

## STRATEGIC LITIGATION TOOLKIT

# Drafting Complaints to the United Nations Human Rights Committee and Committee against Torture

**Torture, Deaths in Custody, and Related Violations**

2018

This document provides a series of tools to assist in drafting claims regarding torture, deaths in custody, and related violations. It is designed to be used by lawyers and activists in assessing potential cases, and in preparing “individual communications”—claims regarding individual cases—to the United Nations Human Rights Committee and the United Nations Committee against Torture.

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Published by:

Open Society Foundations

224 West 57<sup>th</sup> Street

New York, New York 10019 USA

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# Strategic Litigation Toolkit: Drafting Torture Complaints to the United Nations Human Rights Committee or Committee against Torture

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## ACKNOWLEDGMENTS

This toolkit was written through a joint effort by a group of lawyers and human rights defenders who share a common devotion to the fight against torture.

The toolkit aims to serve as a manual for human rights activists and lawyers to develop their skills in drafting individual complaints to the United Nations Human Rights Committee or to the United Nations Committee against Torture, and in using litigation as one of the tools to combat torture, cruel, inhuman or degrading treatment and punishment.

The toolkit draws upon various case profiles, model structures, and sample filings of cases in which the expertise of the Open Society Justice Initiative was utilized. It also presents general principles of drafting, short explanations and arguments on points of law, and explains how to structure a claim.

The main authors of the toolkit are Ben Batros, Nigina Bakhrieva, Masha Lisitsyna, and Alexandra Cherkasenko.

The Justice Initiative would also like to acknowledge the following individuals for their invaluable help in researching, reviewing, and providing input: Katya Szarvas, Erin Neff, Fatima Yasmin Bokhari, Dila Torlak, Patricia A. Rothenberg, Eric Motika, Amanda Wetzel, Sarah Montgomery, Tashmin Ali, Matthew Windsor, Anna Astrakhan, Yulia Votslava, Sardorbek Abdukhaliyev, and Anastasiya Miller. The Justice Initiative is grateful for the peer review of Matthew Sands of the Association for the Prevention of Torture (APT).

The Justice Initiative would also like to express its deepest gratitude to Stein Scholars of Public Interest Law at Fordham Law School, who conducted initial research for the toolkit: Jocelyn Brooks, Katie Wang, and Miranda Galindo.

Rupert Skilbeck, former litigation director, and David Berry, senior communications officer, reviewed the toolkit.

Special thanks to Sonya Kleshik and Olga Vovk, who provided high quality English-Russian translation.

## PART I: HOW TO USE THIS TOOLKIT

1. This Toolkit synthesizes the experience of the Open Society Justice Initiative to provide guidelines for lawyers and activists seeking to assess claims of torture, deaths in custody, and related violations, and to prepare what the United Nations Human Rights Committee (HRC) and the United Nations Committee against Torture (CAT) call “individual communications”—claims on behalf of the victims of these crimes. The Toolkit uses examples of claims to these Committees to assist in organizing the different parts of your claim and provides model legal submissions that you can use to assist in drafting your claim.
2. Terms the UN Committees use in their procedures and decisions include the following:
  - *Author*: The individual submitting the claim to the UN HRC.
  - *Communication*: Article 1 of the Optional Protocol uses this term instead of “complaint,” “petition,” or “claim.” This Toolkit uses the terms “communication” and “claim.”
  - *Views*: The conclusions of the UN Committees as to whether there has been a violation of a person’s rights. In some instances, such as rulings that a case is inadmissible or in conclusions of the UN Committee against Torture, they may use the term “decision.”
3. Part II of the Toolkit provides a **brief overview** of the admissibility criteria the UN Committees use for individual communications and the procedures they use to evaluate them.
4. Part III of the Toolkit sets out **general principles of drafting claims**. Given that the members of the Committee will often not be familiar with the details of your domestic legal system, and that they only meet for short periods each year, it is important to be clear and direct in your drafting.
5. Part IV of the Toolkit explains **how to structure a claim** to one of the Committees. It identifies the different parts of the claim, explains what you should include in each part, and suggests how to present the information. The annexes provide model structures based on this approach.
6. Part V of the Toolkit contains a series of **model legal arguments** you can use as templates. These are short explanations and arguments on legal points that often come up when preparing claims involving torture or death in custody. We have designed them to address the HRC, but you can adapt them for CAT. When adapting them for your particular case, you should
  - change or delete anything that does not apply to your particular case;
  - transpose the arguments so that CAT law appears first and HRC law second if you are arguing before CAT; and
  - ensure that the arguments are up to date by checking the resources listed in Part VI.
7. Part VI of the Toolkit contains a **list of resources** and suggestions on conducting research in this area of law. It may be useful in checking for the most recent decisions or developments on a particular issue, or for conducting research on novel issues not included in this Toolkit.

8. In addition to **model structures** for the claims, the annexes provide links to examples of real cases that have been submitted to the Committees. The examples follow the approach explained in Part IV. Along with the model legal arguments in Part V, these will enable you to build your claim.



## **PART II: PROCEDURE AND ADMISSIBILITY OF CLAIMS**

9. Before examining the merits of a claim, the HRC and CAT consider, individually, whether it is admissible under the Optional Protocol to the International Covenant on Civil and Political Rights (ICCPR) or Article 22 of the UN Convention against Torture (UNCAT). To be admissible, a claim must fall within the Committee's jurisdiction, cannot be under consideration by another body, and crucially, the person who suffered harm must have exhausted any domestic remedies available. The Committee will consider the State's written response to your claim, as well as the information you submit. This section of the Toolkit will provide an overview of the admissibility requirements and of the main procedural steps and logistical details relevant to preparing and submitting a claim to one of the Committees.

### **A. General Principles on Admissibility**

#### The victim and representation

10. Anyone can complain to the Committee if the authorities of a State that is a party to the ICCPR Optional Protocol or has made a declaration under Article 22 of the UNCAT that has violated his or her rights as these documents describe them. There are no limits based on citizenship, legal capability, or age.
11. An NGO or a lawyer cannot bring a case to the Committee without the victim's consent and authorization. Generally speaking, the author must sign the communication or authorize his or her legal representative to submit the claim, in which case the representative must sign it. There is no standard form for the authorization; in particular, certification by a notary is not required. However, authorization must specifically indicate that the representative is entrusted to submit a communication to the relevant UN Committee on behalf of the victim. A general power of attorney not mentioning the Committee would normally not be sufficient.
12. If the author cannot provide a signature or authorization, the communication must include a clear explanation of why he or she cannot. For example, where a person has died or is in prison without access to the outside world, a close family member (e.g. parent, child, or spouse) may lodge a claim on that person's behalf without formal authorization. However, neither detention of the victim nor a familial relationship in and of itself is enough for the Committees to accept a claim on the victim's behalf.
13. The Committees do not consider group claims as such. However, you can submit a single claim on behalf of two or more victims if they both suffered violations arising from the same events and each of them provides an authorization and description of how their rights were violated.

#### Time and place

14. UNCAT claims that follow the commencement of jurisdiction—the date when the State where the violations took place made its declaration under Article 22—satisfy the place and time requirements for admissibility. For HRC claims, generally speaking, not only must violations occur on the territory of the State after the date that the Optional Protocol entered

into force but, as of 2012, they must also not constitute “abuse of the right of submission,”<sup>1</sup> which states that the claim must not be more than five years after the victim exhausted domestic remedies.

15. If the victim was initially detained or the torture commenced before the particular Committee’s jurisdiction commenced, you may still be able to present a claim if the detention or torture continued after that date. Even if the harmful acts ended before the Committees had jurisdiction, if the victim requested an investigation or compensation after that date and the Government failed to provide it (even if the first request predated jurisdiction), then it may still be possible to bring a claim for the failure to investigate and provide redress. Generally, depending on how much of the efforts to obtain compensation or investigation took place before the Committee had jurisdiction, such failures might constitute continuing violations (see model legal argument A.2, below).
16. If the claim is submitted more than five years after the victim exhausted domestic remedies, an explanation as to why might lead the HRC to admit the claim in spite of the new rules.

#### Other international procedure

17. Both Committees consider claims that are under investigation by another international mechanism to be inadmissible, although this does not include non-judicial procedures. Neither Committee treats bodies such as Special Rapporteurs or Working Groups established by the UN Human Rights Council as judicial bodies. For instance, you can send an urgent appeal or an allegation letter to the UN Special Rapporteur on Torture and file the communication with the HRC at the same time.<sup>2</sup> The CAT also considers cases inadmissible that were considered in the past, and some States have imposed restrictions that prevent the HRC from examining such cases as well.
18. Generally, neither HRC nor CAT will consider a case that a regional human rights court, such as the European Court of Human Rights, substantively evaluated.<sup>3</sup> However, there are two circumstances in which they might make an exception for a case or certain issues in a case. First, if the other regional or international court dismissed it solely on procedural grounds such as admissibility, a case might be admissible to HRC or CAT. Second, if the other court did look into the merits of the case, but only considered violations different from those in the communication, HRC or CAT might consider these violations.<sup>4</sup>
19. While the HRC or the CAT is a primary choice for the torture claims, if your client is a victim of domestic violence against women, you could consider submitting your claim to the Committee on the Elimination of Discrimination against Women instead of HRC or CAT.

#### Exhaustion of domestic remedies

20. The Optional Protocol requires the applicant to exhaust domestic remedies with regard to *each* of the violations in the claim, which CAT does not. For example, just indicating that

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<sup>1</sup> UNHRC, *Rules of Procedure*, UN Doc. CCPR/C/3/Rev.9, Rule 96 (Rule 96 in its amended form will apply to communications received by the Committee after 1 January 2012).

<sup>2</sup> However, depending on the circumstances of its engagement, the involvement of the UN Working Group on the Arbitrary Detention may exclude a claim from HRC or CAT.

<sup>3</sup> *Pakas v. Lithuania*, UNHRC, Views of 25 March 2014, CCPR/C/110/D/2155/2012, para. 7.2.

<sup>4</sup> *Althammer v. Austria*, UNHRC, Views of 8 August 2003, CCPR/C/78/D/998/2001, para. 8.4; *Pakas v. Lithuania*, UNHRC, Views of 25 March 2014, CCPR/C/110/D/2155/2012, para. 7.2; *Puertas v. Spain*, UNHRC, Views of 18 June 2013, CCPR/C/107/D/1945/2010, para. 7.3.

all relevant courts considered the applicant's case and that all of them upheld the verdict is generally not sufficient.

21. As the HRC has repeatedly stated, "Article 5(2) (b) of the Optional Protocol by referring to 'all available domestic remedies' clearly refers in the first place to judicial remedies."<sup>5</sup> In some cases, the HRC has expected authors to also exhaust any available non-judicial domestic remedies that offer a reasonable prospect of success.<sup>6</sup> However, in cases of torture and death in custody, only criminal prosecutions of perpetrators constitute an effective remedy, and the Committee will therefore not generally consider unused civil or administrative options to be a failure to exhaust domestic remedies.<sup>7</sup>
22. There is no requirement to exhaust domestic measures that are unavailable, have proven to be ineffective, or that are unduly delayed—remedies must offer a reasonable prospect of success for their omission to constitute a failure to exhaust.<sup>8</sup> Also, the requirement to exhaust domestic remedies does not apply if doing so would be dangerous.<sup>9</sup>
23. The burden of proof initially lies on the author of a communication to show that domestic remedies have been exhausted. If the State claims that further remedies are available to the author, it must show the Committee that such remedies are available and potentially effective in the author's case. The Committee often will not discuss the exhaustion of domestic remedies extensively unless the State objects in this way.

#### Substantiation of the claim

24. Insufficient substantiation can lead to a declaration of inadmissibility. To quote the HRC regarding a principle that applies to CAT as well, authors must provide "pertinent, documented and detailed information."<sup>10</sup> It is important not to advance claims in vague and general terms, but rather to specify the particular acts or omissions of the State's authorities that violated the victim's rights under the ICCPR or CAT.
25. The ICCPR requires evidence that the law, policy, practice, act, or omission of the State—which you claim violates the victim's rights—does so personally and directly.<sup>11</sup> For example, a claim should set out when and where the torture occurred; how often and for what period; the methods used; and when possible, the identity, number, and ranks of the perpetrators.

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<sup>5</sup> *R.T. v. France*, UNHRC, Views of 30 March 1989, CCPR/C/35/D/262/1987, para. 7.4; *R.L.M. v. France*, UNHRC, CCPR/C/44/D/363/1989, para. 5.4; *P.S. v. Denmark*, UNHRC, CCPR/C/45/D/397/1990, para. 5.4.

<sup>6</sup> *Pereira on behalf of Thompson v. Panama*, UNHRC, Views of 21 October 1994, CCPR/C/52/D/438/1990, para. 5.2; *Pereira on behalf of Patino v. Panama*, UNHRC, Views of 21 October 1994, CCPR/C/52/D/437/1990, para. 5.2; *Jonassen v. Norway*, UNHRC, Views of 25 October 2002, CCPR/C/76/D/881/1999, para. 8.6.

<sup>7</sup> *Vicente et al. v. Colombia*, UNHRC, Views of 19 August 1997, CCPR/C/60/D/612/1995, para. 5.2; *Coronel et al. v. Colombia*, UNHRC, Views of 24 October 2002, CCPR/C/76/D/778/1997, para. 6.2.

<sup>8</sup> *Patiño v. Panama*, UNHRC, Views of 21 October 1994, CCPR/C/52/D/437/1990, para. 5.2; *Potter v. NZ*, UNHRC, Views of 28 July 1997, CCPR/C/60/D/632/95, para. 6.3. See also *Torres Ramirez v. Uruguay*, UNHRC, Views of 8 April 1980, CCPR/C/10/D/4/1977, para. 5 (requiring that the State demonstrate "a reasonable prospect that such remedies would be effective").

<sup>9</sup> *Phillip v. Jamaica*, UNHRC, Views of 3 December 1998, CCPR/C/64/D/594/1992, para. 6.4.

<sup>10</sup> *A, B, C and D v. Uzbekistan*, UNHRC, Views of 12 May 2010, CCPR/C/98/D/1079/2002.

<sup>11</sup> OHCHR, 23 *FAQ about Treaty Body Complaints Procedures*, <http://www2.ohchr.org/english/bodies/petitions/individual.htm>.

26. It is important to provide evidence to support each fact that you set out and each violation you claim, otherwise all or part of the claim might be inadmissible. Substantiating evidence must support claims involving allegations of torture and related violations.<sup>12</sup> Although the type of evidence you must include depends on the specific facts alleged, common forms of evidence that the Committee accepts include:
- a statement by the victim, or by other witnesses;
  - complaints to the authorities, and any police reports;
  - decisions by local courts or tribunals;
  - excerpts of relevant local laws;
  - photographs of any injuries suffered;
  - medical and psychological reports<sup>13</sup> (including autopsies where relevant); and
  - other official documentation.
27. A detailed statement by the victim describing the torture is important. It should contain as much detail as possible, including the victim's current health and other consequences of the torture. However, the Committees generally do not consider the statement of the victim by itself sufficient, and so it is important to support these allegations by including medical and/or other evidence. An expert report, for example by a doctor or psychologist trained to assess the impact of torture, may be used to support your claim.
28. Although the Committees may consider corroborating evidence that is not specifically related to the facts of the claim—including NGO and media reports that indicate a pattern or practice of torture within the respondent State—they do not consider this type of general evidence dispositive, and it cannot replace the direct evidence required to support a claim.<sup>14</sup>
29. When either Committee receives a claim, the responding State must offer written observations concerning the admissibility and merits of the communication and any remedy the State may have provided. If the State does not reply, the Committee gives due weight to the author's allegations, so long as they have been properly substantiated.<sup>15</sup>
30. The Committee has not offered general guidelines on substantiation. What amounts to substantiation differs from case to case.

### **B. Submitting A Claim**

31. Claims should be sent to

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<sup>12</sup> UNHRC, *Rules of Procedure of the Human Rights Committee*, UN Doc. CCPR/C/3/Rev.9, 13 January 2011, Rule 96(b) (i.e., if an individual submission is not supported with adequate evidence, the Committee may deem it inadmissible under Article 2 of the Optional Protocol); *Bazarov v. Uzbekistan*, UNHRC, Views of 8 August 2006, CCPR/C/87/D/959/2000, para. 7.3–7.4; *Singh v. Canada*, UNHRC, Views of 30 March 2006, CCPR/C/86/D/1315/2004, para. 6.3.

<sup>13</sup> *Eshonov v. Uzbekistan*, UNHRC, Views of 22 July 2010, CCPR/C/9/D/1225/2003, para. 9.5 (noting that the “the author’s description of the injuries is corroborated either by photographic evidence submitted to the Committee or by the State party’s own forensic medical reports”).

<sup>14</sup> *Kouidis v. Greece*, UNHRC, Views of 28 March 2006, CCPR/C/86/D/1070/2002, para. 7.4 (finding that “the NGO and Committee on the Prevention of Torture reports submitted by the author are of a general character and cannot establish ill-treatment of the author”).

<sup>15</sup> *N.T. v. Kyrgyzstan*, UNHRC, Views of 19 March 2010, CCPR/C/98/D/1522/2006, para. 4.

Petitions and Inquiries Section  
Office of the High Commissioner for Human Rights  
United Nations Office at Geneva  
1211 Geneva 10, Switzerland

In the initial submission, make it clear which Committee you are asking to consider your claim. If you prefer to communicate by email instead of by post, request that the Committee communicate with you via email and provide a single email address for that purpose.

32. When you submit your claim, include a list of all of the supporting evidence and submit copies of that evidence as well. This list should be numbered, to make it easier for the Committee to find the evidence when you refer to it, and should be presented in chronological order. Where that evidence is not in one of the working languages of the Secretariat (English, Spanish, French, or Russian), you should submit a translation, or at least a translated summary.
33. It is advisable to also send an electronic copy of the claim to [petitions@ohchr.org](mailto:petitions@ohchr.org). You can also copy the claim to [registry@ohchr.org](mailto:registry@ohchr.org). It is helpful if you can send the electronic copy in both Word and PDF formats. It is not necessary to send all of the evidence electronically. You can simply explain in the email that the evidence will accompany the written copy of the claim that you have posted.
34. In cases where urgent measures must be taken with regard to your claim, send an email with the subject “Urgent matter” as well as a fax to +41 22 917 9022.

### **C. Procedure after Submitting A Claim**

35. The procedure following the submission of a claim is very similar under the Human Rights Committee and the Committee against Torture. The Special Rapporteur on New Claims or the Secretariat of the Committees processes the claims between Committee sessions. After you submit the claim, if it contains all of the basic information required to register it, the State will receive it. Generally, the Committee will require the Government to respond to the claim within *six months*. However, it must receive any request for a separate decision on admissibility within *two months*.
36. The Committee reviewing your claim will forward the Government’s reply to you. At this point, the Committees generally specify that you have two months to respond to the Government. The Committees may also ask the Government or the author for additional information on admissibility or substance. If the Government does not reply, the Committees may make a decision in the absence of official information from the Government. However, the Committees will generally give the Government a number of opportunities before taking this step. If you do not receive information from the Committees during a prolonged period, send a follow-up message to the Committee to ensure you did not miss a communication.
37. Once a Committee has all of the information that it needs, it will review the substance of the claim in a closed session and provide its Views. In 2017, the Committee issued new guidelines on making oral comments, stating that it would consider, in appropriate cases raising complex issues of fact or domestic law or important questions of interpretation of the Covenant, inviting the parties to provide their comments orally before the Committee. As a rule, the meeting will take place only if both parties accept the invitation and agree to make the arrangements necessary to participate in the meeting. If the Committee considers

the case admissible, it will draw conclusions about whether any of the author's rights were violated and identify the measures of reparation. According to 2016 Guidelines on measures of reparation, the Human Rights Committee sets out measures designed to make full reparation to the victims (restitution, compensation, rehabilitation, and measures of satisfaction), as well as measures aimed at preventing the reoccurrence of similar violations in the future (guarantees of non-repetition).<sup>16</sup> CAT also highlights that the comprehensive reparative concept therefore entails restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition.<sup>17</sup>

38. The reviewing Committee will send its Views to both the Government and the author. If it finds violations of the author's rights, it will request that the Government report on the steps it has taken to implement the remedies the Committee has called for within a specified time. (The HRC typically allows 180 days while CAT generally allows 90 days.)
39. After the Views have been decided, the Special Rapporteur on Follow-up primarily supervises their implementation. After the Government has presented its initial report on the steps it has taken, or will take, to implement the Views, the Special Rapporteur can continue to call for the implementation of the Views, if necessary.
40. It is helpful to support the Special Rapporteur by informing him/her about any action that the Government took concerning the implementation of the Committee's Views. It is similarly important to raise concerns where the Government is refusing to take any steps, especially if the Government is claiming otherwise.
41. The Special Rapporteur has limited resources, and there are many decisions awaiting implementation. Therefore, it is advisable to provide the office with specific and concrete information wherever possible: If the Views are not being implemented, what accounts for the failure? Which Government officials or institutions are creating the obstacles? What might provide specific opportunities to make progress? Which institutions need support for implementation? This helps the Special Rapporteur engage with the Government. Information for the Special Rapporteur must be sent through the Petitions and Inquiries Section of the UN OHCHR.

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<sup>16</sup> UNHRC, *Guidelines on measures of reparation under the Optional Protocol to the International Covenant on Civil and Political Rights*, 2016, para 2.

