against Torture;
- The Subcommittee on Prevention of Torture;
- Other committees: the Committee on the Rights of the Child, the Committee on the Elimination of Discrimination against Women; the Committee on the Elimination of Racial Discrimination, Committee on the Rights of Persons with Disabilities, Committee on Enforced disappearances.

Relevant **complaint procedures** within the United Nations system are based on:

- The Convention against Torture (implemented by the Committee Against Torture);
- The Optional Protocol of the ICCPR (implemented by the Human Rights Committee);
- Other UN treaties adopting individual complaints procedures: Optional Protocol to the Convention on the Rights of the Child, Optional Protocol to the Convention on the Elimination of Discrimination against Women, Convention on the Elimination of Racial Discrimination, Optional Protocol to the Convention on the Rights of Persons with Disabilities, Convention for the Protection of All Persons from Enforced Disappearance.

5 – 8 Regional Mechanisms and Procedures

AFRICA

The relevant **reporting mechanisms** within the African system are:

- The African Commission on Human and Peoples' Rights;
- The Special Rapporteur on Prisons and Conditions of Detention in Africa.

The relevant **complaint procedure** within the African system is based on:

- The African Charter on Human and Peoples' Rights (implemented by the African Commission and Court on Human and Peoples' Rights). There are also some sub-regional courts based on treaties establishing economic communities that may hear individual cases.

EUROPE

The relevant **reporting mechanism** within the European system is:

- The European Committee for the Prevention of Torture.

The relevant **complaint procedure** within the European system is based on:

- The European Convention on Human Rights (implemented by the European Court of Human Rights).

INTER-AMERICAN SYSTEM

The relevant **reporting mechanisms** within the Inter-American system are:

- The Inter-American Commission on Human Rights;
- Rapporteurship on the Rights of Persons Deprived of Liberty.

The relevant **complaint procedure** within the Inter-American system is based on:

- The American Convention on Human Rights or the American Declaration on the Rights and Duties of Man (implemented by the Inter-American Commission and Court of Human Rights).

OTHER REGIONS

There might be some mechanisms that are emerging or have just become operational in other regions too. Before attempting to use them, make sure to do a good research on their mandate, competencies and deficiencies, such as lack of independence.

9. Further information

You may be reluctant to turn to the international mechanisms yourself, or need support and guidance, either for yourself or for a victim. Where you take action yourself, you may wish to strengthen or expedite the process through lobbying. In such cases, organisations or bodies to which you may intend to turn include: those that may take action themselves on the basis of your information or that may be able to provide you with advice and support; those that may be able to help with victim support or rehabilitation; and those where active lobbying may be effective.

PART D. APPENDICES

1. Appendix 1. List of relevant instruments

All of the instruments listed below are potentially of relevance to anyone wishing to submit allegations of ill-treatment to international bodies, or indeed within the national system. They have been arranged thematically in order to make it easier to pick out all instruments relevant to a specific topic. Within the thematic divisions, they have then been subdivided according to their origin, i.e. the international organisation which created them. For reasons of space, it has not been possible to reproduce all of the instruments here, but references have been given in Appendix II to possible sources for obtaining copies of the instruments.

General human rights instruments

United Nations

- Universal Declaration of Human Rights, 10 December 1948,
<http://www.un.org/en/documents/udhr/>
- International Covenant on Civil and Political Rights, 16 December 1966,
<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>
- Optional Protocol to the International Covenant on Civil and Political Rights , 16 December 1966,
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCCPR1.aspx>

Council of Europe

- European Convention on Human Rights, 4 November 1950,
http://www.echr.coe.int/Documents/Convention_ENG.pdf

Organisation of American States

- American Declaration on the Rights and Duties of Man, April 1948,
<http://www.cidh.oas.org/Basicos/English/Basic2.american%20Declaration.htm>
- American Convention on Human Rights, 22 November 1969,
http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm

African Union

- African Charter on Human and Peoples' Rights, 27 June 1981, <http://www.achpr.org/instruments/achpr/>

The League of Arab States

- Arab Charter on Human Rights, 22 May 2004, <http://www.refworld.org/docid/3ae6b38540.html>

Torture-Specific human rights instruments

United Nations

- Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 9 December 1975, <http://www.un-documents.net/a30r3452.htm>
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 December 1984, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>
- Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 18 December 2002, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCAT.aspx>
- Guidelines of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in relation to visits to States parties, 18 January 2011, <http://www.refworld.org/docid/4ef0c4842.html>

Council of Europe

- European Convention on the Prevention of Torture, 26 November 1987, <http://conventions.coe.int/Treaty/en/Treaties/Html/126.htm>

European Union

- Council of the EU Guidelines to EU Policy towards third countries on torture and other cruel, inhuman or degrading treatment or punishment, 18 April 2008, <http://www.consilium.europa.eu/uedocs/cmsUpload/8590.en08.pdf>

Organisation of American States

- Inter-American Convention to Prevent and Punish Torture, 9 December 1985, <http://www.oas.org/juridico/english/treaties/a-51.html>

African Union

- Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines), October 2002, http://www.achpr.org/files/instruments/robben-island-guidelines/achpr_instr_guide_rig_2008_eng.pdf