<sup>17</sup> UNCAT, *General Comment 3, Implementation of Article 14 by States Parties*, 2012, para 2

### PART III: GENERAL DRAFTING PRINCIPLES

42. *Simple language.* When drafting the communication, use simple and direct language. This makes it easier for the Committee to understand your arguments. Many communications will be translated, and using simple language will improve this process.
43. *Summaries and page limits.* The UN Petitions and Inquiries Section now limits claims to 50 pages. If the claim is longer than 20 pages, they also require a summary of up to five pages that counts toward the 50-page limit. As discussed below, including a summary of your claim is always good practice, and it should include all of the main points that you want the Committee to understand, including why the case is admissible and how you address any apparent problems with your claim.
44. *Jargon-free.* Avoid technical legal terms, and use plain language where possible. If you need to refer to the technical legal title of a court, document, or procedure, explain it, as the Committee (and the translators) may not be familiar with the legal system and terms from your country.
45. *Active language.* To help keep your language clear and direct in English, use active verbs rather than passive verbs: “The police tortured Mr. B,” instead of “Mr. B was tortured.”
46. *Humanize the victim.* Refer to people by name, especially the victim of the torture, instead of calling him or her “the victim” or “the author.” This is more direct, more personal, and reduces the risk of confusion.
47. *Write short sentences.* Long sentences can get confusing, and the reader may lose track of the main point.
48. *Paragraphs.* Have a separate paragraph for each fact or point. Short paragraphs can be a useful way to organize the argument. Each paragraph provides a signal to the reader that you are beginning a new point. Number each paragraph. This allows you to avoid repeating information later by making it easier to reference an earlier paragraph.
49. *Separate facts from law.* When drafting, have separate sections for your facts and for your legal arguments. In general, do not make legal arguments or use legal labels in the facts section. For example, when setting out the facts, do not say that the person was tortured. Instead, describe the Government agent’s action in clear and specific terms. You will explain why this constituted torture in the section on the violations, where you make your arguments.
50. *Substantiating your case.* Provide the Committee with evidence and authorities to substantiate your case. When offering facts, cite the evidence that shows how you know something; it is not enough simply to assert a fact, you must point to the evidence. It is much easier for the Committee to follow your evidence (and your claim) if you use exhibit numbers for the evidence that you provide. You should cite evidence for each major fact that you set out. Similarly, provide authorities (such as general comments, previous decisions, and Committee reports) for the legal arguments that you rely on. Aim to provide at least one authority for each major legal point you make.
51. *Stating your case.* In both facts and arguments, do not overstate your case. If you overstate (claim that a violation is worse than the facts support) or exaggerate, you lose credibility with the Committee, which can affect your entire case. If the facts don’t support what you claim, the Committee may find against you even if the facts clearly constitute a violation.

Focus on describing the facts, and then show the Committee why this constitutes a violation. Do not tell the Committee that the person was “gravely tortured.” Instead, show the Committee the specific facts of the case. A legal argument requires more than simply asserting a conclusion.

52. *Structure and headings.* Make sure that your claim has a logical structure. The template gives the main sections, but use subheadings to group related facts or arguments together and to help the reader understand how they fit together. Make sure that the subheadings are clear and tell the reader what each group of facts or arguments shows. Clear, well-organized subheadings allow the reader to skim your document and understand the main arguments. Subheadings are especially useful to organize the facts section and in more complicated sections, such as failure to investigate.
53. Make sure that your subheadings follow a consistent format. The system that this Toolkit uses is:

## **I. SECTION HEADING**

### **A. Subheading**

#### 1. Third-level Heading

##### *a) Introduction Heading*

54. *Legal arguments.* For each argument, whether relating to admissibility or a violation, it is often helpful to use a consistent structure, with (1) a topic sentence, (2) the relevant legal standards, (3) how the facts meet the legal standard, and (4) how the State is responsible.
55. *Topic sentences.* Every section should begin with a topic sentence that identifies (1) the issue the section will address and (2) the key point or argument you are making on that issue. If the Committee knows what you are going to show them, it is easier for them to understand the facts and their relevance to your arguments. By setting the agenda, you can emphasize the important points and build an argument. Topic sentences, like good subheadings, act like signposts, making it easier for the reader to follow your document.
56. *Legal standards.* When presenting your legal arguments, lead with the standards that the particular Committee has set in decisions or general comments, and then support these by citing decisions from other UN Treaty Bodies or other human rights courts. If you need to provide further details or support from “soft law” sources—such as concluding observations, guidelines, or reports of special rapporteurs—then these should come last.
57. *Using case law.* In presenting relevant case law, check whether there are any recent cases on the issue, especially from your Committee. The Committees often refer to the legal principles they developed and applied in their earlier decisions when assessing new cases. Therefore, it is often useful to direct the Committee to cases in which they set out or applied principles that support your arguments, or to cases where they found violations based on facts similar to the facts in your case.
58. *Citing legal authorities.* When making legal arguments, and when using the model arguments in Part V of the Toolkit, make sure that you give all of the information necessary for the reader to find the legal authorities or sources that you are relying on. Legal sources are easier to read and to locate when they are presented in a consistent format. In this Toolkit, the names of cases and of books are in *italics*. Consider putting the legal



authorities (and evidence) you are citing into footnotes to maintain the flow of your argument.

59. *Further guidance.* The UN Office of the High Commissioner for Human Rights has issued guidance on presenting individual complaints under the UN Human Rights Treaties, including claims to the HRC and CAT, in its [\*Fact Sheet No. 7\*](#). This includes a general overview of the information that claims must include and specific requirements of the procedure for each Committee. In addition, for a more detailed overview of the principles and process of drafting a human rights claim, the Justice Initiative has prepared a [\*Practice Note on Drafting Human Rights claims\*](#). The World Organization Against Torture (OMCT) also provides guidance on preparing claims of torture in its updated handbook on [\*Seeking Remedies for Torture Victims: A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies\*](#).

## **PART IV: HOW TO STRUCTURE A CLAIM**

60. This part explains how to structure a claim to one of the Committees. It identifies the different parts of the claim, explains what you should include in each part, and gives suggestions on how to present the information. Alternatively, the Committees have a form that an applicant can fill out (see para. 31, above).

### **A. Details of the Author and Victim**

61. Identify the author of the claim. Usually, this will be the victim. Provide the name, nationality, date of birth, mailing address, and email address of the author and the victim, whether they are the same person or not.
62. If the victim is not submitting the claim, explain why and how the author is related to the victim (see para. 12, above).
63. If you want the Committee to keep the identity of the author or some personal details confidential, explain that in the details section. As a rule, the Committee will provide these details to the respondent Government, but you can request that when the Committee publishes its decision, it use only initials for the victim rather than his or her full name. If even the initials of the victim might expose him or her, then you should request that the decision use “X” or otherwise fully anonymize him or her.
64. Identify the lawyer/activist or organization that is representing the victim. Attach a letter of authority from the victim or the author. You should send the original of the letter of authority if the victim is not personally signing the communication. If the victim cannot sign the letter of authority, you must explain clearly the reason for this: for example, the victim is in prison without any contact with the outside world.
65. Give the address where the Committee should send correspondence. Include a telephone number, fax number, and email address if possible. We recommend using the lawyer’s or NGO’s office as the address for correspondence, as victims and families may move or might not be aware of the need to respond promptly to correspondence from the Committee, which could negatively affect the results of the communication.

### **B. Details of the State**

66. Identify the accused State and set out the date that the treaty on which your claim is based (the ICCPR or UNCAT) entered into force for that State. Also set out the date on which the State accepted that the Committee could consider individual communications. In particular, set out the date on which the First Optional Protocol to the ICCPR entered into force for the State, or the date on which the State made a declaration under Article 22 of the Convention against Torture, especially if the State accepted this at a later time than it ratified or acceded to the main treaty.

### **C. Summary of the Claim**

67. Begin your communication by providing a short summary of your case. The UN Petitions and Inquiries Section require this for claims longer than 20 pages, but they are useful in all claims. Having a summary at the beginning helps the Committee members understand what the whole case is about before they start reading the details. It is an opportunity to give them the big picture. The summary itself should be brief, ideally three to four pages and no more than five pages.

68. Each claim will be assigned a Rapporteur, and a Working Group on Individual Communications will discuss the full text of the claim. However, the summary should include all of the key points so that other members of the Committee who are not part of the Working Group can assess your claim even if they are not able to read the full application. Thus, it should highlight the strengths of the claim and address any weaknesses.
69. The summary does not need to contain every detail, but should give an overview of the facts of the case (including the identity of the victim and the harms he or she suffered), the main steps that the victim or the victim's family have taken to exhaust domestic remedies, and an explanation of how the victim's rights have been violated.
70. The summary should contain four sections: (1) the core of your case in one paragraph; (2) a summary of the facts; (3) a list of the violations and a brief explanation of each; and (4) a summary of the steps that the victim has taken to exhaust domestic remedies.

#### Core of case in one paragraph

71. The core of the case consists of what happened, the rights that were violated, and why.

#### Summary of the facts

72. Provide a short summary of the main facts that make up the claim; this is usually less than one page. In a torture case, this will usually start with the detention of the victim. If particular safeguards against torture were not present and allowed the torture to happen, identify them here.
73. You do not need to include every date or detail at this point. Give a general description of the treatment that constituted the torture. Identify the key parameters of the case: how long the person was detained and tortured for; the location of the torture; who tortured him or her; and whether the victim received any medical attention. If you know why the torture happened (e.g., to extract a confession, in retaliation for an action, or for a discriminatory purpose), state this here.
74. If the torture has stopped, explain when and how (e.g. was the person released; tried and convicted and thus removed from the detention facility where torture took place; has the person died?). Briefly outline any medical treatment received and the impact of the torture on the victim's life and health. Did the victim or the victim's family make any complaints regarding the torture (whether in detention, during any trial, or after release)? Has there been any investigation or any other official response, and if so, what was the outcome?

#### Summary of violations of the ICCPR or UNCAT

75. Set out the violations for which the State is responsible, such as committing torture, not having adequate safeguards against torture, failure to conduct an effective investigation, or failure to provide redress. It is important to state a clear case. For each of the violations, give the claim a short, persuasive title (such as "Consistent Failure to Investigate Torture by Police" or "Torture by Police during Unregistered Detention"), and then briefly explain in a paragraph or two which article the State violated and why.

#### Summary of domestic remedies exhausted

76. Briefly set out the victim's or family's actions to seek justice at the domestic level. If efforts have gone up to the highest court, it may be sufficient to simply state the final decision rejecting the claims.

77. Alternatively, if there have been a number of complaints and requests that did not culminate in a single decision, set out the complaints made to the domestic authorities during detention or during any trial; the complaints made to the police or the prosecutor to obtain an investigation; and any challenges made in the courts (for example, a challenge against the police or prosecutor for refusing to open an investigation or for closing an investigation). In the summary, you might give an overview of the challenges the applicants made. For example:

*“Between 1 June 2008 and 28 March 2009, the applicant made four requests to the police and the prosecutor to investigate the torture of his brother. Between 12 December 2008 and 13 May 2009, the applicant also filed three challenges in the City Court against the failure of the prosecutor to initiate a case against the officers who were responsible for this torture.”*

#### **D. Facts of the Claim**

78. The next section will be a clear explanation of the facts that demonstrate your claim. State the facts in chronological order. Where possible, give the dates and times of events. Refer to the evidence that supports each of your facts.
79. Do not include arguments or legal discussion in this section. The case will be more convincing if you present it objectively, without the legal labels that you will ask the Committee to adjudicate later. Just describe the facts in a straightforward but detailed way, letting them speak for themselves. For example, do not say, *“The police gravely tortured the person”*; instead, describe the police’s actions with physical details. You will explain to the Committee why this constitutes torture in a later section that discusses each of the violations.
80. Use headings to divide the claim into the main stages or events that occurred, and to group the facts together according to these stages. This will help the Committee understand the main points, why certain facts are important, and how each set of facts relates to the others. For example, in a torture case you might have sections for *Detention of [victim’s name]*, *Torture of [victim’s name]*, *Denial of Medical Care in Detention*, *Medical Treatment after Release*, *Official Investigation*, and *Challenges to the Suspension of the Investigation*.
81. Some of the sections may contain a lot of details, or may require explanation of a sequence of events. In those cases, use subheadings to organize the facts. For example, when discussing the official investigation, you might have a subheading for each of the different steps that were taken during the investigation, and one for each time it was suspended and reopened. You might also use subheadings for each of the challenges that the person made to the inadequate investigation.
82. The headings and sections that you use will depend on the facts of your particular case. The paragraphs below describe a few sections that will be relevant to many claims and provide a brief explanation of what details you might include in each. However, it is important to use headings and sections based on the facts of your individual case.

#### **Background of the victim**

83. In two or three paragraphs, set out the background of the victim: his or her age, marital status, presence of children, place of residence, occupation, position in the community if

prominent, and membership in a vulnerable group if relevant. If you have any statements from members of the victim's family or community that he or she was a responsible and reliable citizen, you may include this here.

84. Explain any events that precede the detention and/or torture that are relevant. For example, describe any harassment by the police prior to the violations at the heart of the claim, any political involvement, and any family or neighborhood disputes that may be implicated. If there is a lot of background, this may require its own heading. But only include what is relevant for the Committee to understand what happened to the person.

#### Detention

85. Tell the Committee when and where the victim was first taken into custody; who detained him or her; what triggered the detention; whether the police informed the victim of the reasons for the detention; whether the detention was formally registered, and if so, when.
86. Identify the location of the detention. Describe the conditions (toilet, natural light, space per person, food, access to shower/bath). Describe if there were other people housed in the same facility and/or the same cell. List the length of time of the detention and, if the victim was moved to different detention facilities, when the transfer took place and the conditions in each facility. Specify the State body that had authority over each detention facility, if possible.
87. Answer these questions: Was the victim **informed of his or her rights**? Was **the victim's family informed of the detention**? If so, when and how? If the victim was transferred to different places of detention, was the family informed of each transfer? Did the family inquire about the victim, and try to see him or her in detention? What did the authorities say? Was the family allowed to see the victim? When did the family see the victim for the first time? How often did the family see the victim? What did they observe? Was the victim permitted to see other visitors?
88. State whether the victim asked for a lawyer and how the police responded. If the victim had access to a lawyer, when did the first meeting occur? If the lawyer was state-appointed, describe any complaints against the lawyer. State if the lawyer was present during any investigative steps, in particular interviews or interrogations. Clarify how many steps took place without the lawyer. Describe any difficulties the lawyer had visiting the victim, such as a State body requiring him or her to obtain permission and time limits that were placed on visits. State whether the victim saw the lawyer in private and any details he or she provided about the alleged abuse.
89. Provide the answers to these questions: Did medical personnel examine the victim at the detention facility? If so, when? What did the victim say to the medical personnel? Were any police or detention officers present during the examination? If so, did they say anything? What else did the medical personnel observe? Were there any subsequent medical examinations, perhaps at the time of transfer between detention facilities, and what are the details? If you have records from any medical examinations, include that information here.
90. State whether the victim was **brought before a judge** to approve the detention and, if so, when and on what grounds was the decision made. Describe the hearing: Was the lawyer present? How long did the hearing last? Did the victim try to speak about any beatings by the police? What was the judge's reaction and decision? If detention was ordered, for how long and what reasons did the judge give? Describe whether the victim was detained in

police custody after the court hearing. If a judge ordered pretrial detention, state whether the victim appealed this decision and the results of the appeal. If there were any other hearings extending detention, describe them as well.

91. Clarify whether a public prosecutor and/or any monitoring body **visited the detention facility** while the victim was detained. Describe any complaint the victim lodged with the monitoring body and its results.

#### Torture

92. Detail the harm to the victim, including acts of physical abuse (beatings, etc.) or psychological pressure. How long did the abuse last for each time, and for what period did the abuse continue? Who inflicted it? Include any details about exactly where the torture took place, how regularly it took place, and anything the torturers said that could demonstrate why the victim was tortured. Mention any threats of harm to others, such as a member of the victim's family.
93. If the victim knows the full name or ranks of the officers involved, include these details. It is common not to know these details. In such cases, include any specifics the victim can remember (such as the number of people involved, first names, description of their appearance or uniform, and which agency they were from). List any bystanders who witnessed the torture.
94. Include the victim's description of his or her physical and emotional state before and after the detention and torture. If the victim signed anything (confessions or blank papers) as a result of the physical or psychological pressure, describe this. If another person was tortured in order to incriminate the victim in an alleged crime, describe what happened to that person in a separate paragraph.

#### Release

95. If the victim was released, include a short section describing when and why, and any statements the police made at the time. Describe the victim's physical condition upon release and what he or she did after being released.

#### Trial

96. If the victim was prosecuted, describe the charges and give the date of the trial and the name of the court in which it took place. If any statements that were made as a result of the torture were used against the victim at the trial, make this clear and explain the importance of those statements to the outcome of the trial. If the victim or any of the witnesses referenced the torture during the trial, describe the court's reaction.
97. What was the result of the trial? Did the victim appeal? If so, describe any appeals that took place including the main arguments raised, especially if they include references to the torture. Describe any circumstances that prevented further appeals (such as lack of a written court decision or intimidation of the victim).

#### Death

98. If the victim died, either in detention or as a result of the torture, give any known facts about the cause and circumstances of the death. Include any known objective details, such as who found the victim's body, where, when, and in whose presence. Where the police have provided their own account of events and this differs, consider including that information as well.

99. If the family had difficulty getting the body for burial, explain this. In some cases the State has demanded the family bury the body immediately without any others being present as a condition of releasing the body, usually as a way to conceal the abuse. If the family experienced any such pressure, explain what happened.

Injuries and medical treatment or autopsy

100. The Committees often give medical evidence a good deal of weight. They generally consider medical personnel to be objective and credible. This evidence usually dates from around the time of the torture—an advantage over statements that may have been taken years later. However, State forensic institutions may provide false evidence under pressure, so review carefully any information provided by them.
101. Describe the injuries that the victim suffered as a result of the torture. Begin with the physical injuries. Set out any medical examination or treatment that the victim received in detention or after release and the evidence of the injuries, including any medical reports. If the victim was denied medical attention while in detention, make this clear and describe any requests for medical examination, whether formal or informal, that the victim or his or her lawyer made.
102. If the victim suffered, or continues to suffer, from mental health problems as a result of the torture, describe those problems, as well as any medical diagnosis or treatment for those psychological injuries.
103. If the victim died, describe any autopsy or other forensic medical examination that took place, when it was carried out, and the injuries and cause of death recorded in the report.
104. Specify who conducted the medical examination, treatment, or autopsy. When and where did it take place? Was the doctor independent or an employee of the State? Clarify if the family or victim requested an independent doctor and whether this request was granted. Briefly describe the system of forensic medical examination in the country: Are there any connections between the police or prison authorities and the medical personnel who conducted the examination? Were any police or prison staff present during the examination? Did the victim tell the medical personnel about the torture? If not, why not? What did the examination consist of?
105. If you have any documents resulting from the medical treatment or examinations, ensure that you present these clearly and fully. What were the results of the medical examination, or any treatment that was given? Did the medical practitioner document any injuries or signs of torture on the victim's body? What was the official explanation for these injuries? Was there a psychological examination? Did the victim and his or her lawyer receive a copy of the forensic report? If so, when? If the victim or lawyer tried to challenge the reports or obtain additional examinations, what was the result of these attempts?
106. If a deceased victim's body was autopsied, state whether the family had knowledge that an autopsy would be conducted and whether they had any opportunity to ask questions about the process. Did the victim's family dispute the findings or ask for another, independent examination? If an independent investigation was granted, explain who conducted it, when and how it was conducted, and if the police were present throughout the investigation. Also include the investigation's results.

Official investigation of the torture or death

107. The details of the official investigation and the efforts of the victim or the victim's family to obtain justice can be complicated. Such efforts and investigations may include multiple requests, interviews, and suspensions. In such cases, identify the main stages using subheadings to describe the major steps. Include as many dates as possible.
108. If the victim could not lodge a written complaint but informed anyone of the torture, specify the circumstances. If the victim, his or her family and/or lawyer or NGOs lodged a written complaint to any Government bodies, describe the complaint and the person or office it was sent to.
109. Describe any actions taken by domestic authorities to investigate the torture. Mention the first step of the police or another investigative body or the first complaint made by the victim or on the victim's behalf. State when the investigation (or a pre-investigation check) was opened and who conducted the investigation, including who was formally responsible and who actually collected the evidence. Describe other steps the police took and whether a criminal prosecution was initiated.
110. If any of the perpetrators have been charged with a crime, or with an administrative or disciplinary offense, give the details. Did the charge change over the course of the investigation? Was anyone prosecuted and convicted?
111. Set out the reasons given for any decision not to charge someone or to close the investigation. Detail every incident when the investigation was suspended, closed, or restarted. Include any information regarding the family's challenges to the investigation while it was ongoing.
112. State whether the investigating authority informed the victim or his or her lawyer or family about the progress of the investigation and whether any of these parties had a chance to be involved. What information did the police provide to the victim or victim's surrogate? Detail every request for information or action by the victim or on his or her behalf. Describe the results of these requests.
113. Describe each time the applicant challenged the suspension of the investigation, or the failure to either investigate or charge the persons responsible for the torture. It is often helpful to separate the challenges or complaints lodged with the police or prosecutor from any judicial challenges.
114. Did the victim lodge a civil complaint? Did he or she receive compensation? How was it calculated? Were the respondents in the civil case individual abusers or a State body?
115. Describe any acts of intimidation/retaliation against the victim and/or the victim's family for lodging the complaint. If the police offered unofficial settlements or money in exchange for withdrawing the complaint, describe each incident when such offers were made. Did the family report the intimidation? What were the results of these additional complaints? Did the family ask for any kind of protection? If so, what were the results?

Pattern of torture and impunity

116. The violations in a particular case—the torture, death, absence of safeguards, or failure to investigate—are often part of a wider pattern of failures and abuses in the country. If this is the case, briefly summarize any evidence of such patterns. UN human rights reports that discuss such patterns are particularly compelling, you can also use other sources such as reports by the US Department of State or reports by non-governmental organizations such as Amnesty International or Human Rights Watch. Points of similarity might include



torture in police custody, death of detainees, the failure to prevent or investigate such abuses, or the lack of independence of the police, prosecutor, and judiciary when investigating torture cases. Although evidence of a pattern of torture alone will not be sufficient to prove torture in an individual case, such evidence can be useful to corroborate other evidence specific to your case.

117. Describe previous cases by the UN Human Rights Committee or the UN Committee against Torture against this particular State that made findings regarding torture; the failure to prevent or investigate torture; and the independence of the police, prosecution, and courts when it comes to torture cases. Part VI of this Toolkit includes a list of suggested internet resources to find such cases.

### **E. Admissibility**

118. Explain why your communication is admissible under either Article 5 of the First Optional Protocol to the ICCPR or Article 22(5) of the Convention against Torture. Usually, you will make this argument based on three contentions: (1) the violations fall within the jurisdiction of the Committee; (2) the violations have not been submitted to any other international forum; and (3) the author has exhausted all available domestic remedies. Include a brief statement at the front of this section that states that the case satisfies these three requirements.

#### Jurisdiction

119. First, reference the date of commencement of jurisdiction for the State—either when the ICCPR and the First Optional Protocol to the ICCPR entered into force for the State, or when the Convention against Torture entered into force for the State and when it made its declaration under Article 22 of the Convention against Torture. Then state when the violations occurred.
120. If the violation took place before the Committee’s jurisdiction commenced, explain why the claim is admissible. Reasons include the failure to investigate or to provide reparations, or if a significant part of the investigation took place after the ratification or declaration or as a continuing violation (see para. 15, above).

#### No other international complaint

121. State that no complaint about the violation, including associated claims like the failure to investigate, has been submitted to any other international committee or court. The ICCPR and the CAT state that their Committees will not consider any case that is also submitted to a different procedure of international investigation or settlement. You therefore cannot simultaneously have claims with both the Committee against Torture and the Human Rights Committee. However, the Working Groups and Special Rapporteurs are generally not considered institutions of international settlement (see para. 17, above).

#### Exhaustion of domestic remedies

122. Explain what the victim and/or his or her lawyer, representative, or family has done to bring these violations to the attention of the domestic authorities and to attempt to obtain justice at the national level. Describe the results of these efforts. Also explain why pursuing any further remedies at the national level would be futile, ineffective, or unduly prolonged.

123. Identify the arguments you will make. If there are multiple arguments you may wish to break them into separate sections. Give each section a clear heading (or subheading) that tells the reader what argument it will make. For example:

All available remedies exhausted.

or

Further domestic remedies would be unreasonably delayed.

124. For each argument, start with a sentence that clearly and simply states the issue the section will address, and what point it will demonstrate (use a “topic sentence,” as described in paras. 54–55, above). For example:

All available remedies exhausted.

Mr. Ernazarov’s family has exhausted all potentially effective domestic remedies in relation to the mistreatment and death of Mr. Ernazarov.

Further domestic remedies would be unreasonably delayed.

Mr. Ernazarov’s family should not be required to file a new complaint with the Osh City Court in order to exhaust domestic remedies because to do so would result in the unreasonable prolonging of those remedies.

125. After the topic sentence, insert the relevant legal arguments. These can be based on the standard arguments that are included in this Toolkit, which you should adapt to your particular case. As discussed above, adjust these standard arguments to your case, including ensuring that the decisions from the Committee you are submitting to come first and checking whether there are any more recent cases you should refer to.
126. Finally, refer to the facts that show that the author has exhausted domestic remedies, and explain why these satisfy the legal requirements. Repeat this for each of the subsections.
127. When addressing the domestic remedies that have been exhausted, you do not need to repeat in detail every complaint, application, and challenge that the victim or his or her representative or family has made. Instead, summarize the steps taken and refer to the paragraphs of the *Facts of the Claim* section (described in Section D, above) that provide the details. You might summarize how many requests the family has filed, how many times the investigation was suspended, and how many years the author has waited for an effective remedy for the violation. If there have been different types of complaints or challenges (such as complaints to start the investigation, applications for particular investigative steps to be taken, and then challenges to the suspension or closing of the investigation), you can present these in separate sentences or paragraphs.
128. When addressing why other remedies have not been exhausted, you may need to discuss the relevant legal system: whether civil claims are possible without a criminal prosecution, whether the investigators in this case were independent of the agents who were responsible for the torture, and whether certain types of complaints are futile in this system.

## **F. Violations of the Covenant/Convention**

129. To start this section, repeat the list of CAT or ICCPR violations that you established at the beginning of the document. Include a short title, as well as a brief description of the violation.
130. In the remainder of the claim, address each of the violations from this list in a separate section, using the short title as the heading for each of the sections.
131. Each of the sections addressing one of the violations will follow the same structure as the admissibility section:

- First, a topic sentence.
- Second, the legal standards, which can be based on the legal arguments included in this Toolkit.
- Third, explain how the facts of this case meet that legal standard.
- Finally, end with your conclusion: that the facts show that the State is responsible for this violation.

132. *Topic Sentences.* For each violation, start with a topic sentence that clearly and simply states the issues and arguments contained in the section (see para. 55, above). For example:

“The treatment inflicted on Mr. Gerasimov by the police officers on 27–28 March 2007 amounts to torture within the definition of Article 1 of the UNCAT.”

133. *Multiple Arguments.* If you need to make a number of arguments or prove a number of elements to demonstrate the violation, set out the structure of those arguments or elements up front. For example:

The Kyrgyz Republic assumed the responsibility to protect the right to life of Mr. Ernazarov when he entered State custody. It violated this obligation because (1) Mr. Ernazarov was a vulnerable prisoner, and the State had a positive duty to protect him (2) the authorities have failed to provide a plausible explanation for his death, and so it can be presumed that they are responsible for his death.

134. *Legal Standards.* After the topic sentence, set out the relevant legal standards (see paras. 56–58, above). These can be based on the standard arguments that are included in this Toolkit. Adapt them to your particular case and make sure that the decisions from the particular Committee come first.
135. Check whether either Committee has previously dealt with a case that is similar to yours. Specifically look for whether the Committee has dealt with a similar type of abuse or injury and whether the Committee stated the similar incident constitutes a violation. Also check whether the Committee has addressed similar types of evidence and determined whether the evidence is sufficient. Previous decisions by the Committee will not prove your case or guarantee the same result, as the experience and suffering of each victim depends on individual circumstances, but they can provide useful guidance. It is often persuasive to show the Committee that they have previously ruled that very similar actions constituted a violation of rights.
136. *Submissions.* After setting out the legal standards, demonstrate how the facts of your case (which you set out in the *Facts of the Claim* section) satisfy those legal requirements. It is often useful to highlight the most important details and link them to the requirements of the

law. Start by setting out the most compelling facts (you can refer back to the *Facts* section rather than repeating every detail), and then explain how this is a violation under the Committee's case law. Where you have objective evidence that demonstrates a fact, such as medical evidence or court records, reference it and describe how it meets the requirements set out by the Committee.

137. The particular facts you will use, and the legal standards they will have to meet, will always depend on your case. However, the sample filings in the Annexes provide a number of examples that show how to present these submissions.
138. *Conclusion.* Provide a concluding statement that the State is responsible for the violation.
139. *Complex Arguments.* Some violations pertain to a rule that declares the State responsible for a number of obligations. For example, under the CAT, the State must implement a number of different safeguards to prevent torture, and it must uphold a number of principles in investigating violations. The State has rarely failed to uphold *every* safeguard or violated *every* principle in a particular case. In such cases, you should start with the legal arguments from the Toolkit that show that the general obligation exists (i.e., that the State is obliged to investigate or to put safeguards in place). Then identify which aspects the State has violated in your case and address each of these in turn.

## **G. Remedies**

140. After you have submitted all of the violations for which the State is responsible, tell the Committee which remedies you are seeking. Remember that the Committee's decision only makes findings of violations. The Committee then urges the State to take action, both to provide personal redress to the victim and to prevent similar violations in the future. However, it can still be helpful to set out for the Committee the measures you believe would provide redress and prevent future violations.
141. *Finding of a violation.* One common remedy is to ask the Committee to make a finding that the State is responsible for the torture of the victim, or that it is responsible for a violation of the victim's right to life. Applicants will often also ask the Committee to make a finding that the State failed to effectively investigate the torture or death of the victim, and that it failed to implement adequate safeguards to protect the victim. Specify the articles of the treaty that you argue were violated.
142. *Investigation.* If the case involves a failure to investigate, you might ask the Committee to urge the State to effectively and independently investigate the case. It is helpful in such cases to specify what will be required for that investigation to be effective. In particular, if there were concerns about the independence or impartiality of the initial investigation, you may wish to specify who should conduct the new investigation to address these concerns. This may in some cases require that the State conduct the investigation through a Commission of Inquiry. A Commission of Inquiry is a body established to investigate an incident or set of incidents that have caused public concern. They are normally established after major incidents—such as large scale or politically motivated crimes or systemic violations.<sup>18</sup> Alternatively, if there are specific steps that were not taken or evidence that

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<sup>18</sup> University of Essex, Human Rights Centre Clinic, 'National Commissions of Inquiry: Towards a Human Rights-Based Approach' (2013), <https://www.essex.ac.uk/hrc/careers/clinic/documents/national-comissions-of-inquiry-towards-a-human-rights-based-approach.pdf>

was rejected, such as forensic medical examination, then highlight these and ask the Committee to insist upon their consideration as part of the remedies.

143. *New Trial*. If the victim was convicted on the basis of testimony made as a result of torture, you might ask that the conviction be overturned and that the charges be reviewed, and if necessary the criminal case be heard again, with all necessary safeguards.
144. *Release*. If the State arbitrarily detained the victim and is still holding him or her, you should ask for his or her immediate release as a remedy. If the victim was subjected to an enforced disappearance, request his or her immediate release and information about his or her fate.
145. *Safeguards*. Cases of torture frequently involve a failure to implement adequate safeguards. In these cases, it is often helpful to ask the Committee to urge the State to implement sufficient safeguards to prevent a recurrence of the violation. If you do, consider which safeguards were lacking in this case, and set these out in concrete and practical terms to the Committee. This may assist in the subsequent implementation of the decision if the Committee finds a violation.
146. *Non-repetition*. The Committee will also often remind the Government of its obligation to prevent the recurrence of the violations. In addition to specific safeguards against the torture that happened in this case, you could also identify for the Committee broader legislative or institutional changes, or initiative such as training for Government officials, that would assist in preventing future violations.
147. *Compensation*. Frequently, applicants will ask the Committee to direct the Government to award adequate compensation to the victim or to his or her family. Compensation, while not a sufficient remedy in itself, can be an important step in demonstrating to the victim that the Government recognizes that a wrong was done and takes the violation committed seriously.
148. The Human Rights Committee and Committee against Torture have not specified principles that determine the amount of compensation that a violating State should provide to victims. However, it is helpful to set out for the Committee the types of damage that the victim has suffered, which the compensation should cover. This can include moral damages for the pain, suffering, and humiliation resulting from the torture and arbitrary detention, as well as damages for financial losses or loss of income during the period of detention and torture, future loss of earnings as a result of the violations, and past and future medical and rehabilitation costs.
149. *Other forms of reparation*. You might also ask the Committee to urge the State to provide other reparations to the victim, which can include medical assistance or rehabilitation. If you make such a request, you may wish to clarify whether you want the Government to provide rehabilitation or medical services itself or reimburse the victim for services he or she will purchase.
150. *Public apology and publication of the decision*. The Human Rights Committee and Committee against Torture will usually ask the Government to publish any decision that finds a violation. You can also ask that the Government make a separate public apology to the victim, if the author of the claim desires one.

151. *Further guidance.* The Human Rights Committee adopted in November 2016 guidelines on measures of reparation under the Optional Protocol to the International Covenant on Civil and Political Rights (CCPR/C/158). The Open Society Justice Initiative has prepared a *Practice Note on Remedies in Human Rights Claims*, which provides a more detailed discussion of the remedies you might request.

#### **H. List of Supporting Documents**

152. At the end of the claim, include a list of all of the evidence you are submitting in support of your claim. Give each document an exhibit number to make the documents easier to refer to in the complaint and easier for the Committee to identify.
153. The range of evidence that you will submit will depend on the nature of the claims. However, a few sources which you should consider for many claims are
- statements of the victim, family members, and any other witnesses;
  - medical evidence of injuries, including photographs, medical reports, and an autopsy report if the victim died;
  - copies of any complaints, letters, or legal challenges the victim or the family have made;
  - copies of any court decisions or the results of any investigations;
  - copies of any reports from local or regional NGOs or other inquiries that are relevant to your case;
  - if relevant, a map or diagram of the area, the town, and/or the police station.
154. If any of the supporting documents are in a language that is not a working language of the Secretariat (English, French, Spanish, or Russian), then you should provide a translation or a summary in one of these languages, if at all possible. It is not necessary to notarize the translation. If the document is very large (for example, the indictment, verdict, court record), you may translate only the relevant parts of the document, indicating the pages and points that support your case.

## PART V: MODEL PARAGRAPHS

155. This part of the Toolkit contains a series of model legal arguments that you can use as the basis for your own legal arguments. These are short explanations and arguments regarding legal issues that often come up when drafting claims of torture, death in custody, and associated violations.
156. When preparing your claim, first identify the violations that may be involved, and which Committee or Committees have jurisdiction. Based on this, select the appropriate structure (from those in the annexes) and adjust it to reflect the particular violations in your case. Then you can take the model arguments that relate to each of the violations that you are claiming and use them as the basis for your claim within your chosen structure.
157. The model arguments are prepared with a view to being used before the Human Rights Committee, as this Committee covers all of the violations and more States have accepted the right of individuals to take claims to that Committee. However, if you are making your claim before the Committee against Torture, then you should edit the arguments so that you refer to its law first and the Human Rights Committee law second. Also, note that a small number of arguments are drafted separately for use before the HRC and CAT—for example, the argument on the act of torture itself—because of the specific elements the Convention against Torture requires.
158. While these models may serve as a basis for your legal argument, every case is different and you should be careful to check the arguments and adjust them to suit your case. You should also check whether there have been any recent developments in the law and, if so, adjust the arguments to reflect these changes. Part VI of this Toolkit contains a list of resources and suggestions on how to ensure that your arguments are up to date.
159. Finally, just as you checked the structure of the submission and deleted or amended any sections that were not relevant to the case, do the same thing with the model legal arguments: read through the arguments carefully and change or delete anything that is not relevant or appropriate for your particular case.

### A. Admissibility

#### Human Rights Committee has jurisdiction

160. The ICCPR and the first Optional Protocol to the ICCPR entered into force for the State on [date]. The violations that are the subject of this communication commenced [when]. This communication therefore falls within the jurisdiction of the Committee.

#### Committee against Torture has jurisdiction

161. The Convention against Torture entered into force for the State on [date], and the State made a declaration under Article 22 accepting the jurisdiction of the Committee to hear individual petitions on [date]. The violations that are the subject of this communication commenced [when]. This communication therefore falls within the jurisdiction of the Committee.

Committee has jurisdiction (continuing violation)

**Note:** Use the paragraphs below if the main violation took place before the treaty or right of individual petition entered into force.

162. Although the [torture/death] occurred before the entry into force of the Treaty, this claim is admissible because the State has affirmed those violations, and the violations continued after the entry into force.
163. The Human Rights Committee has found claims to be admissible where the violation continues to affect the victim, concluding that there will be an ongoing violation where the alleged violations “continue, or have effects which themselves constitute violations, after that date” of entry into force of the treaty.<sup>19</sup> It also considers that the claim is admissible where a State re-affirms a previous violation.<sup>20</sup> The Committee against Torture has similarly held that it can examine alleged violations that occurred before a State recognized the right to make individual communications “if the effects of these violations continued after the declaration under Article 22 became effective, and if the effects constitute in themselves a violation of the Convention. A continuing violation must be interpreted as an affirmation, after the formulation of the declaration, by act or by clear implication, of the previous violations of the State party.”<sup>21</sup> In particular, the failure to investigate a violation and a failure to provide remedies for that violation have been considered continuing violations.<sup>22</sup>

No other international complaint

164. No complaint has been submitted to any other procedure of international investigation or settlement regarding this case. This communication therefore satisfies the admissibility requirement in [Article 5(2)(a) of the first Optional Protocol to the ICCPR and/or Article 22(5)(a) of the Convention against Torture].

Domestic remedies have been exhausted

165. An applicant is required to exhaust those domestic remedies that are available and effective.<sup>23</sup> The Human Rights Committee has clarified that this refers “primarily to judicial remedies,”<sup>24</sup> which must offer “a reasonable prospect of redress.”<sup>25</sup> As the Committee has

<sup>19</sup> *Lovelace v. Canada*, UNHRC, Views of 30 July 1981, UN Doc. A/36/40 (Sup. No. 40), para. 11.

<sup>20</sup> *Könye v. Hungary*, UNHRC, Views of 22 September 1992, CCPR/C/5-D/520/1992, para. 6.4.

<sup>21</sup> *A.A. v. Azerbaijan*, UNCAT, Views of 25 November 2005, CAT/C/35/D/247/2004.

<sup>22</sup> *Gerasimov v. Kazakhstan*, UNCAT, Decision of 24 May 2012, CAT/C/48/D/433/2010, para 11.2; *S.E. v. Argentina*, UNHRC, Views of 26 March 1990, CCPR/C/WG/36/DR/275/1988, para. 5.4.

<sup>23</sup> UNHRC, *Annual Report 1984*, para. 584 (quoted in Moller and de Zayas, *United Nations Human Rights Committee Case Law 1977–2008* (Kehl am Rhein: N.P. Engel Verlag, 2009), 112) (“exhaustion of domestic remedies can be required only to the extent that these remedies are effective and available”); *M.G.C. v. Australia*, UNHRC, Views of 26 March 2015, CCPR/C/113/D/1875/2009, para. 10.3.

<sup>24</sup> *R.T. v. France*, UNHRC, Views of 30 March 1989, CCPR/C/35/D/262/1987, para. 7.4; *Vicente et al. v. Colombia*, UNHRC, Views of 19 August 1997, CCPR/C/60/D/612/1995, para. 5.2; *Mariam Sankara et al. v. Burkina Faso*, UNHRC, Views of 28 March 2006, CCPR/C/60/D/1159/2003, para. 6.4.

<sup>25</sup> *Patiño v. Panama*, UNHRC, Views of 21 October 1994, CCPR/C/52/D/437/1990, para. 5.2; *Potter v. N.Z.*, UNHRC, Views of 28 July 1997, CCPR/C/60/D/632/95, para. 6.3; *Torres Ramirez v. Uruguay*, UNHRC, Views of 8 April 1980, CCPR/C/10/D/4/1977, para. 5 (requiring that the State demonstrate “a



explained, “if the alleged offense is particularly serious, as in the case of violations of basic human rights, in particular the right to life, purely administrative and disciplinary remedies cannot be considered adequate and effective.”<sup>26</sup> The Committee specified that a “criminal investigation and consequential prosecution” are necessary remedies in cases of violations of the right to life and freedom from torture.<sup>27</sup>

#### Further domestic remedies would be unduly prolonged

166. An individual is not required to exhaust domestic remedies that are unreasonably prolonged.<sup>28</sup> Whether the delays are considered unreasonable will depend on the complexity of the case.<sup>29</sup> The Human Rights Committee has stated that “a delay of over three years for the adjudication of the case at first instance, discounting the availability of subsequent appeals, was ‘unreasonably prolonged’ within the meaning of article 5, paragraph 2(b), of the Optional Protocol.”<sup>30</sup> When a new investigation was launched almost four years after the incident took place, the Committee against Torture decided that “domestic proceedings have become unreasonably delayed and the complainant is thus not required to pursue them further.”<sup>31</sup>

#### Further domestic remedies would not be effective

167. Applicants are only required to exhaust those remedies that are effective; they need not exhaust remedies that do not offer a reasonable prospect of redress<sup>32</sup> or where there is no reasonable expectation that the remedies would be effective.<sup>33</sup> In making this assessment, human rights bodies typically examine whether the remedies exist and are available in practice: the effectiveness of a remedy must be assessed based on the circumstances of the individual case, looking not only at the formal remedies but also taking into account the legal and political context and the personal circumstances of the applicant.<sup>34</sup>

#### Other domestic remedies are not adequate or available

168. The Human Rights Committee has explained that “if the alleged offence is particularly serious, as in the case of violations of basic human rights, in particular the right to life,

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reasonable prospect that such remedies would be effective”); *Yuzepchuk v. Belarus*, UNHRC, Views of 17 November 2014, CCPR/C/112/D/1906/2009, para 7.4.