General standards for the treatment of persons in official custody

United Nations

- Standard Minimum Rules for the Treatment of Prisoners, 20 August 1955, <http://www.ohchr.org/Documents/ProfessionalInterest/treatmentprisoners.pdf>
- Basic Principles for the Treatment of Prisoners, 14 December 1990, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/BasicPrinciplesTreatmentOfPrisoners.aspx>
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, 9 December 1988, <http://www.un.org/documents/ga/res/43/a43r173.htm>
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 14 December 1990, <http://www.un.org/documents/ga/res/45/a45r113.htm>
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), 29 November 1985, <http://www.un.org/documents/ga/res/40/a40r033.htm>
- United Nations Standard Minimum Rules for Non-custodial Measures ("The Tokyo Rules"), 14 December 1990, <http://www.unrol.org/files/UNITED~2.PDF>
- United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ("The Bangkok Rules"), 21 December 2010, <http://www.un.org/en/ecosoc/docs/2010/res%202010-16.pdf>

- UNHCR, Detention Guidelines: Guidelines on the Applicable Criteria and Standards relating to the detention of Asylum Seekers and Alternatives to Detention, 2012, <http://www.refworld.org/docid/503489533b8.html>

Council of Europe

- European Prison Rules, 11 January 2006, <https://wcd.coe.int/ViewDoc.jsp?id=955747>
- European Code of Ethics for Prison Staff, 12 April 2012, <https://wcd.coe.int/ViewDoc.jsp?id=1932803&Site=CM>

Organisation of American States

- Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas, March 2008, <http://www.cidh.org/Basicos/English/Basic21.a.Principles%20and%20Best%20Practices%20PDL.htm>

Professional standards

United Nations

- The UN Principles on the Effective Investigation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 4 December 2000, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/EffectiveInvestigationAndDocumentationOfTorture.aspx>
- Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 18 December 1982, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/MedicalEthics.aspx>
- Model Autopsy Rules, 1991, <http://www1.umn.edu/humanrts/instree/executioninvestigation-91.html>
- Code of Conduct for Law Enforcement Officials, 17 December 1979, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/LawEnforcementOfficials.aspx>

- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, September 1990,
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx>
- Basic Principles on the Role of Lawyers, 7 September 1990,
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfLawyers.aspx>
- Guidelines on the Role of Prosecutors, 7 September 1990,
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/RoleOfProsecutors.aspx>
- Basic Principles on the Independence of the Judiciary, September 1985,
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/IndependenceJudiciary.aspx>
- UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, December 2012, http://www.unodc.org/documents/justice-and-prison-reform/UN_principles_and_guidlines_on_access_to_legal_aid.pdf

Council of Europe

- Declaration on the Police (Resolution 690 (1979)),
<http://assembly.coe.int/Documents/AdoptedText/ta79/ERES690.htm>
- Collection of CPT standards, <http://www.cpt.coe.int/en/docsstandards.htm>

Instruments Relating to Women

United Nations

- Declaration on the Elimination of All Forms of Discrimination against Women, 7 November 1967, <http://www.refworld.org/docid/3b00f05938.html>
- Convention on the Elimination of All Forms of Discrimination against Women, 18 December 1979,
<http://www.ohchr.org/Documents/ProfessionalInterest/cedaw.pdf>
- Declaration on the Elimination of Violence against Women, 20 December 1993,
<http://www.un.org/documents/ga/res/48/a48r104.htm>

Organisation of American States

- Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, 6 September 1994,
<http://www.oas.org/juridico/english/treaties/a-61.html>

Instruments Relating to Children

United Nations

- Declaration on the Rights of the Child, 20 November 1959,
<http://www.unicef.org/malaysia/1959-Declaration-of-the-Rights-of-the-Child.pdf>
- Convention on the Rights of the Child, 20 November 1989,
<http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty, 14 December 1990, <http://www.un.org/documents/ga/res/45/a45r113.htm>
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), 26 November 1985,
<http://www.un.org/documents/ga/res/40/a40r033.htm>

African Union

- African Charter on the Rights and Welfare of the Child, 1990,
[http://www.au.int/en/sites/default/files/Charter En African Charter on the Rights and Welfare of the Child AddisAbaba July1990.pdf](http://www.au.int/en/sites/default/files/Charter%20En%20African%20Charter%20on%20the%20Rights%20and%20Welfare%20of%20the%20Child%20AddisAbaba%20July1990.pdf)

Instruments Relating to Persons Detained on Mental Health Grounds

United Nations

- Convention on the Rights of Persons with Disabilities, 13 December 2006,
<http://www.un.org/disabilities/documents/convention/convoptprot-e.pdf>
- Principles for the Protection of Persons with Mental Illnesses and the Improvement of Mental Health Care, 17 December 1991,
<http://www.un.org/documents/ga/res/46/a46r119.htm>

Instruments Relating to Racial Discrimination, Apartheid and Genocide

United Nations

- Declaration on the Elimination of All Forms of Racial Discrimination, 20 November 1963, <http://www.un-documents.net/a18r1904.htm>
- International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 1965, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CERD.aspx>
- Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, <https://treaties.un.org/doc/Publication/UNTS/Volume%2078/volume-78-I-1021-English.pdf>
- International Convention on the Suppression and Punishment of the Crime of Apartheid, 30 November 1973, <https://treaties.un.org/doc/Publication/UNTS/Volume%201015/volume-1015-I-14861-English.pdf>

Instruments Relating to Disappearances and Extra-Judicial Executions

United Nations

- International Convention for the Protection of All Persons from Enforced Disappearance, 20 December 2006, <http://www.ohchr.org/EN/HRBodies/CED/Pages/ConventionCED.aspx>
- Declaration on the Protection of All Persons from Enforced Disappearances, 18 December 1992, <http://www.un.org/documents/ga/res/47/a47r133.htm>
- Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, 1989, <http://www1.umn.edu/humanrts/instree/i7pepi.htm>

Organisation of American States

- Inter-American Convention on the Forced Disappearance of Persons, 28 March 1996, <http://www.oas.org/juridico/english/treaties/a-60.html>


Humanitarian Law Instruments

- Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, 12 August 1949, <https://www.icrc.org/applic/ihl/ihl.nsf/INTRO/365?OpenDocument>
- Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, 12 August 1949, <https://www.icrc.org/applic/ihl/ihl.nsf/INTRO/370?OpenDocument>
- Geneva Convention III relative to the Treatment of Prisoners of War, 12 August 1949, <https://www.icrc.org/applic/ihl/ihl.nsf/INTRO/375?OpenDocument>
- Geneva Convention IV relative to the Protection of Civilian Persons in Time of War, 12 August 1949, <https://www.icrc.org/applic/ihl/ihl.nsf/INTRO/380>
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, <https://www.icrc.org/ihl/INTRO/470>
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, <https://www.icrc.org/applic/ihl/ihl.nsf/Treaty.xsp?documentId=AA0C5BCBAB5C4A85C12563CD002D6D09&action=openDocument>

Other Relevant Instruments

United Nations

- Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (“Declaration on Human Rights Defenders”), 8 March 1999, <http://www.ohchr.org/Documents/Issues/Defenders/Declaration/declaration.pdf>
- Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, 23 July 1996, <http://www.un.org/documents/ecosoc/res/1996/eres1996-15.htm>
- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 29 November 1985, <http://www.un.org/documents/ga/res/40/a40r034.htm>

- United Nations Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 16 December 2005, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>
 - Statute of the International Criminal Court, 17 July 1998, http://www.icc-cpi.int/nr/rdonlyres/ea9aeff7-5752-4f84-be94-0a655eb30e16/0/rome_statute_english.pdf
- 

2. Appendix 2. Further information and reading

Instruments

The general or torture-specific international human rights instruments can be found via home pages of organisations under whose auspices the individual instrument has been adopted. There are also other websites that gather texts of international treaties, such as:

- UN, The core international human rights instruments:
<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CoreInstruments.aspx>
- University of Minnesota website: <http://www1.umn.edu/humanrts/>
- Comprehensive information on the UN human rights treaty system and information on States implementation of UN treaties:
<http://www.bayefsky.com/>

In all cases, do not forget to check if the State in question has **ratified** the treaty, and if it has made any **reservations** to it. Information on the status of ratifications and any reservations can usually be found on the website of the body that is in charge with the deposition of the declarations of ratification (e.g. the secretariats of organisations).

Definition of torture and other ill-treatment

- APT and CEJIL, Torture in International Law. A guide to jurisprudence,
http://www.apt.ch/content/files_res/jurisprudenceguide.pdf
- APT, Guide to Jurisprudence on Torture and Ill -treatment: Article 3 of the European Convention for the Protection of Human Rights,
http://www.apt.ch/content/files_res/Article3_en.pdf
- Human Rights Committee, General Comment No. 20,
<http://www1.umn.edu/humanrts/gencomm/hrcom20.htm>
- Evans, Malcolm D, Getting to Grips with Torture, 51(2) International and Comparative Law Quarterly (2002), pp. 365 - 383.

- McGregor Lorna, Applying the Definition of Torture to the Acts of Non-State Actors: The Case of Trafficking in Human Beings, 36(1) Human Rights Quarterly (2014), pp. 210-241.
- Nowak Manfred and McArthur Elizabeth, The United Nations Convention against Torture: A Commentary (Oxford: Oxford University Press, 2008).
- Rodley, Nigel S., The Definition(s) of Torture in International Law, 55(1) *Current Legal Problems* (2002), pp. 467-493.
- UN Voluntary Fund for Victims of Torture, interpretation of torture in the light of the practice and jurisprudence of international bodies, http://www.ohchr.org/Documents/Issues/Torture/UNVFVT/Interpretation_torture_2011_EN.pdf

Documenting torture

There are many resources available guiding NGOs through documenting and reporting human rights violations in general and torture allegations in particular.

Two manuals are of particular importance for documenting torture:

- Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, www.ohchr.org/Documents/Publications/training8Rev1en.pdf . It contains detailed provisions on the legal investigation of torture, and in particular the medical examination of torture victims. The UN has endorsed the Istanbul protocol on several occasions and it now represents an established set of guidance, which medical professionals, NGOs and experts regularly use to document allegations of torture.
- Minnesota Protocol: Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions <http://www1.umn.edu/humanrts/instree/executioninvestigation-91.html> . It contains similarly detailed provisions concerning autopsies and the examination of dead bodies, including those who have died as a result of torture.