<sup>26</sup> *Vicente et al. v. Colombia*, UNHRC, Views of 19 August 1997, CCPR/C/60/D/612/1995, para. 5.2; *Coronel et al. v. Colombia*, UNHRC, Views of 24 October 2002, CCPR/C/76/D/778/1997, para. 6.2.

<sup>27</sup> *Moidunov v. Kyrgyzstan*, UNHRC, Views of 19 July 2011, CCPR/C/102/D/1756/2008, para 8.10.

<sup>28</sup> First Optional Protocol to the ICCPR, Article 5(2)(b) (“This shall not be the rule where the application of those remedies is unreasonably prolonged.”).

<sup>29</sup> *Fillastre and Bizoarn v. Bolivia*, UNHRC, Views of 5 November 1991, CCPR/C/43/D/336/1988, para. 5.2.

<sup>30</sup> *Ibid.*

<sup>31</sup> *Gerasimov v. Kazakhstan*, UNCAT, Decision of 24 May 2012, CAT/C/48/D/433/2010, para 11.5.

<sup>32</sup> *Patiño v. Panama*, UNHRC, Views of 21 October 1994, CCPR/C/52/D/437/1990, para. 5.2.

<sup>33</sup> *Ramirez v. Uruguay*, UNHRC, Views of 8 April 1980, CCPR/C/10/D/4/1977, para. 5; *Monika v. Cameroon*, UNHRC, Views of 19 January 2015, CCPR/C/112/D/1965/2010, para 11.4.

<sup>34</sup> *Akdivar and Others v. Turkey*, ECtHR [GC], Grand Chamber Judgment of 30 August 1996, para. 68–69; *Khashiyev and Akayeva v. Russia*, ECtHR, Judgment of 24 February 2005, para. 116–17.

purely administrative and disciplinary remedies cannot be considered adequate and effective.”<sup>35</sup> The victim is thus not required to pursue other remedies, such as civil or disciplinary proceedings. In light of the gravity of the violations, nothing less than a fully independent investigation capable of leading to the punishment of those responsible could constitute an effective remedy.

No further exhaustion required because of danger to applicant

169. The Human Rights Committee has held that there is no requirement to exhaust domestic remedies where it is dangerous for the applicant to do so.<sup>36</sup> Specifically, when a detainee has a reasonable fear of retaliation from prison authorities, the detainee is not required to complain to those authorities regarding mistreatment or poor conditions of detention.<sup>37</sup> Under such circumstances, the Committee considers the applicant’s failure to exhaust domestic remedies justified. Regional human rights mechanisms also recognize that applicants cannot be required to exhaust domestic remedies if doing so would place them or their families in danger.<sup>38</sup>

**B. Evidentiary Matters**

Reverse burden of proof

**Note:** Use the paragraphs in this section if you do not have access to important evidence, including medical evidence, because the violation took place in the custody of the State, which did not conduct proper tests or grant access to the results. The initial burden of proof always rests with the author, but it can be reversed.

170. Where an individual suffers injuries or dies in custody, the Human Rights Committee has found on numerous occasions that “the burden of proof cannot rest alone on the author of the communication, especially considering that the authors and the State party do not always have equal access to evidence and that frequently the State party alone has access to relevant information.”<sup>39</sup> Rather, in such cases, the burden shifts to the Government to provide a satisfactory and plausible explanation supported by evidence.<sup>40</sup> Indeed, the Human Rights Committee has ruled that “a death in any type of custody should be regarded as *prima facie* a summary or arbitrary execution,” unless a “thorough, prompt and impartial

<sup>35</sup> *Vicente et al. v. Colombia*, UNHRC, Views of 19 August 1997, CCPR/C/60/D/612/1995, para. 5.2;

*Coronel et al. v. Colombia*, UNHRC, Views of 24 October 2002, CCPR/C/76/D/778/1997, para. 6.2.

<sup>36</sup> *Randolph v. Togo*, UNHRC, Views of 15 December 2003, CCPR/C/79/D/910/2000, para. 2.5, 5.8, 8.6; *Avadanov v. Azerbaijan*, UNHRC, Views of 2 November 2010, CCPR/C/100/D/1633/2007, para. 6.4; *El Alwani v. Libya*, UNHRC, Views of 11 July 2007, CCPR/C/90/D/1295/2004, para. 3.1, 5.2.

<sup>37</sup> *Phillip v. Trinidad and Tobago*, UNHRC, Views of 20 October 1998, CCPR/C/64/D/594/1992, para. 6.4.

<sup>38</sup> *Akdivar and Others v. Turkey*, ECtHR [GC], Grand Chamber Judgment of 30 August 1996, para. 74; *Plan de Sanchez Massacre*, IACommHR, Report No. 31/99 of 11 March 1999, para. 27; *Rodriguez v. Honduras*, IACtHR, Judgment of 29 July 1988, para. 66; *Jawara v. Gambia*, AfCommHPR, Comm. Nos. 147/95, 149/96 (2000), para. 35–36.

<sup>39</sup> *Krasnova v. Kyrgyzstan*, UNHRC, Views of 29 March 2011, CCPR/C/101/D/1402/2005, para 8.3; *Sassene v. Algeria*, UNHRC, Views of 29 October 2014, CCPR/C/112/D/2026/2011, para 7.3.

<sup>40</sup> *Bleier v. Uruguay*, UNHRC, Views of 29 March 1982, UN Doc. A/37/40 (Sup. No. 40), para. 13.3.

investigation” rebuts that presumption.<sup>41</sup> It has also found that “in cases of forced confessions, the burden is on the State to prove that statements made by the accused have been given of their own free will.”<sup>42</sup>

171. The Committee against Torture has also found that “the prosecution should carry the burden of proof where there are allegations that a confession was extracted under torture”<sup>43</sup> and applied the reverse burden of proof in cases involving the non-refoulement obligation.<sup>44</sup> The UN Special Rapporteur on Torture has similarly noted that where an individual suffers harm while in the custody of the State, the burden shifts to the Government to provide a satisfactory and plausible explanation supported by evidence.<sup>45</sup>

### C. Substantive Violations

#### Torture by the State (HRC)

172. The prohibition of torture and cruel and inhuman treatment is absolute under Article 7 of the ICCPR. The Human Rights Committee has made it clear that “Article 7 allows of no limitation.”<sup>46</sup> There is no list of acts that do and do not constitute torture or inhuman treatment; rather, the assessment “depends on all the circumstances of the case, such as the duration and manner of the treatment, [and] its physical or mental effects.”<sup>47</sup> As part of this assessment, the Committee has found that repeated beatings in custody constitute torture or cruel and inhuman treatment under Article 7, especially where the State denies the victim medical care for his/her injuries.<sup>48</sup> The Human Rights Committee found a violation of the right to humane treatment in a case where the police threatened to harm parents of the victims, deprived the victims of food for three days, did not allow their families access to them, and did not transmit the food parcels their families provided.<sup>49</sup>

**Note:** In making your arguments on torture, include factors such as:

- exactly what acts were committed that constitute torture;

<sup>41</sup> *Eshonov v. Uzbekistan*, UNHRC, Views of 22 July 2010, CCPR/C/9/D/1225/2003, para. 9.2.

*Guneththige v. Sri Lanka*, UNHRC, Views of 30 March 2015, CCPR/C/113/D/2087/2011, para 6.2.

<sup>42</sup> *Sharifova et al. v. Tajikistan*, UNHRC, Views of 1 April 2008, CCPR/C/92/D/1209, 1231/2003, and 1241/2004.

<sup>43</sup> *Ktiti v. Morocco*, UNCAT, Decision of 26 May 2011, CAT/C/46/D/419/2010, para. 8.8; UNCAT, *Report on Brazil Produced by the Committee under Article 20 of the Convention and Reply from the Government of Brazil*, UN Doc. CAT/C/39/2, 28 July 2008.

<sup>44</sup> *A.S. v. Sweden*, UNCAT, Decision of 24 November 2000, CAT/C/25/D/149/1999, para. 8.6; *Karou v. Sweden*, UNCAT, Decision of 8 May 2002, UN Doc. A/57/44, para. 10.

<sup>45</sup> Special Rapporteur on Torture, Manfred Nowak, *Report on Mission to Kazakhstan*, UN Doc. A/HRC/13/39/Add.3, December 2009, para. 53; Special Rapporteur on Torture, Nigel Rodley, *Report of the Special Rapporteur on Torture*, UN Doc. A/56/156, July 2001, para. 12(j); Special Rapporteur on Torture, Manfred Nowak, *Report on Mission to Sri Lanka*, UN Doc. A/HRC/7/3/Add.6, February 2008, para. h; idem, *Report on Mission to Indonesia*, UN Doc. A/HRC/7/3/Add.7, March 2008, 21.

<sup>46</sup> UNHRC, *General Comment 20, Article 7, Concerning Prohibition of Torture and Cruel Treatment or Punishment*, 1992, para. 3, 5.

<sup>47</sup> Ibid, para. 4; *Vuolanne v. Finland*, UNHRC, Views of 7 April 1989, CCPR/C/35/D/265/1987, para. 9.2.

<sup>48</sup> *Bailey v. Jamaica*, UNHRC, Views of 31 March 1993, CCPR/C/47/D/334/1988, para. 9.2–9.3; *Linton v. Jamaica*, UNHRC, Views of 22 October 1992, CCPR/C/46/D/255/1987, para. 8.5.

<sup>49</sup> *Sharifova et al. v. Tajikistan*, UNHRC, Views of 1 April 2008, CCPR/C/92/D/1209, 1231/2003, and 1241/2004.

- the identity of the perpetrator(s) and the specific acts each one committed;
- the location where the injuries were inflicted and why the victim was in that place (under arrest, being questioned, etc.);
- the medical, psychological, and other effects of the torture;
- any factors that made the victim particularly vulnerable;
- why these acts constitute torture under Article 7 of the ICCPR or under the UNCAT;
- how the State is linked to the torture and/or those who committed the torture to show that the defendant is therefore responsible for the violation; and
- information that would help to explain the purpose of the torture.

### Torture by the State (CAT)

173. Article 1 of the UNCAT defines torture 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.

The UNCAT articulates the “absolute and non-derogable” character of the prohibition against torture,<sup>50</sup> which is accepted as a matter of customary international law.<sup>51</sup> The UNCAT also requires States parties to prevent “other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture.”<sup>52</sup>

174. The UNCAT does not contain a list of acts which do and do not constitute torture or inhuman treatment. The UN Special Rapporteur on Torture concluded that “the decisive criteria for distinguishing torture from [cruel, inhuman, or degrading treatment] may best be understood to be the purpose of the conduct and the powerlessness of the victim, rather than the intensity of the pain or suffering inflicted.”<sup>53</sup> Beatings by the police while in detention have been found to constitute torture under Article 1.<sup>54</sup>

<sup>50</sup> UNCAT, Article 2(2).

<sup>51</sup> UNCAT, *General Comment 2, Implementation of Article 2 by States Parties*, 2008, para. 1.

<sup>52</sup> UNCAT, Article 16(1).

<sup>53</sup> Special Rapporteur on Torture, Manfred Nowak, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UN Doc. E/CN.4/2006/6, December 2005, para. 39.

<sup>54</sup> *Dimitrijevic v. Serbia and Montenegro*, UNCAT, Decision of 24 November 2004, CAT/C/33/D/207/2002, para 5.3, 6; *Dimitrov v. Serbia and Montenegro*, UNCAT, Decision of 3 May 2005, CAT/C/34/D/171/2000, para. 2.1, 7.1; *Niyonzima v. Burundi*, UNCAT, Decision of 21 November 2014, CAT/C/53/D/514/2012, para. 8.2; *Abdelmalek v. Algeria*, UNCAT, Decision of 23 May 2014, CAT/C/52/D/402/2009, para 11.2–11.3.

### Torture by private actor

175. Torture does not need to be inflicted by a State official to constitute a violation of the ICCPR. The Human Rights Committee has explained that States have a duty “to afford everyone protection ... against the acts prohibited by Article 7, whether inflicted by people acting in their official capacity, outside their official capacity or in a private capacity.”<sup>55</sup> The Committee has affirmed that States parties have a positive obligation to protect persons under their jurisdiction from acts of private individuals,<sup>56</sup> and must take reasonable steps to prevent and punish acts of torture by them.<sup>57</sup> Jurisdiction over private actors extends to locations that are formally outside the State’s territory but where the State effectively exercises control.<sup>58</sup> This positive obligation on States to prevent torture, including torture by private parties, applies in particular to protecting vulnerable persons subjected to arrest, detention, or imprisonment.<sup>59</sup>
176. Under Article 1 of the UNCAT, public officials acquiesce in the perpetration of torture when they fail to take appropriate steps to prevent such acts and fail to prosecute those responsible for the acts.<sup>60</sup> The Committee against Torture has observed that where State authorities or others acting in an official capacity “know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-State officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials or private actors consistently with [UNCAT], the State bears responsibility and its officials should be considered as authors, complicit or otherwise responsible under [UNCAT] for consenting to or acquiescing in such impermissible acts.”<sup>61</sup>

### Death in custody (killing by the State)

177. The Human Rights Committee has described the right to life under Article 6(1) as the “supreme right from which no derogation is permitted ... [and] which should not be interpreted narrowly.”<sup>62</sup> The Committee considered that States parties should “take measures ... to prevent and punish ... arbitrary killing by their own security forces,”<sup>63</sup>

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<sup>55</sup> UNHRC, *General Comment 20, Article 7, Concerning Prohibition of Torture and Cruel Treatment or Punishment*, 3 October 1992, para. 2; *Ernazarov v. Kyrgyzstan*, UNHRC, Views of 7 May 2015, CCPR/C/113/D/2054/2011, para. 9.5.

<sup>56</sup> UNHRC, *General Comment 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 2004, para. 8.

<sup>57</sup> UNHRC, *Concluding Observations on the Russian Federation*, UN Doc. CCPR/CO/79/RUS, 2003, para. 13.

<sup>58</sup> Special Rapporteur on Torture, Juan Mendez, *Interim Report of the Special Rapporteur on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, UN Doc. A/70/303, 7 August 2015, para. 65.

<sup>59</sup> UNHRC, *General Comment 20, Article 7, Concerning Prohibition of Torture and Cruel Treatment or Punishment*, 1992, para. 11; *Ernazarov v. Kyrgyzstan*, UNHRC, Views of 7 May 2015, CCPR/C/113/D/2054/2011, para. 9.5.

<sup>60</sup> *Dzemajl et al. v. Serbia and Montenegro*, UNCAT, Decision of 21 November 2002, CAT/C/29/D/161/2000, para. 9.2.

<sup>61</sup> UNCAT, *General Comment 2, Implementation of Article 2 by States Parties*, 2008, para. 18.

<sup>62</sup> UNHRC, *General Comment 6, Article 6, The Right to Life*, 1982, para. 1; UNHRC, *General Comment 14, Article 6, Nuclear Weapons and the Right to Life*, 1984, para. 1.

<sup>63</sup> UNHRC, *General Comment 6, Article 6, The Right to Life*, 1982, para. 3.

describing the deprivation of life by State authorities as “a matter of the utmost gravity.”<sup>64</sup> The Committee recently ruled that “a death in any type of custody should be regarded as *prima facie* a summary or arbitrary execution, and there should be thorough, prompt and impartial investigation to confirm or rebut the presumption.”<sup>65</sup> This principle applies equally in cases where the State claimed that the death was a suicide.<sup>66</sup> The State is also responsible for the death of a victim who dies later, at home or at the hospital, as a result of injuries sustained while in police custody.<sup>67</sup>

178. Where an individual dies in custody, a violation of Article 6(1) will generally be found, unless an effective and timely investigation shows otherwise. The burden of proof cannot rest on the author of a communication alone, because the State often has sole access to the relevant information.<sup>68</sup> Where the case depends on that information, according to the Human Rights Committee, the Committee may consider an author’s allegations as substantiated “in the absence of satisfactory evidence and explanations to the contrary submitted by the State party.”<sup>69</sup>

Death in custody (failure to protect life)

**Note:** Use this argument if the victim died in the custody of the State, but there is not sufficient evidence to prove that State agents directly caused the death. This includes cases that may have been a suicide or in which other detainees may have killed the victim.

179. The Human Rights Committee has described the right to life under Article 6(1) as the “supreme right,”<sup>70</sup> which “cannot be understood in a restrictive manner, and the protection of this right requires that states adopt positive measures.”<sup>71</sup> A number of decisions have recognized the positive obligation to take adequate measures to protect the right to life,<sup>72</sup> which includes protection “not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights.”<sup>73</sup>
180. The positive obligation to protect life applies in particular to detainees: “It is incumbent on States to ensure the right of life of detainees ... the State party by arresting and detaining individuals takes the responsibility to care for their life.”<sup>74</sup> The Committee has recognized

<sup>64</sup> Ibid.

<sup>65</sup> *Eshonov v. Uzbekistan*, UNHRC, Views of 22 July 2010, CCPR/C/9/D/1225/2003, para. 9.2;

*Guneththige v. Sri Lanka*, UNHRC, Views of 30 March 2015, CCPR/C/113/D/2087/2011, para. 6.2.

<sup>66</sup> *Barbato v. Uruguay*, UNHRC, Views of 21 October 1982, CCPR/C/17/D/84/1981, para. 9.2; *Moidunov v. Kyrgyzstan*, UNHRC, Views of 19 July 2011, CCPR/C/102/D/1756/2008, para. 8.8.

<sup>67</sup> *Akmatov v. Kyrgyzstan*, UNHRC, Views of 29 October 2015, CCPR/C/115/D/2052/2011, para. 8.7.

<sup>68</sup> *Bleier v. Uruguay*, UNHRC, Views of 29 March 1982, UN Doc. A/37/40 (Sup. No. 40), para. 13.3;

*Mukong v. Cameroon*, UNHRC, Views of 21 July 1994, CCPR/C/51/D/458/1991, para. 9.2.

<sup>69</sup> *Bleier v. Uruguay*, UNHRC, Views of 29 March 1982, UN Doc. A/37/40 (Sup. No. 40), para. 13.3.

<sup>70</sup> UNHRC, *General Comment 14, Article 6, The Right to Life*, 1984, para. 1.

<sup>71</sup> UNHRC, *General Comment 6, Article 6, The Right to Life*, 1982, para. 2.

<sup>72</sup> *Akmatov v. Kyrgyzstan*, UNHRC, Views of 29 October 2015, CCPR/C/115/D/2052/2011, para. 8.4;

*Barbato v. Uruguay*, UNHRC, Views of 21 October 1982, CCPR/C/17/D/84/1981, para. 9.2.

<sup>73</sup> UNHRC, *General Comment 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 2004, para. 8; *Rizvanović v. Bosnia and Herzegovina*, UNHRC, Views of 21 March 2004, CCPR/C/110/D/1997/2010, para. 9.1–9.4.

<sup>74</sup> *Lantsova v. Russia*, UNHRC, Views of 15 April 2002, CCPR/C/74/D/763/1997, para. 9.2; *Titiahonjo v. Cameroon*, UNHRC, Views of 13 November 2007, CCPR/C/91/D/1186/2003, para. 6.2.

that prisoners are “particularly vulnerable,”<sup>75</sup> imposing a special responsibility on the State to take adequate and appropriate measures to protect them.<sup>76</sup> The State must protect a detainee’s life even if the detainee has not requested protection.<sup>77</sup> This obligation requires that the State take positive steps to protect the individual both from murder and from suicide while in custody.<sup>78</sup> Where a State fails to take “adequate measures” to protect prisoners, it may be responsible for a violation of Article 6(1).<sup>79</sup> According to the Human Rights Committee, this protection “should be interpreted so as to extend to the widest possible protection against abuses, whether physical or mental.”<sup>80</sup>

### Unlawful detention

181. Article 9(1) of the ICCPR provides that “no one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.” The Human Rights Committee has reiterated that deprivation of liberty “in violation of a procedure as established by law” violates Article 9(1).<sup>81</sup>
182. Prompt and accurate registration is an important component of lawful detention,<sup>82</sup> as well as an important safeguard against torture.<sup>83</sup> The revised UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules) requires that all prisoners not only be registered, but that this registration accurately record the day and hour that a person was initially detained, as well as the reasons and authority for the detention.<sup>84</sup> The Human Rights Committee has also held that detention is unlawful under Article 9(1) where a suspect is kept in police detention for longer than national law authorizes,<sup>85</sup> for example where a person was held for two weeks in police detention without being brought before a judge.<sup>86</sup>

### Arbitrary detention

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<sup>75</sup> UNHRC, *General Comment 21, Article 10, Right to Humane Treatment and Respect for Human Dignity*, 1992, para. 3.

<sup>76</sup> *Barbato v. Uruguay*, UNHRC, Views of 21 October 1982, CCPR/C/17/D/84/1981, para. 9.2; *Bleier v. Uruguay*, UNHRC, Views of 29 March 1982, CCPR/C/15/D/30/1978, para. 11.2, 13.3.

<sup>77</sup> *Ernazarov v. Kyrgyzstan*, UNHRC, Views of 25 March 2015, CCPR/C/113/D/2054/2011, para. 9.4; *Lantsov v. Russian Federation*, UNHRC, Views of 22 March 2002, CCPR/C/74/D/763/1997, para. 9.2.

<sup>78</sup> *Barbato v. Uruguay*, UNHRC, Views of 21 October 1982, CCPR/C/17/D/84/1981, para. 9.2.