Other guides and resources on documenting allegations of torture:

- Asia Pacific Forum, Raoul Wallenberg Institute, Manual on Conducting a National Inquiry into Systemic Patterns of Human Rights Violation, <http://www.asiapacificforum.net/support/resources/training/national-inquiries/downloads/resources/manual-on-conducting-a-national-inquiry-into-systemic-patterns-of-human-rights-violation-2012>
- Asia Pacific Forum, Undertaking Effective Investigations: A Guide for National Human Rights Institutions, <http://www.asiapacificforum.net/support/files/investigations-manual-for-nhris>
- Front Line Defenders, A manual on Digital Security and Privacy for Human Rights Defenders, http://www.frontlinedefenders.org/files/en/eseaman.en_.pdf
- Front Line Defenders, Workbook on Security: Practical Steps for Human Rights Defenders at Risk, http://www.frontlinedefenders.org/files/workbook_eng.pdf
- HURIDOCS, What is documentation. A manual, Vol. 1 and 2, <https://www.huridocs.org/resource/what-is-documentation/>
- Internews, Speak Up, Speak Out: A Toolkit for Reporting on Human Rights Issues, http://www.internews.org/sites/default/files/resources/Internews_SpeakUpSpeakOut_Full.pdf
- IRCT, In pursuit of justice: The importance of psychosocial support for torture victims participating in legal proceedings, <http://www.irct.org/media-and-resources/library/other-irct-key-publications.aspx>
- Save the Children, Interviewing Children: A guide for journalists and others, http://www.savethechildren.org.uk/sites/default/files/docs/INTERVIEWING_CHILDREN.pdf
- UN, Training Manual on Human Rights Monitoring, <http://www1.umn.edu/humanrts/monitoring/monitoring-training.html>
- Witness: Conducting safe, effective and ethical Interviews with survivors of sexual and gender-based violence, <http://library.witness.org/product/guide-to-interviewing-survivors-of-sexual-and-gender-based-violence/>

Using mechanisms to report allegations of torture

Most of the mechanisms make their reports available on the Internet. The mechanisms based at the OHCHR have a particularly well-developed website, with a database containing most if not all public documents published by them. Most (if not all) human rights institutions have websites, where they publish an increasing number of documents and publications.

National mechanisms

- APT, Asia Pacific Forum, OHCHR, Preventing torture: An Operational Guide for National Human Rights Institutions, <http://www.ohchr.org/Documents/Publications/PreventingTorture.pdf>
- APT, Optional Protocol to the UN Convention against Torture: Implementation Manual, 2010, www.aptc.ch/content/files_res/opcat-manual-english-revised2010.pdf
- APT, National Human Rights Commissions and Ombudspersons' Offices / Ombudsmen as National Preventive Mechanisms under the Optional Protocol to the Convention against Torture, 2006, http://www.aptc.ch/content/files_res/opcat-nhris-ombudspersons-as-npms-en.pdf

UN mechanisms

- OMCT, Seeking Remedies for Torture Victims: A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies, OMCT Handbook Series Vol. 4 (2014), 2nd edition, http://www.omct.org/files/2014/11/22956/v4_web_onusien_en_omc14.pdf
- UN, Information and guidelines for relevant stakeholders' written submissions, <http://www.ohchr.org/Documents/HRBodies/UPR/TechnicalGuideEN.pdf>
- OHCHR, A Handbook for Civil Society (2008), http://www.ohchr.org/EN/AboutUs/CivilSociety/Documents/Handbook_en.pdf
- UPR Info, Civil Society Follow-up Kit 2014, http://www.upr-info.org/followup/stable/Civil_society_kit.pdf

European system

- European Court of Human Rights, The Practical Guide on Admissibility Criteria, http://www.echr.coe.int/Documents/Admissibility_guide_ENG.pdf
- European Court of Human Rights, Fact sheets on different issues, <http://www.echr.coe.int/Pages/home.aspx?p=press/factsheets>
- OMCT, Article 3 of the European Convention on Human Rights: A Practitioner's Handbook, OMCT Handbook Series Vol. 1 (2014), 2nd edition, http://www.omct.org/files/2014/11/22956/v1_web_europeen_handbook_en_omc14.pdf

Inter-American system

- Inter-American Commission on Human Rights, Petition and case system: Informational brochure, http://www.oas.org/es/cidh/docs/folleto/CIDHFolleto_eng.pdf
- International Justice Resource Centre, Reinsberg Lisa J., Advocacy before the Inter-American System: A Manual for Attorneys and Advocates, <http://ijrcenter.org/wp-content/uploads/2014/03/Manual-Advocacy-before-the-Inter-American-System-2014.pdf>
- OMCT, The Prohibition of Torture and Ill-Treatment in the Inter-American Human Rights System: A Handbook for Victims and their Advocates, OMCT Handbook Series Vol. 2 (2014), 2nd edition, http://www.omct.org/files/2014/11/22956/v2_web_guide_interamricain_en_omc14.pdf

African system

- African Court on Human and Peoples' Rights, Practice Directions as a guide to potential litigants, <http://www.african-court.org/en/index.php/documents-legal-instruments>

- Egyptian Initiative for Personal Rights and others, Filing a Communication before the African Commission on Human and Peoples' Rights: A complainant's manual, <http://www.redress.org/downloads/publications/1307%20Manual%20to%20the%20African%20Commission.pdf>
- FIDH, Practical Guide: NGOs and the African Commission for Human and Peoples' Rights, <https://www.fidh.org/IMG/pdf/cadhpmanuelen.pdf>
- Oder Judith, Litigating Torture Cases in Light of Recent Developments within the African Human Rights System, http://www.omct.org/files/2007/07/4222/african_system_j_oder.pdf
- OMCT, The Prohibition of Torture and Ill-Treatment in the African Human Rights System: A Handbook for Victims and their Advocates, OMCT Handbook Series Vol. 3 (2014), 2nd edition, http://www.omct.org/files/2014/11/22956/v3_web_african_en_omc14.pdf
- REDRESS, Reaching for Justice: The Right to Reparation in the African Human Rights System, <http://www.redress.org/downloads/publications/1310Reaching%20For%20JusticeFinal.pdf>

ICC

- Human Rights First, The Role of Human Rights NGOs in Relation to ICC Investigations, https://www.humanrightsfirst.org/wp-content/uploads/pdf/NGO_Role_Discussion_Paper.pdf
- Human Rights Watch, The International Criminal Court: How Nongovernmental Organizations Can Contribute to the Prosecution of War Criminals, <http://www.hrw.org/legacy/backgrounders/africa/icc0904/icc0904.pdf>
- ICC, Representing Victims before the International Criminal Court: A Manual for legal representatives, <http://www.icc-cpi.int/iccdocs/PIDS/tmp/Representing%20Victims%20before%20ICC.PDF>

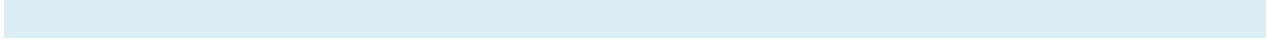
Rules of procedure of international human rights bodies

- UN Human Rights Committee, Rules of Procedure, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=8&DocTypeID=65
- UN Committee against Torture, Rules of Procedure, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=1&DocTypeID=65
- African Commission on Human and Peoples' Rights, Rules of Procedure, <http://www.achpr.org/instruments/rules-of-procedure-2010/>
- African Court on Human and Peoples' Rights, Rules of the Court, <http://www.african-court.org/en/index.php/documents-legal-instruments>
- European Court of Human Rights, Rules of Procedure, http://www.echr.coe.int/Documents/Rules_Court_ENG.pdf
- Inter-American Commission on Human Rights, Rules of Procedure, <http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp>
- Inter-American Court on Human Rights, Rules of Procedure, http://www.corteidh.or.cr/sitios/reglamento/nov_2009_ing.pdf
- ECOWAS Court Rules of Procedure, http://www.courtecowas.org/site2012/pdf_files/rules_of_procedure.pdf
- The East African Court of Justice Rules of Procedure, <http://eacj.org/wp-content/uploads/2013/09/EAC-Rules-of-Procedure-2013.pdf>

As rules of procedure are occasionally amended, you need to check for any updates.

Other resources on international law and practice relating to torture

- Human Rights Centre, University of Essex, Foley Conor, Combating Torture: A Manual for Judges and Prosecutors, <http://www.essex.ac.uk/combatingtorturehandbook/english/index.htm>
- OHCHR, Professional Training Series, Human Rights Standards and Practice for the Police, <http://www.ohchr.org/Documents/Publications/training5Add3en.pdf>

- IRCT Key publications, <http://www.irct.org/media-and-resources/library/other-irct-key-publications.aspx>
 - Rodley, Nigel S., Pollard, Matt, “The Treatment of Prisoners Under International Law”, 3rd edition, Oxford University Press (2009).
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3. Appendix 3. Contact details

The following is a list of intergovernmental and non-governmental organisations working on the prohibition of torture and their contact details. The body of the Handbook provides direction on the mandate of each organisation. The non-governmental organisations listed here have different mandates in relation to torture. Some deal with rehabilitation, some with litigation and redress, and others with advocacy and prevention. It is advisable to consult their websites before contacting them in order to understand their mandate and their particular method of work.

International Mechanisms

Office of the UN High Commissioner for Human Rights

Office of the United Nations High Commissioner for Human Rights (OHCHR)

Palais Wilson

52 rue des Pâquis

CH-1201 Geneva, Switzerland

Telephone: +41 22 917 9220

E-mail: infodesk@ohchr.org

www.ohchr.org

Postal address

Office of the United Nations High Commissioner for Human Rights (OHCHR)

Palais des Nations

CH-1211 Geneva 10, Switzerland

Civil Society Section

Telephone: +41 (0) 22 917 9656

E-mail: civilsociety@ohchr.org

UN treaty body committees: individual petitions

Petitions and Inquiries Section
Office of the High Commissioner for Human Rights
United Nations Office at Geneva
1211 Geneva 10, Switzerland
Fax: + 41 22 9179022 (particularly for urgent matters)
E-mail: petitions@ohchr.org