<sup>79</sup> *Ibid.*

<sup>80</sup> *UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, 9 December 1988, G.A. Res. 43/173, UN Doc. A/RES/43/173, note to Principle 6.

<sup>81</sup> *Gridin v. Russian Federation*, UNHRC, Views of 20 July 2000, CCPR/C/69/D/770/1997, para. 8.1; UNHRC, *General Comment 35, Article 9, Right to Liberty*, 2014, CCPR/C/GC/35, para. 11, 22.

<sup>82</sup> *Çakici v. Turkey*, ECtHR, Judgment of 8 July 1999, para. 105; *Kozulina v. Belarus*, UNHRC, Views of 14 January 2015, CCPR/C/112/D/1773/2008, para. 9.6; see also UNHRC, *General Comment 35, Article 9, Right to Liberty*, 2014, CCPR/C/GC/35, para. 58.

<sup>83</sup> UNHRC, *General Comment 20, Article 7, Concerning Prohibition of Torture and Cruel Treatment or Punishment*, 1992, para. 11.

<sup>84</sup> UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), 21 May 2015, E/CN.15/2015/L.6/Rev.1, Rule 7.

<sup>85</sup> *Umarova v. Uzbekistan*, UNHRC, Views of 3 November 2010, CCPR/C/100/D/1449/2006, para. 8.4.

<sup>86</sup> *Akhadov v. Kyrgyzstan*, UNHRC, Views of 25 May 2011, CCPR/C/101/D/1503/2006, para. 7.4.

183. Article 9(1) of the ICCPR provides that “no one shall be subjected to arbitrary arrest or detention.” Although the ICCPR does not define the concept of arbitrariness, the Human Rights Committee has held that the protection against arbitrary detention is not limited to prohibiting detention that is “against the law”; rather, it “must be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability.”<sup>87</sup> Arbitrariness thus includes lack of due process<sup>88</sup> and “incompatibility with the principles of justice or with the dignity of the human person.”<sup>89</sup> The UN Working Group on Arbitrary Detention has regarded detention as arbitrary where the person is detained merely because they have exercised one of their fundamental rights.<sup>90</sup> Detention in the course of immigration control proceedings is not per se arbitrary, but must be justified as reasonable, necessary, and proportionate in light of the circumstances and reassessed over time.<sup>91</sup>
184. Formal compliance with domestic law does not preclude arbitrary detention.<sup>92</sup> Detention must only be imposed to meet a legitimate aim, and only where it is reasonable, necessary, and proportionate to meet that aim.<sup>93</sup> The Human Rights Committee considers that “remand in custody must not only be lawful but reasonable and necessary in all the circumstances.”<sup>94</sup> Detention for an ulterior purpose, such as to force the disclosure of information, may be arbitrary.<sup>95</sup> Detention will also be arbitrary if it is “motivated by discrimination.”<sup>96</sup> The Committee has also affirmed that detention is arbitrary where it is aimed at silencing an advocate for greater democracy<sup>97</sup> or where it is a result of someone’s personal political views.<sup>98</sup> Moreover, the Committee has held that the guarantee against arbitrary detention is non-derogable, such that States cannot justify a deprivation of liberty that is unreasonable or unnecessary under the circumstances, even in situations covered by Article 4.<sup>99</sup>

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<sup>87</sup> *Van Alphen v. The Netherlands*, UNHRC, Views of 23 July 1990, CCPR/C/39/D/305/1988, para. 5.8; *Mukong v. Cameroon*, UNHRC, Views of 21 July 1994, CCPR/C/51/D/458/1991, para. 9.8; UNHRC, *General Comment 35, Article 9, Right to Liberty*, 2014, CCPR/C/GC/35, para. 12.

<sup>88</sup> UNHRC, *General Comment 35, Article 9, Right to Liberty*, 2014, CCPR/C/GC/35, para. 12; *Marques de Morais v. Angola*, UNHRC, Views of 29 March 2005, CCPR/C/83/D/1128/2002, para. 6.1.

<sup>89</sup> *A v. Australia*, UNHRC, Views of 30 April 1997, CCPR/C/59/D/560/1993, para. 7.6.

<sup>90</sup> *Fact Sheet No. 26: The Working Group on Arbitrary Detention*, OHCHR, at Part II, available at <http://www.ohchr.org/Documents/Publications/FactSheet26en.pdf>.

<sup>91</sup> UNHRC, *General Comment 35, Article 9, Right to Liberty*, 2014, CCPR/C/GC/35, para. 18.

<sup>92</sup> *Van Alphen v. The Netherlands*, UNHRC, Views of 23 July 1990, CCPR/C/39/D/305/1988, para. 5.8; *Saadi v. United Kingdom*, ECtHR, Judgment of 29 January 2008, para. 67; UNHRC, *General Comment 35, Article 9, Right to Liberty*, 2014, CCPR/C/GC/35, para. 12.

<sup>93</sup> UNHRC, *General Comment 35, Article 9, Right to Liberty*, 2014, CCPR/C/GC/35, para. 12; Special Rapporteur on Torture, Manfred Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (Strasbourg: N. P. Engel, 2005), 225; *Kozulina v. Belarus*, UNHRC, Views of 14 January 2015, CCPR/C/112/D/1773/2008, para. 9.7.

<sup>94</sup> *Kulov v. Kyrgyzstan*, UNHRC, Views of 19 August 2010, CCPR/C/99/D/1369/2005, para. 8.3.

<sup>95</sup> *Mbenge v. Zaire*, UNHRC, Views of 25 March 1983, CCPR/C/OP/2, para. 20–21.

<sup>96</sup> Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (Strasbourg: N. P. Engel, 2005), 225; UNHRC, *General Comment 35, Article 9, Right to Liberty*, 2014, CCPR/C/GC/35, para. 17.

<sup>97</sup> *Mukong v. Cameroon*, UNHRC, Views of 21 July 1994, CCPR/C/51/D/458/1991, para. 9.6, 9.8.

<sup>98</sup> *Bahamonde v. Equatorial Guinea*, UNHRC, Views of 10 November 1993, CCPR/C/49/D/468/1991, para. 9.1, 9.5; *Jaona v. Madagascar*, UNHRC, Views of 1 April 1985, CCPR/C/24/D/132/1982, para. 14; *Blanco v. Nicaragua*, UNHRC, Views of 20 July 1994, CCPR/C/51/D/328/1988, para. 10.3; *Gusinskiy v. Russia*, ECtHR, Judgment of 19 May 2004, para. 77.

<sup>99</sup> UNHRC, *General Comment 35, Article 9, Right to Liberty*, 2014, CCPR/C/GC/35, para. 66.



### Incommunicado detention

185. Incommunicado detention, in which the detainee cannot communicate with the outside world at all, violates a number of human rights norms. The Human Rights Committee has held that incommunicado detention can violate the right of a detainee to be treated with dignity under Article 10<sup>100</sup> and the right to personal liberty under Article 9.<sup>101</sup> Prolonged incommunicado detention is generally regarded as a violation of Article 7.<sup>102</sup> It has also held that “total isolation of a detained or imprisoned person may amount to acts prohibited by article 7.”<sup>103</sup>
186. Incommunicado detention is also linked to other violations, in particular, torture.<sup>104</sup> The Human Rights Committee has found that incommunicado detention is conducive to torture<sup>105</sup> and has therefore called on all States to establish provisions against incommunicado detention.<sup>106</sup> In 2003, the UN Special Rapporteur on Torture reported that “torture is most frequently practised during incommunicado detention. Incommunicado detention should be made illegal, and persons held incommunicado should be released without delay.”<sup>107</sup> Incommunicado detention includes situations where a detainee’s family is informed that the person is “safe” but not where he or she is or the nature of the detention.<sup>108</sup> The Committee against Torture has also repeatedly expressed concern regarding incommunicado detention, observing that “the incommunicado regime, regardless of the legal safeguards for its application, facilitates the commission of acts of

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<sup>100</sup> *Arutyunyan v. Uzbekistan*, UNHRC, Views of 13 May 2004, CCPR/C/80/D/917/2000 (in this case, the victim was held incommunicado for two weeks).

<sup>101</sup> UNHRC, *General Comment 35, Article 9, Right to Liberty*, 2014, CCPR/C/GC/35, para. 35; *Marques de Morais*, UNHRC, Views of 18 April 2005, CCPR/C/83/D/1128/2002, (10-day incommunicado detention without access to a lawyer violated Articles 9(3)(4)); *Shaw v. Jamaica*, UNHRC, Views of 4 June, CCPR/C/62/D/704/1996, (the victim was held incommunicado for eight months); *Shikhmuradov v. Turkmenistan*, UNHRC, Views of 17 October 2014, CCPR/C/112/D/2069/2011, para 6.5.

<sup>102</sup> *Shikhmuradova v. Turkmenistan*, UNHRC, Views of 17 October 2015, CCPR/C/112/D/2069/2011, para. 6.4; UNHRC, *General Comment 35, Article 9, Right to Liberty*, 2014, CCPR/C/GC/35, para. 56.

<sup>103</sup> *Kulov v. Kyrgyzstan*, UNHRC, Views of 26 July 2010, CCPR/C/99/D/1369/2005.

<sup>104</sup> UNHRC, *General Comment 35, Article 9, Right to Liberty*, 2014, CCPR/C/GC/35, para. 56.

<sup>105</sup> *Preliminary Observations of the Human Rights Committee: Peru*, UN Doc. CCPR/C/79/Add.67, para. 18, 24, 25 July 1996; *Mukong v. Cameroon*, UNHRC, Views of 21 July 1994, CCPR/C/51/D/458/1991; *El-Megreisi v. Libyan Arab Jamahiriya*, UNHRC, Views of 23 March 1994, CCPR/C/50/D/440/1990.

<sup>106</sup> UNHRC, *General Comment 20, Article 7, Concerning Prohibition of Torture and Cruel Treatment or Punishment*, 1992, para. 11; *Kulov v. Kyrgyzstan*, UNHRC, Views of 26 July 2010, CCPR/C/99/D/1369/2005.

<sup>107</sup> Special Rapporteur on Torture, Theo Van Boven, *The Question of Torture Submitted in Accordance with Commission Resolution 2002/38*, UN Doc. E/CN.4/2003/68, December 2002, para. 26(g).

<sup>108</sup> Human Rights Council, *Joint Study on Secret Detention*, prepared by the Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms While Countering Terrorism, the Special Rapporteur on Torture, the Working Group on Arbitrary Detention, and the Working Group on Enforced and Involuntary Disappearances, UN Doc. A/HRC/13/42, May 2010, 19; *Bendib v. Algeria*, UNCAT, Decision of 8 November 2013, CAT/C/51/D/376/2009, para. 6.4.

torture and ill-treatment”,<sup>109</sup> and finding that incommunicado pretrial detention (“arraigo”) violates Mexico’s obligation to prevent torture under Article 2(1) of UNCAT.<sup>110</sup>

#### Distress to family as cruel treatment

187. The Human Rights Committee has held that families of victims of human rights violations may themselves be victims, particularly when the violations involve enforced disappearance or execution. It has found violations of ICCPR Article 7 with respect to victims’ families based on the “anguish and stress” that the disappearance of a son or daughter causes a parent because of “continuing uncertainty concerning her fate and whereabouts.”<sup>111</sup> The Committee has also found violations of Article 7 on behalf of victims’ families in instances of torture and death in detention,<sup>112</sup> and failure to conduct an effective investigation of an assassination.<sup>113</sup> Where the family member is a minor, the anguish that they suffer may be particularly acute, and also constitute a violation of Article 24 of the ICCPR.<sup>114</sup>
188. The Committee against Torture also recognizes that the torture of a person may affect the rights of dependents. Article 14(1) of the Convention against Torture specifically provides for a right of the dependents of torture victims to claim compensation, and some have argued that close family members of torture victims may be entitled to compensation both for the suffering of the victim and for their own suffering.<sup>115</sup>

#### Extradition or expulsion to face risk of torture (non-refoulement)

189. The Human Rights Committee has determined that States “must not expose individuals to the danger of torture or cruel, inhuman or degrading treatment or punishment upon return to another country by way of their extradition, expulsion or refoulement.”<sup>116</sup> This obligation, included in Article 2 of the ICCPR, directs States to “undertake to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant.” In evaluating a potential violation of Article 2, the

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<sup>109</sup> *Conclusions and Recommendations of the Committee against Torture Spain*, UN Doc. CAT/C/CR/29/3, 23 December 2002, para 10; *Arana v. France*, UNCAT, Views of 9 November 1999, CAT/C/23/D/63/1997 para 11.4; *Aarrass v. Morocco*, UNCAT, Decision of 19 May 2014, CAT/C/52/D/477/2011, para. 10.3; *Bendib v. Algeria*, UNCAT, Decision of 8 November 2013, CAT/C/51/D/376/2009, para. 6.4; see also UNHRC, *General Comment 35, Article 9, Right to Liberty*, 2014, CCPR/C/GC/35, para. 58.

<sup>110</sup> *Ramiro Ramírez Martínez et al. v. Mexico*, UNCAT, Decision of 4 August 2015, CAT/C/55/D/500/2012, para 17.5.

<sup>111</sup> *Almeida v. Uruguay*, UNHRC, Views of 21 July 1983, CCPR/C/OP/2, para 14; *Sarma v. Sri Lanka*, UNHRC, Views of 31 July 2003, CCPR/C/78/D/950/2000, para. 9.5; *Sharma v. Nepal*, UNHRC, Views of 6 November 2008, CCPR/C/94/D/1469/2006, para 7.9.

<sup>112</sup> *Eshonov v. Uzbekistan*, UNHRC, Views of 2010, CCPR/C/99/D/1225/2003, para. 9.10; *Guneththige v. Sri Lanka*, UNHRC, Views of 30 March 2015, CCPR/C/113/D/2087/2011, para 6.6.

<sup>113</sup> *Sankara et al. v. Burkina Faso*, UNHRC, Views of 2006, CCPR/C/86/D/1159/2003, para 12.2.

<sup>114</sup> *Almegaryaf and Matar v. Libya*, UNHRC, Views of 25 March 2014, CCPR/C/110/D/2006/2010, para. 7.10.

<sup>115</sup> Manfred Nowak and Elizabeth McArthur, ‘*The United Nations Convention against Torture: A Commentary*’ (Oxford: Oxford University Press, 2008), 489.

<sup>116</sup> UNHRC, *General Comment 20, Article 7, Concerning Prohibition of Torture and Cruel Treatment or Punishment*, 1992, para 9.

Committee considers whether a high risk of torture or ill-treatment is a “necessary and foreseeable consequence” of deportation.<sup>117</sup> The Committee has clarified that States may not expel individuals if they will face a real risk of prolonged arbitrary detention or other form of severe violation of liberty or security.<sup>118</sup>

190. Article 3 of the UN Convention against Torture explicitly prohibits extradition or expulsion of an individual who risks being subjected to torture if returned to another State. A person may not be extradited in circumstances where the risk is “foreseeable, real and personal”<sup>119</sup>; it does not have to meet the test of “highly probable.”<sup>120</sup> To determine whether such a risk exists, the Committee examines various factors, including the author’s ethnic background, political involvement,<sup>121</sup> and history of detention and/or torture.<sup>122</sup> The Committee may also consider the circumstances under which the author left his or her country,<sup>123</sup> an author’s risk of expulsion to a third country where torture is likely,<sup>124</sup> court proceedings in the country of origin that resulted in sentencing in absentia,<sup>125</sup> the human rights situation relevant to the victim’s specific circumstances,<sup>126</sup> and a consistent pattern of gross, flagrant, or mass violations of human rights.<sup>127</sup> The fight against terrorism does not absolve States from honoring their obligation of non-refoulement.<sup>128</sup> Diplomatic assurances in themselves cannot avoid the application of the principle of non-refoulement.<sup>129</sup>

#### Conviction based on confession obtained through torture

191. Article 14 of the ICCPR provides that everyone has the right “not to be compelled to testify against himself or to confess guilt.” The Human Rights Committee has recognized that “it is important for the discouragement of violations under Article 7 that the law must prohibit

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<sup>117</sup> *G.T. v. Australia*, UNHRC, View of 4 November 1997, CCPR/C/61/D/706/1996, para. 8.1, 8.6.

<sup>118</sup> UNHRC, *General Comment 35, Article 9 Liberty and Security of Person*, 2014, para. 57.

<sup>119</sup> *A.R. v. The Netherlands*, UNCAT, Decision of 21 November 2003, CAT/C/31/D/203/2002, para 7.3. *Abdussamatov et al. v. Kazakhstan*, UNCAT, Decision of 1 June 2012, CAT/C/48/D/444/2010, para 13.4.

<sup>120</sup> *Abdussamatov et al. v. Kazakhstan*, UNCAT, Decision of 1 June 2012, CAT/C/48/D/444/2010, para 13.4.

<sup>121</sup> *El Rgeig v. Switzerland*, UNCAT, Views of 22 January 2007, CAT/C/37/D/280/2005 (applicant was politically active in country of origin); *Aemei v. Switzerland*, UNCAT, Views of 9 May 1997, CAT/C/18/D/34/1995 (applicant has undertaken activities in the receiving country); *Khan v. Canada*, UNCAT, Views of 4 July 1994, UN Doc. A/50/44 at 46 (1994) (letter from applicant’s own organization advised him not to come back).

<sup>122</sup> *Aemei v. Switzerland*, UNCAT, Views of 9 May 1997, CAT/C/18/D/34/1995; *El Rgeig v. Switzerland*, UNCAT, Views of 22 January 2007, CAT/C/37/D/280/2005.

<sup>123</sup> *Mutombo v. Switzerland*, UNCAT, Views of 27 April 1994, UN Doc. A/49/44 at 45 (applicant left the country in a clandestine manner); *Alan v. Switzerland*, UNCAT, Views of 31 January 1995, CAT/C/16/D/21/1995 (applicant was in internal exile).

<sup>124</sup> *Korban v. Sweden*, UNCAT, Views of 16 November 1998, CAT/C/21/D/88/1997.

<sup>125</sup> *Karoui v. Sweden*, UNCAT, Views of 8 May 2002, CAT/C/28/D/185/2001.

<sup>126</sup> *Arana v. France*, UNCAT, Views of 16 December 1996, CAT/C/23/D/63/1997 (NGOs expressed suspicion that other persons in the same circumstances as the applicant had been subjected to torture); *Agiza v. Sweden*, UNCAT, Views of 20 May 2005, CAT/C/34/D/233/2003 (torture is widely used against political dissenters and common detainees).

<sup>127</sup> *Abdussamatov et al v. Kazakhstan*, UNCAT, Decision of 1 June 2012, CAT/C/48/D/444/2010, para 13.3.

<sup>128</sup> *Ibid*, para 13.7.

<sup>129</sup> *Ibid*.

the use or admissibility in judicial proceedings of statements or confessions obtained through torture or other prohibited treatment”<sup>130</sup> including cruel, inhuman, and degrading treatment,<sup>131</sup> as well as “any direct or indirect physical or psychological coercion.”<sup>132</sup> The Committee has stressed the obligation of States to take account of any claims suggesting that statements by the accused were made under duress, regardless of whether the confessions were later relied upon.<sup>133</sup> The Committee has also stated that in cases of alleged forced confessions: the burden of proving that victims supplied such statements of their own free will is on the State<sup>134</sup>; a lack of physical marks does not necessarily show that torture did not occur;<sup>135</sup> and the accused’s claims of torture need only be well founded, indicating that torture was more likely than not to have occurred.<sup>136</sup>

192. Article 15 of the Convention against Torture, explicitly sets out the same principles, providing that statements made as a result of torture “shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.” This prohibition applies to statements victims make describing ill-treatment of themselves, statements they make about third parties, as well as real evidence obtained through statements made under torture.<sup>137</sup> This principle is non-derogable and no exceptions apply, including concern for national security.<sup>138</sup> When a person claims that a statement has been obtained by torture, any State using the statement in legal proceedings has an obligation to investigate such claims regardless of whether the alleged torture occurred under its own jurisdiction.<sup>139</sup> In addition, the State should ensure that individuals can challenge the legality of any evidence plausibly suspected of having been obtained by torture.<sup>140</sup>

#### Detention, torture, or killing based on discrimination

193. The Human Rights Committee has repeatedly stressed the importance of the principle of nondiscrimination embodied in Article 2 and Article 26 of the ICCPR, and has interpreted the term “discrimination” broadly.<sup>141</sup> The principle of nondiscrimination is essential to protecting the rights of vulnerable populations, including persons in custody, minorities, and individuals espousing views that place them in danger of governmental or third-party

<sup>130</sup> UNHRC, *General Comment 20, Article 7, Concerning Prohibition of Torture and Cruel Treatment or Punishment*, 1992, para 12.

<sup>131</sup> Special Rapporteur on Torture, Juan Mendez, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UN Doc. A/HRC/25/60, 10 April 2014, para. 26.

<sup>132</sup> *Idieva v. Tajikistan*, UNHRC, Views of 31 March 2009, CCPR/C/95/D/1276/2004, para 9.3;

*Grishkovtsov v. Belarus*, UNHRC, Views of 1 April 2015, CCPR/C/113/D/2013/2010, para 8.2.

<sup>133</sup> *Kouidis v. Greece*, UNHRC, Views of 28 March 2006, CCPR/C/86/D/1070/2002, para. 7.5.

<sup>134</sup> *Singarasa v. Sri Lanka*, UNHRC, Views of 21 July 2004, CCPR/C/81/D/1033/2001, para 7.4; *Sultanova and Ruzmetov v. Uzbekistan*, UNHRC, Views of 19 April 2006, CCPR/C/86/D/915/2000.