Human Rights Committee

Human Rights Treaties Division
Office of the High Commissioner for Human Rights
Palais Wilson - 52, rue des Pâquis
CH-1201 Geneva (Switzerland)
Telephone: +41 22 917 90 00
Fax: +41 22 917 90 08
E-mail: ccpr@ohchr.org
<http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx>

Committee against Torture

Human Rights Treaties Division
Office of the High Commissioner for Human Rights
Palais Wilson - 52, rue des Pâquis
CH-1201 Geneva (Switzerland)
Telephone: +41 22 917 97 06
Fax: +41 22 917 90 08
E-mail: cat@ohchr.org
<http://www.ohchr.org/en/hrbodies/cat/pages/catindex.aspx>

Committee for the Elimination of Racial Discrimination

Human Rights Treaties Division

Office of the High Commissioner for Human Rights

Palais Wilson - 52, rue des Pâquis

CH-1201 Geneva (Switzerland)

Telephone: +41 22 917 97 57

Fax: +41 22 917 90 08

E-mail: cerd@ohchr.org

<http://www.ohchr.org/EN/HRBodies/CERD/Pages/CERDIndex.aspx>

Committee on the Elimination of Discrimination against Women

Human Rights Treaties Division

Office of the High Commissioner for Human Rights

Palais Wilson - 52, rue des Pâquis

CH-1201 Geneva (Switzerland)

Telephone: +41 22 917 94 43

Fax: +41 22 917 90 08

E-mail: cedaw@ohchr.org

<http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/CEDAWIndex.aspx>

Committee on the Rights of the Child

OHCHR-UNOG

CH 1211 Geneva 10, Switzerland

Telephone: +41-22-917 9000

Fax: +41-22-917 9011

E-mail: webadmin.hchr@unog.ch

<http://www.unhchr.ch/>

UN Special Procedures Division

OHCHR-UNOG

8-14 Avenue de la Paix

1211 Geneva 10
Switzerland

UN Special Rapporteur on Torture

Un Special Rapporteur on Torture
OHCHR-UNOG
CH 1211 Geneva 10, Switzerland
Telephone: +41-22-917 9000
Fax: +41-22-917 9006
E-mail: webadmin.hchr@unog.ch
<http://www.unhchr.ch/>

Human Rights Council Complaint Procedure

Complaint Procedure Unit
Human Rights Council Branch
Office of the United Nations High Commissioner for Human Rights
United Nations Office at Geneva
CH-1211 Geneva 10, Switzerland
Fax: (41 22) 917 90 11
E-mail: cp@ohchr.org

OHCHR Civil Society Section
Tel: +41 22 917 96 56
Fax: +41 22 917 90 11
E-mail: civilsociety@ohchr.org

Regional Mechanisms

African Commission on Human and Peoples' Rights

Kairaba Avenue, P.O. Box 673
Banjul, The Gambia
Telephone: +220-392962
Fax: +220-390764
Email: achpr@achpr.gm
www.achpr.org

European Committee for the Prevention of Torture

Council of Europe
F-67075 Strasbourg Cedex
France
E-mail: HumanRights.Info@coe.int
Telephone: +33-3-88 41 20 24
Fax: +33-3-88 41 27 04
<http://www.cpt.coe.int/>

European Court of Human Rights

The Registrar
European Court of Human Rights
Council of Europe
F-67075 Strasbourg Cedex
France
Telephone: +33-3-88 41 20 18
Fax: +33-3-88 41 27 30
Fax for request for interim measures: +33-3-88 41 39 00
<http://www.echr.coe.int/>

Inter-American Commission on Human Rights

Inter-American Commission on Human Rights
1889 F St., NW, Washington, D.C., USA 20006.

Telephone: +1-202-458 6002

Fax: +1-202-458 3992

E-mail: cidhoea@oas.org

<http://www.cidh.oas.org/>

Inter-American Commission's Rapporteurship on the Rights of Persons Deprived of Liberty

Inter-American Commission on Human Rights
1889 F St. NW, Washington, D.C., 20006, USA

Telephone: +1-202-458-3992

<http://www.oas.org/en/iachr/pdl/default.asp>

Inter-American Court of Human Rights

Inter-American Court of Human Rights

Apdo 6906-1000

San José, Costa Rica

Telephone: + 506-234 0581 or +506-225 3333

Fax: +506-234 0584

E-mail: corteidh@sol.racsa.co.cr

<http://www1.umn.edu/humanrts/iachr/iachr.html>

Further Sources of Help

Intergovernmental Specialised Agencies

International Labour Organisation

International Labour Standards and Human Rights Department (NORMES)

4 route de Morillons

CH-1211 Geneva 22

Switzerland

Telephone: +41-22-799 7126

Fax: +41-22-799 6926

Email: infleg@ilo.org

<http://www.ilo.org/>

Organization for Security and Co-Operation in Europe (OSCE), Office for Democratic Institutions and Human Rights (ODIHR)

Organization for Security and Co-operation in Europe

Office for Democratic Institutions and Human Rights

Aleje Ujazdowskie 19

00-557 Warsaw

Poland

Telephone: +48-22-520 06 00

Fax: +48-22-520 06 05

E-mail: office@odihhr.osce.waw.pl

<http://www.osce.org/odihhr/> (includes current details of field operations)