<sup>135</sup> Special Rapporteur on Torture, Juan Mendez, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UN Doc. A/HRC/25/60, 10 April 2014, para. 25.

<sup>136</sup> *Ibid.*, para. 33.

<sup>137</sup> *P.E. v. France*, UNCAT, Views of 21 November 2002, CAT/C/29/D/193/2001, 30.

<sup>138</sup> Special Rapporteur on Torture, Juan Mendez, *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UN Doc. A/HRC/25/60, 10 April 2014, para. 22.

<sup>139</sup> *G.K. v. Switzerland*, UNCAT, View of 7 May 2003, CAT/C/30/D/219/2002, para 6.10; *Niyonzima v. Burundi*, UNCAT, Decision of 21 November 2014, CAT/C/53/D/514/2012, para. 8.7.

<sup>140</sup> UNCAT, *Concluding Observations on the UK*, UN Doc. CAT/C/CR/33/3, 2004, para. 5(d).

<sup>141</sup> UNHRC, *General Comment 18: Non-discrimination*, 1989, para 7.

reprisals. Similarly, the Committee against Torture has reinforced the importance of safeguarding vulnerable populations from torture and other cruel treatment. Moreover, the definition of “torture” in Article 1 of the Convention against Torture includes the intentional infliction of severe pain and suffering for “any reason based on discrimination of any kind.” The Committee has insisted that “the protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment.”<sup>142</sup> The Human Rights Committee has also recognized certain sexual abuse against women, committed by the State, as “extreme gender-based violence” which may constitute a violation of Article 7 of the ICCPR.<sup>143</sup>

194. In *Osmani v. Republic of Serbia*, the Committee against Torture found that the victim’s membership of a minority group historically subjected to discrimination, the Roma, aggravated the physical and mental suffering of the victim, thus reaching the threshold of cruel, inhuman, or degrading treatment or punishment.<sup>144</sup> In *L.N.P. v. Argentina*, the Human Rights Committee found that the victim’s age, sex, and ethnicity contributed to her facing discrimination when she attempted to report a rape and during the trial of the alleged offender. The re-victimization caused by this violated Article 7, as well as the prohibition on discrimination in Article 26.<sup>145</sup>

#### Detention, torture, or killing because human rights defender or journalist

195. The Human Rights Committee has repeatedly emphasized the importance of freedom of expression guaranteed by Article 19, which provides: “Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds.” The Committee has focused particular attention on the expression of political views, noting that a high risk of prosecution and other punitive measures often accompanies the exercise of this right. The Committee held that detention as a result of a person’s political views is arbitrary.<sup>146</sup> Even if an arrest is formally carried out in compliance with domestic law, if its aim is to silence a person’s opinions, the arrest is arbitrary and contrary to Article 9.<sup>147</sup>
196. Human rights defenders and journalists are particularly likely to be victims of freedom of expression violations. Acknowledging the heightened vulnerability of journalists to discriminatory treatment, arbitrary attacks, and harassment, the Human Rights Committee has called for increased measures of protection to ensure the free exercise of their rights of expression and association.<sup>148</sup>
197. Echoing these sentiments, the United Nations Special Rapporteur on the situation of human rights defenders noted that defenders are also frequently arrested and prosecuted on false charges, and are regularly denied access to a lawyer, medical care, and judicial process

<sup>142</sup> UNCAT, *General Comment 2, Article 2, Implementation of Article 2 by State Parties*, 2008, para. 21.

<sup>143</sup> *Mehalli v. Algeria*, UNHRC, Views of 28 May 2014, CCPR/C/110/D/1900/2009, para. 7.10.

<sup>144</sup> *Osmani v. Republic of Serbia*, UNCAT, Decision of 25 May 2009, CAT/C/42/D/261/2005, para. 10.4.

<sup>145</sup> *L.N.P. v. Argentina*, UNHRC, Views of 18 July 2011, CCPR/C/102/D/1610/2007, para. 13.3, 13.6.

<sup>146</sup> *Jaona v. Madagascar*, UNHRC, Views of 1 April 1985, UN Doc. Sup. No. 40 (A/40/40) at 179, para 14–16; *Blanco v. Nicaragua*, UNHRC, Views of 20 July 1994, CCPR/C/51/D/328/1988, para. 10.3.

<sup>147</sup> *Mukong v. Cameroon*, UNHRC, Views of 10 August 1994, CCPR/C/51/D/458/1991, para. 2.1, 9.8.

<sup>148</sup> UNHRC, *General Comment 35, Article 9, Right to Liberty*, 2014, CCPR/C/GC/35, para. 9; UNHRC, *Concluding Observations on Argentina*, UN Doc. CCPR/C/79/Add.46, 1995, para. 12.

while in detention.<sup>149</sup> The Special Rapporteur expressed deep concern about “the use of killing, harassment and threats” against defenders trying to gather and publish information on violations of human rights,<sup>150</sup> and urged States to abide by the Declaration on Human Rights Defenders, which encourages States to take all necessary measures to protect defenders against “any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action.”<sup>151</sup>

198. Other regional human rights bodies have also recognized the right to freedom of expression without fear of intimidation or arrest. The European Court of Human Rights (ECtHR) has condemned detention that was used in part to silence political opposition,<sup>152</sup> and the Inter-American Commission has recognized that harassment and intimidation tactics against “social communicators” violate the right to freedom of expression.<sup>153</sup> It has also held that the killing of journalists with impunity has serious “chilling effects” on other media practitioners and the public at large by instilling generalized fear about denouncing Government and private abuses.<sup>154</sup>

#### Solitary confinement

199. Solitary confinement under certain circumstances may be considered torture or cruel, inhuman, and degrading treatment. Whether solitary conditions amount to torture or ill-treatment is determined on an individual basis by evaluating prison conditions, the stringency of the confinement, the duration, the objective of confinement, and the effect on the prisoner.<sup>155</sup> According to the Mandela Rules, prolonged or indefinite solitary confinement may be considered torture or cruel, degrading, and inhuman treatment.<sup>156</sup> The Mandela Rules define prolonged detainment as confinement for more than 15 consecutive days.<sup>157</sup> The Special Rapporteur has said that torture is more likely to happen when an individual is under solitary confinement because witnesses are not present.<sup>158</sup> The Special Rapporteur also asserts that prolonged solitary confinement is a violation of Article 10,

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<sup>149</sup> UN Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya, UN Doc. A/HRC/13/2230, December 2009, para 31, 47, 49, 55 (certain categories of defenders, such as members of human right NGOs, journalists, women defenders, and defenders of lesbian, gay, bisexual, and transgender rights are subject to particularly virulent threats, attacks, and intimidation).

<sup>150</sup> Special Rapporteur on the Situation of Human Rights Defenders, Margaret Sekaggya, UN Doc. A/HRC/13/2230, December 2009, para. 40, 53.

<sup>151</sup> Ibid, para. 62.

<sup>152</sup> *Gusinskiy v. Russia*, ECtHR, Judgment of 19 May 2004, para 77; para. 62–78.

<sup>153</sup> Inter-American Commission on Human Rights, Office of the Special Rapporteur for Freedom of Expression, *Declaration of Principles on Freedom of Expression*, Principle 9 (Oct. 2000).

<sup>154</sup> *Miranda v. Mexico*, IACommHR, Report No. 50/99 of April 13, 1999, para. 52; *Victor Manuel Orepeza v. Mexico*, IACommHR, Report No. 130/99 of 19 November 1999, para. 58.

<sup>155</sup> *A.A. v. Denmark*, UNCAT, Decision of 13 November 2012, CAT/C/49/D/412/2010, para. 7.4.

<sup>156</sup> UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), 21 May 2015, E/CN.15/2015/L.6/Rev.1, Rule 43.

<sup>157</sup> Ibid, Rule 44.

<sup>158</sup> Special Rapporteur on Torture, Juan Mendez, *Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UN Doc. A/66/268, 5 August 2011, para. 70

paragraph 3 of the ICCPR because it does not fulfill the purpose of the rehabilitation of prisoners.<sup>159</sup>

200. Solitary confinement must be used only in exceptional cases for as short a time as possible.<sup>160</sup> Further, solitary confinement must not be imposed as part of an individual's sentence or as punishment for violating prison rules.<sup>161</sup> According to the Special Rapporteur on torture, solitary confinement should never be used on a person with a mental disability or during pretrial detention.<sup>162</sup> Implementing solitary confinement during pretrial detention increases the chances of false confessions as a result of the pressure and hardship it imposes.<sup>163</sup>

#### D. Violation of Safeguards

**Note:** While the CAT and ICCPR have only general references to the obligation to prevent torture, international human rights law and jurisprudence increasingly recognize the vital importance of adopting safeguards to protect persons in custody. While the jurisprudence of UN Treaty Bodies confirms most of the safeguards, individual decisions have not highlighted all of them (for example, failure to video record the interrogations and independent monitoring of the facilities are notably absent). The jurisprudence is evolving and you can rely on the soft law standards, as well as extant jurisprudence, to support your arguments.

#### Obligation to provide safeguards against torture

201. International human rights law recognizes the vital importance of safeguards to protect persons in custody. The Human Rights Committee has explained that the prohibition of torture includes the obligation to protect persons from torture, and as part of this obligation, States must put safeguards into place.<sup>164</sup> These safeguards include the right to have one's detention registered and notified to a third party, the right to access a lawyer, and the provision of an independent medical examination.<sup>165</sup> The Committee also stressed that States have a duty to train relevant personnel, such as police officers and prison guards, to minimize the chance of violation.<sup>166</sup>

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<sup>159</sup> Ibid.

<sup>160</sup> UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), 21 May 2015, E/CN.15/2015/L.6/Rev.1, Rule 45.

<sup>161</sup> Special Rapporteur on Torture, Juan Mendez, *Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UN Doc. A/66/268, 5 August 2011, para. 72.

<sup>162</sup> Ibid, para. 78, 81, 85.

<sup>163</sup> Peter Scharff Smith, "Solitary Confinement: An Introduction to the Istanbul Statement on the Use and Effects of Solitary Confinement," 41; see also Special Rapporteur on Torture, Juan Mendez, *Interim Report of the Special Rapporteur of the Human Rights Council on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UN Doc. A/66/268, 5 August 2011, para. 76

<sup>164</sup> UNHRC, *General Comment 20, Article 7, Concerning Prohibition of Torture and Cruel Treatment or Punishment*, 1992, para. 11.

<sup>165</sup> Ibid.

<sup>166</sup> Ibid, para. 10.

202. Article 2 of the UNCAT contains the same requirement for safeguards against torture, requiring that “each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.” The Committee against Torture has also identified a range of required safeguards, including an official detention register, independent inspection of detention facilities, informing detainees of their rights (including prompt legal assessment), medical assistance, contact with family, and the right to complain of mistreatment and challenge detention.<sup>167</sup>

Failure to register custody at moment of detention and to retain effective custody records

203. The Human Rights Committee has stated that protecting detained persons requires that “their names and places of detention, as well as for the names of persons responsible for their detention, to be kept in registers readily available and accessible to those concerned, including relatives and friends.”<sup>168</sup> In addition, “the time and place of all interrogations should be recorded, together with the names of all those present and this information should also be available for purposes of judicial or administrative proceedings.”<sup>169</sup>
204. The Committee against Torture has stated that countries should create a national registry of prisoners.<sup>170</sup> It has decided that a “failure to register the complainant’s detention” among other facts contributes to the violation of the State’s obligation to prevent and punish torture.<sup>171</sup> The UN Special Rapporteur on Torture has also recommended that States “register persons deprived of their liberty from the very moment of apprehension.”<sup>172</sup> The Mandela Rules elaborate that all police custody sites should record in a designated register (1) information concerning the prisoner’s identity and preferred gender, (2) the reasons for commitment and the authority therefore, (3) the day and hour of his admission and release, and (4) the date and time of arrest. Furthermore, places of detention should not receive people into custody “without a valid commitment order of which the details shall have been previously entered in the register.”<sup>173</sup>

Failure to notify family of detention

205. A detainee’s family must be promptly informed of his or her detention. The Human Rights Committee has noted that registering detention enables information regarding a person’s detention to be “readily available and accessible to those concerned, including relatives and friends”.<sup>174</sup> The Committee against Torture has listed the right “to inform a relative” as one of the “fundamental legal safeguards” that States must afford detainees from the moment

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<sup>167</sup> UNCAT, *General Comment 2, Article 2, Implementation of Article 2 by State Parties*, 2008, para. 8, 13.

<sup>168</sup> UNHRC, *General Comment 20, Article 7, Concerning Prohibition of Torture and Cruel Treatment or Punishment*, 1992, para. 11.

<sup>169</sup> *Ibid.*

<sup>170</sup> *Abdelmalek v. Algeria*, UNCAT, Decision of 23 May 2014, CAT/C/52/D/402/2009, para 11.6; *Bendib v. Algeria*, UNCAT, Decision of 8 November 2013, CAT/C/51/D/376/2009, para. 6.5.

<sup>171</sup> UNCAT, *Gerasimov v. Kazakhstan*, Decision of 24 May 2012, CAT//C/48/D/433/2010, para 12.2.

<sup>172</sup> Special Rapporteur on Torture, Nowak, *Report on Mission to Kazakhstan*, UN Doc. A/HRC/13/39/.3, December 2009, para. 81(a).

<sup>173</sup> UN Standard Minimum Rules for the Treatment of Prisoners (approved by the Economic and Social Council by its resolutions 663C of 31 July 1957 and 2076 of 13 May 1977), Rule 7.

<sup>174</sup> UNHRC, *General Comment 20, Article 7, Concerning Prohibition of Torture and Cruel Treatment or Punishment*, 1992, para. 11.



that they are deprived of their liberty.<sup>175</sup> The Committee against Torture and the UN Special Rapporteur on Torture have also recommended that States “grant access to lawyers and allow for notification of family members from the moment of actual deprivation of liberty.”<sup>176</sup>

#### Failure to provide prompt and private access to lawyer

206. Detention without access to a lawyer violates human rights law.<sup>177</sup> The Human Rights Committee has explicitly stated that “the protection of the detainee also requires that prompt and regular access be given to doctors and lawyers.”<sup>178</sup> The UN Special Rapporteur on Torture has stressed that a detainee’s access to a lawyer must be prompt and that the lawyer should be independent from the State<sup>179</sup>; the Committee against Torture has also found that this is an important safeguard against torture.<sup>180</sup> The UN Body of Principles for the Protection of Detained Persons affirms detainees’ rights to consult and communicate with a lawyer without delay and in full confidentiality.<sup>181</sup>
207. Depriving detainees of access to a lawyer violates their right to prepare their defense. Defendants have the right to adequately prepare a defense with their lawyer, in order to meet the principle of equality of arms and to properly fulfill the right to a lawyer and the right to a fair trial. Individuals must be able to communicate with their lawyers freely, in private, and without the presence of law enforcement officials. Adequate legal assistance implies the defendant’s lawyer can properly prepare a defense, which includes receiving court records, evidence, documentation, and other relevant materials, with sufficient time to review them.<sup>182</sup> Lawyers should perform their duties in accordance with professional ethics and free from interference from law enforcement. Defendants must also receive proper materials, including paper, pens, and so on, needed to prepare their defense.<sup>183</sup>

#### Failure to provide private and independent medical examination

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<sup>175</sup> Ibid.

<sup>176</sup> Special Rapporteur on Torture, Nowak, *Report on Mission to Kazakhstan*, UN Doc. A/HRC/13/39/Add.3, December 2009, para. 81(a); *Bendib v. Algeria*, UNCAT, Decision of 8 November 2013, CAT/C/51/D/376/2009, para. 6.4, 6.6.

<sup>177</sup> ICCPR, Article 14 (3) (b); *Wight v. Madagascar*, UNHRC, Views of 1 April 1985, CCPR/C/OP/2, para. 17; *Grishkovtsov v. Belarus*, UNHRC, Views of 1 April 2015, CCPR/C/113/D/2013/2010, para. 8.5.

<sup>178</sup> UNHRC, *General Comment 20, Article 7, Concerning Prohibition of Torture and Cruel Treatment or Punishment*, 1992, para. 11.

<sup>179</sup> UN Special Rapporteur on Torture, Theo van Boven, *Report on the Question of Torture Submitted in Accordance with Commission Resolution 2002/38*, UN Doc. E/CN.4/2003/68, December 2002, para. 26; *Aarrass v. Morocco*, UNCAT, Decision of 19 May 2014, CAT/C/52/D/477/2011, para. 10.3.

<sup>180</sup> *G.K. v. Switzerland*, UNCAT, Decision of 12 May 2003, CAT/C/30/D/219/2002, para. 6.3; *Abdelmalek v. Algeria*, UNCAT, Decision of 23 May 2014, CAT/C/52/D/402/2009, para. 11.6; *Ntikarahera v. Burundi*, UNCAT, Decision of 12 May 2014, CAT/C/52/D/503/2012, para. 6.6.

<sup>181</sup> *UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, 9 December 1988, G.A. Res. 43/173, UN Doc. A/RES/43/173, Principle 18(3); *Ntikarahera v. Burundi*, UNCAT, Decision of 12 May 2014, CAT/C/52/D/503/2012, para. 6.6.

<sup>182</sup> *Sirageva v. Uzbekistan*, UNHRC, Views of 1 November 2005, CCPR/C/85/D/907/2000, para. 6.3.

<sup>183</sup> *Khoroshenko v. Russian Federation*, UNHRC, Views of 29 March 2011, CCPR/C/101/D/1304/2004, para. 9.7.

208. The Human Rights Committee has recommended that States parties provide independent medical examinations,<sup>184</sup> and has noted that “the protection of the detainee ... requires that prompt and regular access be given to doctors.”<sup>185</sup> The Committee against Torture has similarly established that guarantees to protect persons deprived of their liberty from torture include the right to “independent medical assistance.”<sup>186</sup> Specifically, medical examinations should be administered by doctors who are sufficiently independent from State authorities.<sup>187</sup>
209. The UN Body of Principles for the Protection of Detained Persons requires that “a proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided wherever necessary.”<sup>188</sup> The UN Special Rapporteur on Torture has stated that “at the time of arrest, a person should undergo a medical inspection, and medical inspections should be repeated regularly and should be compulsory upon transfer to another place of detention.”<sup>189</sup> The mandatory medical examination of detainees upon admission to and prior to exit from police custody helps to ensure that any change in the detainees’ physical health during their time in custody is recorded, thereby deterring authorities from mistreating them. Medical examinations should also follow the standards outlined in the Istanbul Protocol.<sup>190</sup>

#### Failure to bring promptly before a judge

210. Torture often takes place in the initial hours of custody, and thus bringing a detainee promptly before a judge is an important safeguard against torture. The failure to do so will often be a violation of the obligation to provide safeguards against torture. It also often violates Article 9(3), which specifically requires State actors to bring a detainee before a judge or authorized judicial power promptly following their arrest or detention.<sup>191</sup> The Committee has emphasized that authorization of detention by a prosecutor is not

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<sup>184</sup> UNHRC, *Concluding Observations on Hungary*, UN Doc. CCPR/C/HUN/CO/5, 2010, para. 14; UNHRC, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Russian Federation*, UN Doc. CCPR/C/RUS/2002/5, 2002, para. 51; *Bazarov v. Uzbekistan*, UNHRC, Views of 8 August 2006, UN Doc. CCPR/C/87/D/959/2000, para. 8.3.

<sup>185</sup> UNHRC, *General Comment 20, Article 7, Concerning Prohibition of Torture and Cruel Treatment or Punishment*, 1992, para. 11.

<sup>186</sup> UNCAT, *General Comment 2, Article 2, Implementation of Article 2 by State Parties*, 2008, para. 13; *Aarrass v. Morocco*, UNCAT, Decision of 19 May 2014, CAT/C/52/D/477/2011, para. 10.3.

<sup>187</sup> *Agiza v. Sweden*, UNCAT, Decision of 24 May 2005, CAT/C/34/D/233/2003, para. 12.25; UNCAT, *Concluding Observations on Argentina*, 2004, UN Doc. CAT/C/CR/33/1, para 6; *Bairamov v. Kazakhstan*, UNCAT, Decision of 14 May 2014, CAT/C/52/D/497/2012, para. 8.3.

<sup>188</sup> *UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, 9 December 1988, G.A. Res. 43/173, UN Doc. A/RES/43/173, Principle 24.

<sup>189</sup> UN Special Rapporteur on Torture, Theo van Boven, *Report on the Question of Torture Submitted in Accordance with Commission Resolution 2002/38*, UN Doc. E/CN.4/2003/68, December 2002, para. 26.

<sup>190</sup> *Aarrass v. Morocco*, UNCAT, Decision of 19 May 2014, CAT/C/52/D/477/2011, para. 12.

<sup>191</sup> *Bazarov v. Uzbekistan*, UNHRC, Views from 14 July 2006, CCPR/C/87/D/959/2000, para 8.2; *Bashasha v. Libya*, UNHRC, Views from 2 November 2010, CCPR/C/100/D/1776/2008, para. 7.6; *Grishkovtsov v. Belarus*, UNHRC, Views of 1 April 2015, CCPR/C/113/D/2013/2010, para 8.3.

acceptable, instead requiring the independence and impartiality of judicial control.<sup>192</sup> Detainees must be physically present before the judge during the determination to authorize their detention.<sup>193</sup> This allows the judge to inquire about the treatment the detainee received in custody.<sup>194</sup> The judge will also determine whether the detention is lawful and further detention is necessary, thus ensuring the detainee is not held arbitrarily.<sup>195</sup> Detention on remand should not involve a return to police custody, but rather to a separate facility under different authority, where risks to the rights of the detainee can be more easily mitigated.<sup>196</sup>

211. The meaning of “prompt” in Article 9(3) must be determined in each case separately,<sup>197</sup> but should not exceed 48 hours; only the most exceptional circumstances could justify any longer delay.<sup>198</sup> The absence of a detainee’s request to have his detention reviewed does not justify delay in bringing him or her before a judge.<sup>199</sup> The Human Rights Committee has also reiterated that pretrial detention must only be used in exceptional cases and must be as short as possible.<sup>200</sup> However, if detained, the individual should be held at an official detention facility under a different authority, separate from the investigators, police officers, and supervisors who initially held the detainee in custody, to mitigate the risk of torture.<sup>201</sup>

#### Failure to provide complaint mechanism and protect complainants from reprisal

212. States parties have an obligation to ensure that there is an effective mechanism in place for detainees or prisoners to complain about their treatment. The Human Rights Committee has established that States must recognize “the right to lodge complaints against maltreatment prohibited by article 7,”<sup>202</sup> pointing out that a failure to investigate such allegations and bring perpetrators of violations to justice could result in a separate breach of the ICCPR.<sup>203</sup> The Human Rights Committee has further noted that States are implicitly “obliged not to hinder access to the Committee and to prevent retaliatory measures against any person who

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<sup>192</sup> *Kaldarov v. Kyrgyzstan*, UNHRC, Views from 18 March 2010, CCPR/C/98/D/1338/2005, para. 8.2; *Gapirjanova v. Uzbekistan*, UNHRC, Views from 5 March 2010, CCPR/C/98/D/1589/2007, para. 8.4; UNHRC, *General Comment 35, Article 9, Liberty and Security of Person*, 2014, para. 32.

<sup>193</sup> UNHRC, *General Comment 35, Article 9, Liberty and Security of Person*, 2014, para. 34.

<sup>194</sup> *Ibid.*

<sup>195</sup> UNHRC, *Concluding Observations on Tajikistan*, UN Doc. CCPR/CO/84/TJK, 2005, para. 12.

<sup>196</sup> UNHRC, *General Comment 35, Article 9, Liberty and Security of Person*, 2014, para. 36.

<sup>197</sup> *McLawrence v. Jamaica*, UNHRC, Views from 18 July 1997, CCPR/C/60/D/702/1996, para. 5.6;

*Yuzepchuk v. Belarus*, UNHRC, Views of 24 October 2014, CCPR/C/112/D/1906/2009, para. 8.3.

<sup>198</sup> UNHRC, *General Comment 35, Article 9, Liberty and Security of Person*, 2014, para. 33; *Yuzepchuk v. Belarus*, UNHRC, Views of 24 October 2014, CCPR/C/112/D/1906/2009. Para. 8.3.

<sup>199</sup> *Pichugina v. Belarus*, UNHRC, Views of 17 July 2013, CCPR/C/108/D/1592/2007, para. 7.3; UNHRC, *General Comment 35, Article 9, Liberty and Security of Person*, 2014, para. 32.

<sup>200</sup> UNHRC, *General Comment 35, Article 9, Liberty and Security of Person*, 2014, paras. 37–38; *Basso v. Uruguay*, UNHRC, Views from 29 October 2010, CCPR/C/100/D/1887/2009, para. 10.2.

<sup>201</sup> UNHRC, *General Comment 35, Article 9, Liberty and Security of Person*, 2014, para. 36; UN Special Rapporteur on Torture, Manfred Nowak, *Report Mission to Indonesia*, UN Doc. A/HRC/7/3/Add.7, March 2008, para. 78.

<sup>202</sup> UNHRC, *General Comment 20, Article 7, Concerning Prohibition of Torture and Cruel Treatment or Punishment*, 1992, para. 14.

<sup>203</sup> UNHRC, *General Comment 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 2004, para. 15, 18.

has addressed a communication to the Committee.”<sup>204</sup> Thus, any attempt by State authorities to intimidate the author of a communication or his or her counsel would be “untenable and incompatible with the spirit of the ICCPR and the Optional Protocol thereto.”<sup>205</sup>

213. Similarly, Article 13 of the UN Convention against Torture requires that States both ensure that individuals have the right to complain about mistreatment and protect any complainants or witnesses from retaliation or intimidation. The UN Body of Principles for the Protection of Detained Persons reiterates the duty of States to protect complainants from reprisal.<sup>206</sup> The Committee against Torture found a violation of Article 13, and an interference with the complainant’s right of petition amounting to a violation of Article 22, when the complainant was coerced—through police pressure on his family and repeated interrogations—to sign a letter of withdrawal of his claim to the Committee.<sup>207</sup>

#### Failure to tape-record interviews

214. The audio and visual recording of police interviews is a safeguard against the torture or ill-treatment of detainees. The Human Rights Committee has recommended that States parties arrange the systematic “audio-visual recording of interrogations in all police stations and places of detention.”<sup>208</sup> This recording should take place for the “entire duration” of interrogations; “sporadic and selective use of electronic surveillance methods” is inadequate.<sup>209</sup> The Committee against Torture has identified the audio and video recording of interrogations as an effective method to prevent torture,<sup>210</sup> affirming that States parties should ensure the taping of all interrogations in police stations and detention facilities.<sup>211</sup> It has stated that video recording of interrogations should be a legal requirement,<sup>212</sup> and a “standard procedure ... in order to extend and strengthen the protection afforded to detainees in police custody.”<sup>213</sup> It has recommended that States parties use audio and video equipment “not only in interrogation rooms but also in cells and corridors.”<sup>214</sup>

#### No independent monitoring of detention facilities

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<sup>204</sup> UNHRC, *General Comment 33, The Obligations of States Parties under the Optional Protocol to the International Covenant on Civil and Political Rights*, 2009.

<sup>205</sup> *Hammel v. Madagascar*, UNHRC, Views of 3 April 1987, CCPR/C/OP/2 at 179 (1990), para. 19.3.

<sup>206</sup> *UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, 9 December 1988, G.A. Res. 43/173, UN Doc. A/RES/43/173, Principle 33(4).

<sup>207</sup> *Gerasimov v. Kazakhstan*, UNCAT, Decision of 24 May 2012, CAT/C/48/D/433/2010, para. 12.10.

<sup>208</sup> UNHRC, *Concluding Observations on Uzbekistan*, UN Doc. CCPR/C/UZB/CO/3, 2010, para. 11; UNHRC, *Concluding Observations on Mexico*, UN Doc. CCPR/C/MEX/CO/5, 2010, para. 13; UNHRC, *Concluding Observations on Spain*, UN Doc. CCPR/C/ESP/CO/5, 2009, para. 14; UNHRC, *Concluding Observations on Azerbaijan*, UN Doc. CCPR/C/AZE/CO/3, 2009, para. 11.

<sup>209</sup> UNHRC, *Concluding Observations on Japan*, UN Doc. CCPR/C/JPN/CO/5, 2008, para. 19.

<sup>210</sup> UNCAT, *General Comment 2, Article 2, Implementation of Article 2 by States Parties*, 2008, para. 14.

<sup>211</sup> UNCAT, *Concluding Observations on Turkmenistan*, UN Doc. CAT/C/TKM/CO/1, 2011, para. 9; UNCAT, *Concluding Observations on Greece*, UN Doc. CAT/C/GR/33/2, 2004, para. 6(e).

<sup>212</sup> UNCAT, *Concluding Observations on Slovenia*, UN Doc. CAT/C/SVN/CO/3, 2011, para. 8.

<sup>213</sup> UNCAT, *Concluding Observations on France*, UN Doc. CAT/C/FRA/CO/4-6, 2010, para. 23.

<sup>214</sup> UNCAT, *Concluding Observations on Austria*, UN Doc. CAT/C/AUT/CO/4-5, 2010, para. 9.

215. States are obliged to establish an independent body that monitors detention facilities under the ICCPR, the UNCAT, and its Optional Protocol. The Human Rights Committee mandates that States parties must take “concrete measures” to monitor the treatment of persons deprived of their liberty and ensure “impartial supervision.”<sup>215</sup> The Committee has advocated the creation of an “external and independent body entrusted with the functions of visiting the [facilities] and receiving and investigating complaints emanating from such [facilities].”<sup>216</sup> The Committee has explained that monitors should be a “competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment,”<sup>217</sup> and shall have “private access to the detainee and inclusion of appropriate medical and forensic expertise.”<sup>218</sup>
216. The Committee against Torture also recommends that States “establish a systematic and independent system to monitor the treatment in practice of persons arrested, detained or imprisoned.”<sup>219</sup> The Optional Protocol of the UNCAT requires each State party to set up national preventive mechanisms to regularly examine the treatment of detained persons and make recommendations to the relevant authorities.<sup>220</sup> States parties are required to guarantee the functional independence of these mechanisms as well as the independence of their personnel.<sup>221</sup> In addition, access to detention facilities should be granted to independent governmental and nongovernment organizations, in particular the International Committee of the Red Cross.<sup>222</sup>

Detention of women in temporary detention facilities staffed only by men

217. In order to safeguard the rights and dignity of female detainees, males should either not be permitted in female detention centers or limited to positions in which there is no direct contact with females. The Mandela Rules state that a female section of a prison should be under the authority of a responsible female officer, who has custody of the keys, that only females should conduct regular supervision of female detainees, and that if a male staff member must be in a female detention facility then a female staff member must accompany

<sup>215</sup> UNHRC, *General Comment 21, Article 10, Humane Treatment of Persons Deprived of Liberty*, 1992, para. 6.

<sup>216</sup> UNHRC, *Concluding Observations on Namibia*, UN Doc. CCPR/CO/81/NAM, 2004, para. 14.

<sup>217</sup> *UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, 9 December 1988, G.A. Res. 43/173, UN Doc. A/RES/43/173, Principle 29(1); discussed in UNHRC, *General Comment 21, Article 10, Humane Treatment of Persons Deprived of Liberty*, 1992, para. 5.

<sup>218</sup> *Alzery v. Sweden*, UNHRC, Views of 25 October 2006, CCPR/C/88/D/1416/2005, para. 11.5.

<sup>219</sup> UNCAT, *Concluding Observations on Brazil*, UN Doc. A/56/44, 2001, para. 120(d); UNCAT, *Concluding Observations on Moldova*, UN Doc. CAT/C/CR/30/7, 2003, para. 6(1); UNCAT, *General Comment 2, Article 2, Implementation of Article 2 by States Parties*, 2008, para. 8, 13.

<sup>220</sup> Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (2002), Article 3, 19(a)(b) (A Subcommittee on Prevention is tasked with advising States parties on the establishment of such mechanisms—Optional Protocol, art. 11(1)(b)).

<sup>221</sup> *Ibid*, Article 18(1).

<sup>222</sup> UNCAT, *Concluding Observations on Turkmenistan*, UN Doc. CAT/C/TKM/CO/1, 2011, para. 14(b); UNCAT, *Concluding Observations on Uganda*, UN Doc. CAT/C/CR/34/UGA, 2005, para. 10; UNCAT, *Concluding Observations on Nepal*, UN Doc. CAT/C/NPL/CO/2, 2005, para. 23.

him at all times.<sup>223</sup> The Committee against Torture has also emphasized that female staff members should supervise female detainees.<sup>224</sup>

218. The UN Handbook for Prison Managers and Policymakers on Women and Imprisonment sets out in detail the problems of the employment of male staff in female prisons.<sup>225</sup> As the Committee on the Elimination of Discrimination against Women stresses, disrespectful treatment of female prisoners by male staff, including inappropriate touching and unnecessary intrusion into personal life, can amount to sexual harassment and discrimination,<sup>226</sup> and sexual harassment is a form of sexual violence, which can be degrading and create health and safety problems.<sup>227</sup> Indeed, the mere presence of male staff may create increased fear in female prisoners and may re-traumatize those who were abused by men in the past, and goes beyond the deprivation of privacy that is innate in a prison setting.<sup>228</sup>

#### Tolerance of a climate of impunity

219. Both the Human Rights Committee and the Committee against Torture have held that a systemic lack of investigation into past human rights abuses can constitute a failure to provide adequate safeguards against future violations.<sup>229</sup> The Human Rights Committee determined that the duty to investigate and prosecute is important in regard to past abuses and also to ensure that such abuses “do not occur in the future.”<sup>230</sup> The Committee also held that passing a law that prevents investigation and forecloses the possibility of effective remedies to the victims contributes to a climate of impunity and is likely to “give rise to further grave human rights violations.”<sup>231</sup>
220. The Committee against Torture has also emphasized the link between past violations and the duty to prevent future violations, stating that failures to investigate and prosecute past abuses result in a climate of impunity that violates the obligation to prevent torture,<sup>232</sup> and has held that the lack of appropriate punishment was incompatible with the “duty to prevent” such acts under Article 2 of the UNCAT.<sup>233</sup> This principle was reinforced in

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<sup>223</sup> UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules), 21 May 2015, E/CN.15/2015/L.6/Rev.1, Rule 81.

<sup>224</sup> UNCAT, *Concluding Observations on Cambodia*, UN Doc. CAT/C/KHM/CO/2, at para. 19.

<sup>225</sup> *Handbook for Prison Managers and Policymakers on Women and Imprisonment*, United Nations Office on Drugs and Crime, 2008, 14.

<sup>226</sup> *Inga Abramova v. Belarus*, CEDAW, Views of 25 July 2011, CEDAW/C/49/D/23/2009, para. 7.7.

<sup>227</sup> *Ibid*; CEDAW, *General Recommendation 19: Violence against Women*, 1992.

<sup>228</sup> *Handbook for Prison Managers and Policymakers on Women and Imprisonment*, United Nations Office on Drugs and Crime, 2008, 14.

<sup>229</sup> UNHRC, *General Comment 20, Article 7, Concerning Prohibition of Torture and Cruel Treatment or Punishment*, 1992, para. 15; *Rodriguez v. Uruguay*, UNHRC, Views of 19 July 1994, CCPR/C/51/D/322/1988, para. 12.4; UNCAT, *Concluding Observations on Tajikistan*, UN Doc. CAT/C/TJK/CO/1, 2006, para. 5; *Guridi v. Spain*, UNCAT, Decision of 17 May 2005, CAT/C/34/D/212/2002 para. 6.6.

<sup>230</sup> UNHRC, *General Comment 20, Article 7, Concerning Prohibition of Torture and Cruel Treatment or Punishment*, 1992, para. 15; UNHRC, *Concluding Observations on Chile*, UN Doc. CCPR/C/CHL/CO/5, 2007; UNHRC, *Concluding Observations on Croatia*, UN Doc. CCPR/CO/71/HRV, 2001.

<sup>231</sup> *Rodriguez v. Uruguay*, UNHRC, Views of 19 July 1994, CCPR/C/51/D/322/1988, para. 12.4.

<sup>232</sup> UNCAT, *Concluding Observations on Turkmenistan*, UN Doc. CAT/C/TKM/CO/1, 2011, para. 11.

<sup>233</sup> *Guridi v. Spain*, UNCAT, Decision of 17 May 2005, UN Doc. CAT /C/34/D/212/2002, para. 6.6.

multiple Concluding Observations, where the Committee decried the “lack of meaningful disciplinary action or criminal prosecution” that resulted in a “climate of impunity.”<sup>234</sup> The Committee has also noted that “measures to guarantee that there is no recurrence of the violations”<sup>235</sup> form part of the right to an effective remedy for victims of human rights violations, guaranteed by Article 14.

## **E. Violation of Obligation to Investigate**

### Obligation to investigate death in custody

221. The State must conduct “a thorough, prompt and impartial investigation” into any death in custody. The failure to provide a plausible explanation for a death in custody through such an independent and thorough investigation gives rise to a presumption that the person was arbitrarily killed.<sup>236</sup> In addition, the Human Rights Committee has made clear that the failure to conduct a proper investigation into a death in custody can constitute a separate violation of Article 6(1) of the ICCPR,<sup>237</sup> and of Article 2(3), which obliges States parties to “ensure that individuals ... have accessible and effective remedies to vindicate [their] rights.”<sup>238</sup>

### Obligation to investigate torture (in addition to death in custody)

222. The obligation to investigate applies equally to torture and cruel, inhumane, and degrading treatment under Article 7, with the Committee stating that complaints of torture “must be investigated promptly and impartially by competent authorities so as to make the remedy effective.”<sup>239</sup> The obligation to provide an effective remedy for violations of the rights in the ICCPR “is central to the efficacy of article 2, paragraph 3,”<sup>240</sup> and “a failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach” of the ICCPR.<sup>241</sup>

### Obligation to investigate torture (alone)

223. The State is obligated to conduct an independent, impartial, thorough, timely, and effective investigation into any allegations of torture, under both the ICCPR and the UNCAT. The

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<sup>234</sup> UNCAT, *Concluding Observations on Turkmenistan*, UN Doc. CAT/C/TKM/CO/1, 2011, para. 11; UNCAT, *Concluding Observations on Tajikistan*, UN Doc. CAT/C/TJK/CO/1, 2006, para. 5; UNCAT, *Concluding Observations on Georgia*, UN Doc. CAT/C/GEO/CO/3, 2006, para. 12; UNCAT, *Concluding Observations on South Africa*, UN Doc. CAT/C/ZAF/CO/1, 2006, para. 13.

<sup>235</sup> *Ali v. Tunisia*, UNCAT, Views of 21 November 2008, CAT/C/41/D/291/2006, para. 15.8.

<sup>236</sup> *Eshonov v. Uzbekistan*, UNHRC, Views of 22 July 2010, CCPR/C/9/D/1225/2003, para. 9.2.

<sup>237</sup> *Telitsina v. Russia*, UNHRC, Views of 29 March 2004, CCPR/C/80/D/888/1999, para. 7.6.

<sup>238</sup> UNHRC, *General Comment 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 2004, para. 15.

<sup>239</sup> UNHRC, *General Comment 20, Article 7, Concerning Prohibition of Torture and Cruel Treatment or Punishment*, 1992, para. 14.

<sup>240</sup> UNHRC, *General Comment 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 2004, para. 16.

<sup>241</sup> UNHRC, *General Comment 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 2004 para. 15.

Human Rights Committee has stated that complaints of torture “must be investigated promptly and impartially by competent authorities so as to make the remedy effective,”<sup>242</sup> and “a failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant.”<sup>243</sup> The UN Convention against Torture similarly requires that any complaint of torture must be investigated “promptly and impartially [by the] competent authorities.”<sup>244</sup> The State must effectively investigate any allegations or evidence of torture, even when the victim has not made a formal complaint.<sup>245</sup> A State’s failure to investigate and criminally prosecute—or to allow civil proceedings related to—allegations of acts of torture in a prompt manner, may constitute a *de facto* denial of redress and thus constitute a violation of the State’s obligations under Article 14 of UNCAT.<sup>246</sup>

### Requirements of effective investigation

224. The key criteria for an effective investigation are set out in the *Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the “Istanbul Protocol”)<sup>247</sup> and the *Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions* (“Minnesota Protocol”).<sup>248</sup> An investigation can be deemed ineffective for the following reasons:
1. *Lack of Independence and Impartiality.* The investigation was not conducted by an independent and impartial body.
  2. *Undue Delay.* The investigation did not commence promptly and was not conducted expeditiously.
  3. *Inadequacy.* The investigation failed to undertake a number of necessary steps to uncover the facts.
  4. *Participation.* The victim and family were excluded from the investigation.
  5. *Transparency.* The investigation was conducted in private, and no final report was published.

<sup>242</sup> UNHRC, *General Comment 20, Article 7, Concerning Prohibition of Torture and Cruel Treatment or Punishment*, 1992, para. 14; *Kirsanov v. Russian Federation*, UNCAT, Decision of 14 May 2014, CAT/C/52/D/478/2011, para 11.3.

<sup>243</sup> UNHRC, *General Comment 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 2004. Para. 15–16.

<sup>244</sup> Article 12, 13 of the UN Convention against Torture; *Bairamov v. Kazakhstan*, UNCAT, Decision of 14 May 2014, CAT/C/52/D/497/2012, para. 8.5

<sup>245</sup> *Henri Unai Parot v. Spain*, UNCAT, Decision of 9 June 1995, CAT/C/14/D/6/1990, para. 10.4; *Abad v. Spain*, UNCAT, Decision of 14 May 1998, CAT/C/20/D/59/1996, para. 8.6. *Ramiro Ramirez Martínez et al. v. Mexico*, UNCAT, Decision of 4 August 2015, CAT/C/55/D/500/2012, para 17.7.

<sup>246</sup> UNCAT, *General Comment 3, Implementation of Article 14 by States Parties*, 2012, para 17.

<sup>247</sup> United Nations Office of the High Commissioner for Human Rights, *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 2004.

<sup>248</sup> *United Nations Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*, UN Doc. E/ST/CSDHA/12, 1991 (as updated in June 2016).



6. *Establishing Responsibility.* The investigation was not capable of leading to the identification and punishment of those responsible.

**Note:** The Istanbul Protocol refers to investigations of torture, and the Minnesota Protocol addresses investigations of killings. If your case only involves one or the other, then delete all references to the other protocol throughout the arguments regarding investigations.

In addition, only include those requirements of an effective investigation (from among the six) that were violated in your case.