United Nations Development Programme (UNDP)

1 UN Plaza

New York NY 10017

United States

<http://www.undp.org> (this site provides access to many UNDP field offices throughout the world)

United Nations High Commissioner for Refugees

C.P. 2500,

1211 Geneva 2

Switzerland

<http://www.unhcr.ch/> (Includes link to email contacts and details of all UNHCR field operations)

UNICEF

UNICEF House
3 United Nations Plaza
New York, New York 10017
U.S.A.
Telephone: +1-212-326 7000
Fax: +1-212-887 7465
<http://www.unicef.org/>

International Humanitarian Organisation

International Committee of the Red Cross

19 Avenue de la Paix
CH 1202 Geneva
Switzerland
Telephone: +41-22-734 60 01
Fax: +41-22-733 20 57 (Public Information Centre)
E-mail: webmaster.gva@icrc.org
<http://www.icrc.org/>

International NGOs

Umbrella Organisations

Association Pour la Prévention de la Torture (APT)

Route de Ferney 10
Case postale 2267

CH-1211 Geneva 2
Switzerland
Telephone: +41-22-734 2088
Fax: +41-22-734 5649
Email: apt@apt.ch
<http://www.apt.ch/> (includes copies of many of their reports and studies)

Federation Internationale des Ligues des Droits de L'homme (FIDH)

17 Passage de la Main d'Or
75011 Paris, FRANCE
Telephone : +33-1-43 55 25 18
Fax : +33-1-43 55 18 80
E-mail : fidh@csi.com
<http://www.fidh.imagnet.fr/>

Organisation Mondiale Contre la Torture / World Organisation Against Torture (OMCT)

International Secretariat
PO Box 35 - 37 Rue de Varembe
CH1211 Geneva CIC 20
Switzerland
Telephone: + 41-22-733 3140
Fax: + 41-22-733 1051
Email: omct@omct.org
<http://www.omct.org/>

Other International NGOs

Amnesty International (AI)

International Secretariat

1 Easton St

London

WC1X 8DJ

UK

Telephone: +44-171-413 5500

Fax: +44-171-956 1157

E-mail: amnestyis@amnesty.org

<http://www.amnesty.org/> (the starting point for access to all AI reports and press releases, as well contact details for national branches)

Centre for Civil and Political Rights (CCPR Centre)

Rue de Varembé 1

PO Box 183

1202 Geneva

Switzerland

Telephone: +41-22-33 22 555

Email: info@ccprcentre.org

<http://www.ccprcentre.org/>

FIACAT

Fédération Internationale de l'ACAT

27 rue de Maubeuge

75009 PARIS

France

Telephone : +33-1-42 80 01 60

Fax : +33-1-42 80 20 89

E-mail : fiacat@fiacat.org

<http://www.fiacat.org/?lang=en>

Human Rights Internet (HRI)

8 York Street, Suite 302
Ottawa, Ontario
K1N 5S6 Canada
Telephone: +1-613-789 7407
Fax: +1-613-789 7414
E-mail: hri@hri.ca
<http://www.hri.ca/>

Human Rights Watch (HRW)

350 Fifth Avenue, 34th Floor
New York, NY
10118-3299 USA
Telephone: +1-212-290 4700
Fax: +1-212-736 1300
E-mail: hrwnyc@hrw.org
<http://www.hrw.org/>

Inter-American Institute of Human Rights

A.P. 10.081-1000
San José, Costa Rica
Tel.: +506-234 0404
Fax: +506-234 0955
E-mail: instituto@iidh.ed.cr
<http://www.iidh.ed.cr/>

International Service for Human Rights

(provides information and assistance to NGOs wishing to use the UN system)

1 Rue de Varembeé
P.O. Box 16

Ch-1211 Geneva CIC
Switzerland
Telephone: +41-22-733 5123
Fax: +41-22-733 0826
www.ishr.ch/

Penal Reform International

60-62 Commercial Street
London
E1 6LT
United Kingdom
Telephone: +44 20 7247 6515
Fax: +44 20 7377 8711
E-mail: Headofsecretariat@pri.org.uk
<http://www.penalreform.org/>

Physicians for Human Rights (PHR)

100 Boylston St.
Suite 702
Boston, MA 02116
United States
Telephone: +1-617-695 0041
Fax: +1-617-695 0307
E-mail: info@phrusa.org
<http://physiciansforhumanrights.org/>

REDRESS

87 Vauxhall Walk
London SE11 5HJ
United Kingdom

Telephone: +44 207 7793 1777

Fax: +44 207 7793 1719

E-mail: info@redress.org

<http://www.redress.org/>

UPR Info

3, Rue de Varembé

4th Floor

1202 Geneva

Switzerland

Telephone: + 41 22 321 77 70

Email: info@upr-info.org

<http://www.upr-info.org/>

Victim support organisations

African Centre for the Treatment and Rehabilitation of Torture Victims (Actv)

Block 39 Plot 113 Owen Road (off Tufnell Drive) Kamwokya

P.O.Box 6108 Kampala Uganda

Telephone: +256 312 263918/620

Fax: +256 312 263919

E-mail: actv@actvuganda.org

www.actvuganda.org

Center for Victims of Torture

2356 University Avenue West, Suite 430

St. Paul, MN 55114

USA

Telephone: +1 612.436.4800

E-mail: cvt@cvt.org

<http://www.cvt.org/>

Freedom from Torture, Medical Foundation for the Care of Victims of Torture

111 Isledon Road

London N7 7JW

United Kingdom

E-mail (by contact form): <http://www.freedomfromtorture.org/webform/7807>

Telephone: +44 020 7697 7777

Fax: 020 7697 7799

www.freedomfromtorture.org/

International Rehabilitation Council for Torture Victims (IRCT)

P.O. Box 2107

DK-1014 Copenhagen K

Denmark

Telephone: +45-33-76 06 00

Fax: +45-33-76 05 00

E-mail: irct@irct.org

<http://www.irct.org> / (includes the contact details of centres for victims of torture in many countries)

United Nations Voluntary Fund for Victims of Torture

(Helps to fund projects for the rehabilitation of victims of torture)

OHCHR-UNOG (Trust Funds Unit)

CH-1211 Geneva 10

Telephone: +41-22-917 9000

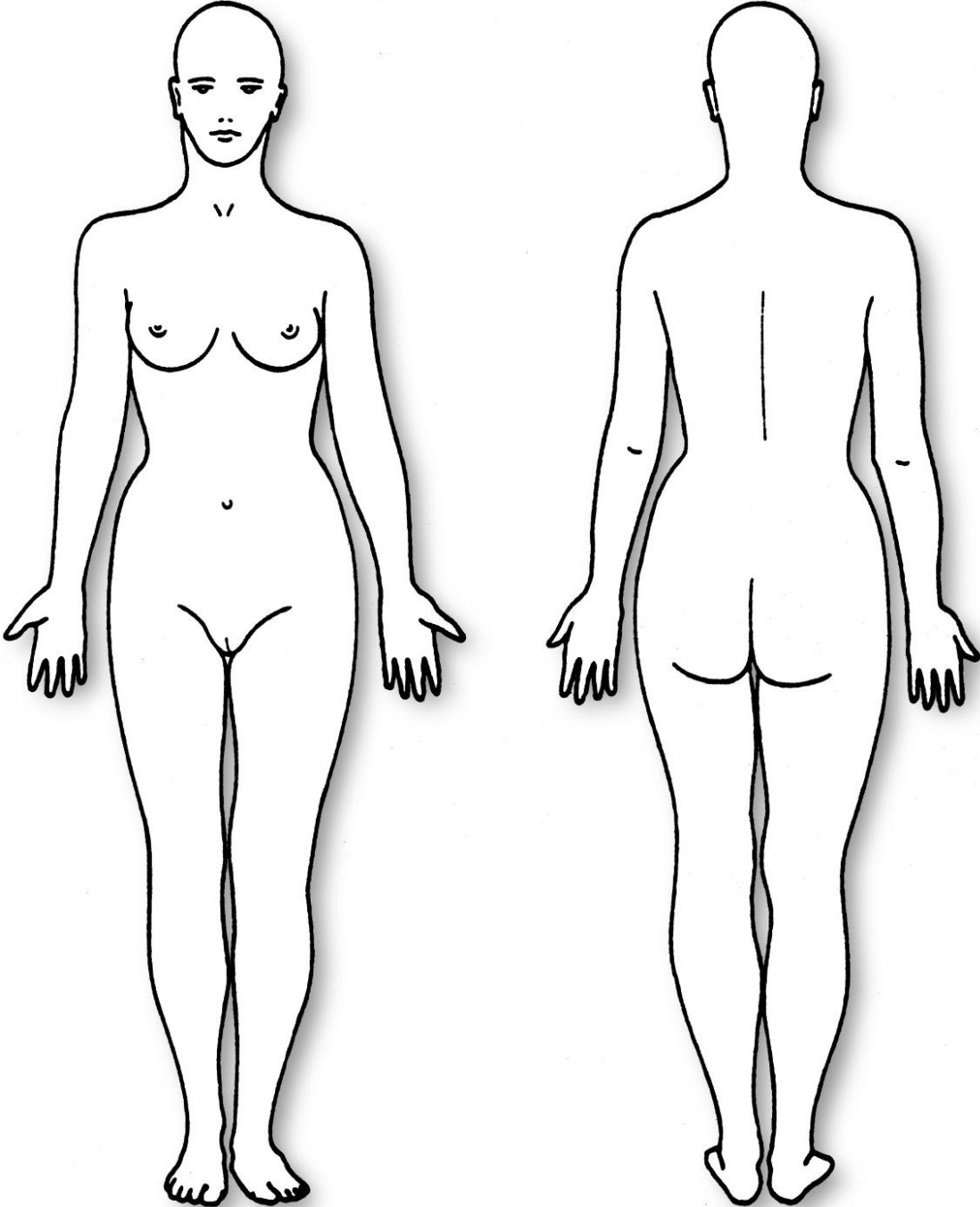
Fax: +41-22-917 9011

E-mail: dpremont.hchr@unog.ch

<http://www.unhcr.ch/>

4. Appendix 4. Body diagrams

FEMALE - FRONT AND BACK



MALE - FRONT AND BACK