#### Investigation not independent and impartial

225. Investigations of torture and resulting deaths must be both independent and impartial. Article 2(3) of the ICCPR imposes a “general obligation to investigate allegations of violations ... thoroughly and effectively through independent and impartial bodies.”<sup>249</sup> The Istanbul Principles state that the investigators “shall be independent of the suspected perpetrators and the agency they serve,”<sup>250</sup> and the Human Rights Committee and the Committee against Torture have affirmed that complaints of torture against the police should not be investigated by the police or anyone under the authority of the police.<sup>251</sup> The Minnesota Protocol similarly requires a prompt and impartial investigation.<sup>252</sup>
226. Independence requires “that there should be no hierarchical or institutional connection but also that the investigators should be independent in practice.”<sup>253</sup> Independent supervision of the investigation will often not be enough, especially where the supervision is passive or where the actual investigation is conducted by police officers connected with the events under investigation.<sup>254</sup> The Istanbul Principles state that where
- established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent

<sup>249</sup> UNHRC, *General Comment 31, Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 2004, para. 15; *Ernazarov v. Kyrgyzstan*, UNHRC, Views of 7 May 2015, CCPR/C/113/D/2054/2011, para. 9.6.

<sup>250</sup> Istanbul Principles (annexed to the Istanbul Protocol), Article 2.

<sup>251</sup> UNHRC, *Concluding Observations on Hong Kong*, UN Doc. CCPR/C/79/Add. 57, 1996, para. 11; UNHRC, *Concluding Observations on Kenya*, UN Doc. CCPR/CO/83/KEN, 2005, para. 18; UNHRC, *Concluding Observations on Slovenia*, UN Doc. CCPR/CO/84/SVN, 2005, para. 9; UNHRC, *Concluding Observations on Zambia*, UN Doc. CCPR/C/79/Add. 62, 1996, para. 12; Special Rapporteur on Torture, Nowak, *Report on Mission to Kazakhstan*, UN Doc. A/HRC/13/39/Add. 3, February 2010, para. 49; UNCAT, *Concluding Observations on Hungary*, UN Doc. CAT/C/HUN/CO/4, 2007, para. 16(a); *Bairamov v. Kazakhstan*, UNCAT, Decision of 14 May 2014, CAT/C/52/D/497/2012, para. 8.6.

<sup>252</sup> The Revised Minnesota Protocol in Para 27 highlights the requirement for “(i) prompt; (ii) effective and thorough; (iii) independent and impartial; and (iv) transparent” investigations.

<sup>253</sup> *Bati and Others v. Turkey*, ECtHR, Judgment of 3 September 2005, para. 135.

<sup>254</sup> *Kelly and Others v. The United Kingdom*, ECtHR, Judgment of 4 May 2001, para. 95, 114; *Mikheyev v. Russia*, ECtHR, Judgment of 26 January 2006, para. 110 (citing *Güleç v. Turkey*, ECtHR, Judgment of 27 July 1998, para. 80–82); *Evloev v. Kazakhstan*, Decisions of 5 November 2013, CAT/C/51/D/441/2010, at para. 9.4. But contrast *N.Z. v. Kazakhstan*, UNCAT, Decision of 28 November 2014, CAT/C/53/D/495/2012, para 13.5, where close supervision by the prosecutor’s office, which on several occasions revoked the decisions of the investigators to close the investigation and returned the case for additional investigation, satisfied the requirements of the impartiality.

existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure.<sup>255</sup>

227. An impartial investigation must be directed at uncovering the facts regarding what happened to the victim. Investigators cannot “rely on hasty ... conclusions to close their investigation or as the basis of their decision.”<sup>256</sup>

#### Investigation not thorough or adequate

228. Both the Human Rights Committee and the Committee against Torture have consistently held that States have a duty to investigate cases of torture and deaths in custody thoroughly.<sup>257</sup> To fulfill this obligation, State authorities must investigate alleged ill-treatment of detainees as expeditiously and thoroughly as possible,<sup>258</sup> a principle that applies equally to the death of a detainee in custody. This means that the authorities must make a serious attempt to thoroughly investigate and ascertain the material facts.<sup>259</sup> Further, investigations “should not rely on hasty or ill-founded conclusions to close their investigation or as the basis of their decisions,”<sup>260</sup> and must take all reasonable steps to secure the evidence concerning the incident.<sup>261</sup>

229. The Istanbul Protocol reiterates that “thoroughness” is one of the “fundamental principles of any effective investigation” into allegations of torture.<sup>262</sup> According to the Protocol, such investigations must:

at a minimum, seek to obtain statements from the victims of alleged torture; to recover and preserve evidence, including medical evidence, related to the alleged torture ... to identify possible witnesses and obtain statements from them concerning the alleged torture; and to determine how, when and where the alleged incidents of torture occurred as well as any pattern or practice that may have brought about the torture.<sup>263</sup>

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<sup>255</sup> Istanbul Principles, para. 5; *Eshonov v. Uzbekistan*, UNHRC, Views of 22 July 2010, CCPR/C/99/D/1225/2003, para. 9.6; see also *Ernazarov v. Kyrgyzstan*, UNHRC, Views of 25 March 2015, CCPR/C/113/D/2054/2011, para. 9.6.

<sup>256</sup> *Corsacov v. Moldova*, ECtHR, Judgment of 4 April 2006, para. 69.

<sup>257</sup> *Vicente et al. v. Colombia*, UNHRC, Views of 19 August 1997, CCPR/C/60/D/612/1995, para. 8.8; *Arhuacos v. Colombia*, UNHRC, Views of 19 August 1997, CCPR/C/60/D/612/1995, para. 8.8; *Bautista v. Colombia*, UNHRC, Views of 13 November 1995, CCPR/C/55/D/563/1993, para. 8.6; *Ristic v. Yugoslavia*, UNCAT, Decision of 11 May 2001, CAT/C/26/D/113/1998, para. 9.6; *Bairamov v. Kazakhstan*, UNCAT, Decision of 14 May 2014, CAT/C/52/D/497/2012, para. 8.5.

<sup>258</sup> *Stephens v. Jamaica*, UNHRC, Views of 18 October 1995, CCPR/C/55/D/373/1989, para. 9.2; *Reynolds v. Jamaica*, UNHRC, Views of 3 April 1997, CCPR/C/59/D/587/1994, para. 12.

<sup>259</sup> *Ristic v. Yugoslavia*, UNCAT, Decision of 11 May 2001, CAT/C/26/D/113/1998, para. 9.6. (a proper investigation would have included more thorough steps, such as an exhumation and new autopsy).

<sup>260</sup> *Corsacov v. Moldova*, ECtHR, Judgment of 4 April 2006, para. 69 (citing *Assenov and Others v. Bulgaria*, ECtHR, Judgment of 28 October 1989, para. 103).

<sup>261</sup> *Ibid.* (citing *Tanrikulu v. Turkey* [GC], ECtHR, Grand Chamber Judgment of 8 July 1999, para. 104ff; *Gül v. Turkey*, ECtHR, Judgment of 14 December 2000, para. 89).

<sup>262</sup> Istanbul Protocol, para. 74.

<sup>263</sup> *Ibid.*, para. 77.

The UN Committee against Torture has highlighted that “an investigation should include as a standard measure an independent physical and psychological forensic examination as provided for in the Istanbul Protocol.”<sup>264</sup> The Protocol sets out in detail how the medical examination should be conducted and recorded,<sup>265</sup> and the evidence that should be gathered from the victim.<sup>266</sup>

230. The European Court of Human Rights has identified a number of steps that authorities should take in their investigation,<sup>267</sup> including: taking initiative in investigating all the circumstances of the abuse; taking reasonable steps available to “secure the evidence concerning the incident, including, *inter alia*, eyewitness testimony, [and] forensic evidence”<sup>268</sup>; and conducting a medical examination that fully examines the injuries on a victim’s body and results in “a complete and accurate record of possible signs of ill-treatment and injury and an objective analysis of clinical findings.”<sup>269</sup>

**Note:** In this last paragraph, only include any specific steps that the authorities should have taken but were missing in the investigation of your case. If none of these steps apply in your case, do not use this paragraph.

#### Investigation not prompt and expeditious

231. Any investigation must be both commenced promptly and then conducted expeditiously. The Human Rights Committee has stated that “complaints [of ill-treatment] must be investigated promptly and impartially by competent authorities so as to make the remedy effective.”<sup>270</sup> In particular, in relation to ill-treatment of detainees, the Committee has reiterated that “the State party is under an obligation to investigate, as expeditiously and thoroughly as possible, incidents of alleged ill-treatment of inmates.”<sup>271</sup>
232. The Committee against Torture has reiterated the requirement that investigations be conducted promptly and confirmed that this relates to both opening the investigation and the expeditious conduct of that investigation. The Committee found an unacceptable delay where an inquiry was not launched until three weeks after allegations of torture, and the investigation took ten months.<sup>272</sup> The Committee against Torture also highlighted that “the lengthy period for preliminary examination of torture complaints, which can last up to two

<sup>264</sup> UNCAT, *General Comment 3, Implementation of Article 14 by States Parties*, 2012, para 25.

<sup>265</sup> Istanbul Protocol, para. 104–5, 161–233 (physical symptoms), 234–314 (psychological symptoms).

<sup>266</sup> *Ibid*, para. 99, 120–60.

<sup>267</sup> *Gül v. Turkey*, ECtHR, Judgment of 14 December 2000, para. 89-90; *Salman v. Turkey*, ECtHR, Judgment of 27 June 2000, para. 104-109.

<sup>268</sup> *Edwards v. the United Kingdom*, ECtHR, Judgment of 14 March 2002, para. 71.

<sup>269</sup> *Gül v. Turkey*, ECtHR, Judgment of 14 December 2000, para. 89; *Edwards v. The United Kingdom*, ECtHR, Judgment of 14 March 2002, para. 71.

<sup>270</sup> UNHRC, *General Comment 20, Article 7, Concerning Prohibition of Torture and Cruel Treatment or Punishment*, 1992, para. 14; *Ernazarov v. Kyrgyzstan*, UNHRC, Views of 7 May 2015, CCPR/C/113/D/2054/2011, para. 9.6; *Yuzepchuk v. Belarus*, UNHRC, Views of 17 November 2014, CCPR/C/112/D/1906/2009, para 8.2.

<sup>271</sup> *Stephens v. Jamaica*, UNHRC, Views of 18 October 1995, CCPR/C/55/D/373/1989, para. 9.2; *Abdullayev v. Turkmenistan*, UNHRC, Views of 25 March 2015, CCPR/C/113/D/2218/2012, para 7.2.

<sup>272</sup> *Abad v. Spain*, UNCAT, Views of 14 May 1998, CAT/C/20/D/59/1996, para. 8.7.

months, may prevent timely documentation of evidence.”<sup>273</sup> Thus, in a case against Kazakhstan, a violation was found when a complainant reported the acts of torture several days after the events, but a preliminary inquiry was initiated only after a month and resulted in a refusal to open a criminal investigation.<sup>274</sup>

233. A prompt investigation is required to recover and preserve evidence, including medical evidence and witness statements (while memories are fresh), related to the alleged torture to aid in any potential prosecution of those responsible.<sup>275</sup> In examining whether lack of promptness violates the State’s obligation to effectively investigate, the European Court of Human Rights has considered the time taken to start the investigation,<sup>276</sup> delays in taking statements,<sup>277</sup> and the length of time taken for the initial investigations.<sup>278</sup>

#### Investigation not capable of identifying and punishing those responsible

234. The Human Rights Committee has explained that “as with the failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant,” and that this obligation applies in particular to violations of Articles 6 and 7.<sup>279</sup> The Committee against Torture has confirmed that investigations should seek to ascertain the facts and identify the perpetrators.<sup>280</sup> Regional courts have also elaborated on this principle. The ECtHR has held that an investigation into torture should be capable of identifying and punishing those responsible, and that it “must not be unjustifiably hindered by the acts or omissions of the authorities.”<sup>281</sup> The Inter-American Commission on Human Rights held that the State’s duty “requires punishment not only of material authors, but also of the intellectual authors of those acts.”<sup>282</sup>

#### Family not permitted to participate in investigation

235. The Human Rights Committee has found that for an investigation to be “effective,” the victim or victim’s family must be involved, and at a minimum must be informed of the

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<sup>273</sup> UNCAT, *Concluding Observations on Kazakhstan*, UN Doc. CAT/C/KAZ/CO/2, 2008, para. 24; *Bairamov v. Kazakhstan*, UNCAT, Decision of 14 May 2014, CAT/C/52/D/497/2012, para. 8.7; *Eyloev v. Kazakhstan*, Decisions of 5 November 2013, CAT/C/51/D/441/2010, at para. 9.5.

<sup>274</sup> *Gerasimov v. Kazakhstan*, UNCAT, Decision of 24 May 2012, CAT/C/48/D/433/2010, para. 12.3.

<sup>275</sup> *Assenov and Others v. Bulgaria*, ECtHR, Judgment of 28 October 1998; *Eyloev v. Kazakhstan*, UNCAT, Decisions of 5 November 2013, CAT/C/51/D/441/2010, para. 9.5; *Hero v. BiH*, UNHRC, Views of 28 October 2014, CCPR/C/112/D/1966/2010, para. 9.6.

<sup>276</sup> *Çiçek v. Turkey*, ECtHR, Judgment of 27 February 2001, para. 149; *Tekin v. Turkey*, ECtHR, Judgment of 9 June 1998, para. 67.

<sup>277</sup> *Assenov and Others v. Bulgaria*, ECtHR, Judgment of 28 October 1998, para. 103.

<sup>278</sup> *Labita v. Italy*, ECtHR, Judgment of 6 April 2000, para. 133–36.

<sup>279</sup> UNHRC, *General Comment 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 2004, para. 18; UNHRC, *General Comment 20, Article 7, Concerning Prohibition of Torture and Cruel Treatment or Punishment*, 1992, para. 15.

<sup>280</sup> *Abad v. Spain*, UNCAT, Decision of 14 May 1998, CAT/C/20/D/59/1996, para. 8.8; *Dzemajl v. Yugoslavia*, UNCAT, Decision of 21 November 2002, CAT/C/29/D/161/2000, para. 9.4.

<sup>281</sup> *Aksoy v. Turkey*, ECtHR, Judgment of 18 December 1996, para. 95.

<sup>282</sup> *Corumbiara Massacre v. Brazil*, IACCommHR, Report No. 32/04 of March 11, 2004, para. 256.

outcome of the investigation,<sup>283</sup> and that where a person has died in custody “the families of the deceased and their legal representatives should have access to all information relevant to the investigation, and should be entitled to present other evidence.”<sup>284</sup> The Committee against Torture has also found that the State violated its obligations to effectively investigate where “the public prosecutor never informed the complainant about whether an investigation was being or had been conducted after the criminal complaint was filed.”<sup>285</sup>

236. Both the Istanbul and Minnesota Protocols provide that the victim, victim’s family, and victim’s legal representative have a right to be involved in the investigations and “shall be informed of, and have access to, any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence.”<sup>286</sup> Also, “family members have specific rights in relation to human remains,” and “to the extent possible, family members should be consulted prior to an autopsy.”<sup>287</sup> The family of the deceased has “a right to insist that a medical or other qualified representative be present at the autopsy.”<sup>288</sup> The ECtHR has held that “necessary” family involvement includes access to materials in the investigation, knowledge of the progress of the investigation to allow them to participate (for example in the instruction of experts), and knowledge of the outcome of the investigation.<sup>289</sup>

#### No public scrutiny of investigation

237. For an investigation to be “effective,” international law requires that the investigation be conducted in public and that its results be published. The Istanbul Principles require that “the methods used to carry out such investigations shall meet the highest professional standards and the findings shall be made public.”<sup>290</sup> The Committee against Torture requires that “every allegation of torture [be] thoroughly investigated and the results made public.”<sup>291</sup> The Committee has also recommended establishing centralized, public registers of complaints of torture and of the results of investigations to ensure openness and impartiality.<sup>292</sup> The ECtHR has recognized a similar requirement of public involvement

<sup>283</sup> *El Hassy v. Libyan Arab Jamahiriya*, UNHRC, Views of 24 October 2007, CCPR/C/91/D/1422/2005, para. 8; *Ernazarov v. Kyrgyzstan*, UNHRC, Views of 7 May 2015, CCPR/C/113/D/2054/2011, para. 9.6.

<sup>284</sup> *Ernazarov v. Kyrgyzstan*, UNHRC, Views 7 May 2015, CCPR/C/113/D/2054/2011, para. 9.6.

<sup>285</sup> *Dimitrijevic v. Serbia and Montenegro*, UNCAT, Decision of 19 November 2004, CAT/C/33/D/207/2002, para. 5.4; *Dzemajl et al. v. Yugoslavia*, UNCAT, Decision of 21 November 2002, CAT/C/29/D/161/2000, para. 9.5.

<sup>286</sup> Istanbul Principles, Article 4; Revised Minnesota Protocol, Article 3, para. 41.

<sup>287</sup> Revised Minnesota Protocol, para. 43.

<sup>288</sup> *Ibid.*, para. 43, 74. Para 74 states, “Wherever it is feasible, a specific and suitably trained and experienced Family Liaison Officer should be appointed to offer the family of the deceased information and support as well as to collect information, such as ante-mortem data, required for the identification of a deceased person. The Family Liaison Officer should meet the family at the earliest opportunity and provide regular updates about the investigation, its progress, and results, and address concerns the family may have as the investigation progresses. A positive relationship with the family of any missing or deceased person can produce useful information and results for any investigation.”

<sup>289</sup> *Trubnikov v. Russia*, ECtHR, Judgment of 5 July 2005, para. 93; *Kucheruk v. Ukraine*, ECtHR, Judgment of 6 September 2007, para. 158; *Ogur v. Turkey*, ECtHR, Judgment of 20 May 1999, para. 92.

<sup>290</sup> Istanbul Principles, Article 5.

<sup>291</sup> UNCAT, Summary Record of the 245th Meeting, UN Doc. CAT/C/SR.245, 11 June 1996, para. 37; Nowak and McArthur, *The United Nations Convention against Torture: A Commentary*, 437.

<sup>292</sup> UNCAT, *Concluding Observations on Bolivia*, UN Doc. A/56/44, 2001, para. 97(e).

inherent in effective investigations, also requiring that the authorities publish the findings<sup>293</sup> and grant the family access to the investigation materials as well as its outcome.<sup>294</sup>

238. To implement the requirement of transparent and public investigations, the Istanbul Protocol recommends that “where investigative procedures are inadequate because of a lack of resources or expertise, the appearance of bias, the apparent existence of a pattern of abuse or other substantial reasons, States shall pursue investigations through an independent commission of inquiry or similar procedure.”<sup>295</sup> The revised Minnesota Protocol similarly recognizes that “In specific circumstances, a State may establish a special mechanism such as a commission of inquiry or a transitional justice mechanism. An international investigation mechanism with the expertise and capacity to conduct an independent and objective investigation may be appropriate. The requirements of promptness, effectiveness and thoroughness, independence and impartiality, and transparency apply equally to investigations undertaken by these mechanisms.”<sup>296</sup>
239. There should be “wide notice of the establishment of a commission and the subject of the inquiry” so as to allow witnesses to come forward, and that investigation hearings “should be conducted in public, unless in-camera proceedings are necessary to protect the safety of a witness.”<sup>297</sup> The Istanbul Principles requires that the inquiry should issue a written report within a reasonable time that includes “the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. Upon completion, the report shall be made public.”<sup>298</sup>

#### Failure to conduct proper medical examination (torture)

240. The Human Rights Committee has recommended that States parties establish independent medical bodies to examine allegations of torture.<sup>299</sup> The Committee against Torture similarly has urged States parties to automatically provide medical examinations following any allegations of torture or ill-treatment as part of their Article 12 duty to investigate.<sup>300</sup> Both Committees have also instructed States to follow the guidelines set out in the Istanbul Protocol for medical investigations of alleged torture.<sup>301</sup>

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<sup>293</sup> *McKerr v. United Kingdom*, ECtHR, Judgment of 4 May 2001, para. 141.

<sup>294</sup> *Chitayev and Chitayev v. Russia*, ECtHR, Judgment of 18 January 2007, para. 165–66; *Finucane v. The United Kingdom*, ECtHR, Judgment of 1 July 2003, para. 71, 82–83.

<sup>295</sup> Istanbul Protocol, para 75.

<sup>296</sup> Revised Minnesota Protocol, para 46.

<sup>297</sup> Istanbul Protocol, para. 113, 114.

<sup>298</sup> Istanbul Principles, Article 5(b).

<sup>299</sup> *Concluding Observations of the Human Rights Committee, Hungary*, UN Doc. CCPR/C/HUN/CO/5, 2010, para. 14; UNHRC, *Consideration of Reports Submitted by States Parties under Article 40 of the Covenant, Russian Federation*, UN Doc. CCPR/C/RUS/2002/5, 2002, para. 51; *Saimijon and Bazarov v. Uzbekistan*, UNHRC, Views of 8 August 2006, CCPR/C/87/D/959/2000, para. 8.3

<sup>300</sup> UNCAT, *Annual Report of 1998–1999*, G.A. 64th Session, A/54/44, *Concluding Observations on Tunisia*, UN Doc. A/54/44(SUPP) 1999, para. 103; *Thabti v. Tunisia*, UNCAT, Decision of 20 November 2003, CAT/C/31/D/187/2001, para. 10.7; *Aarrass v. Morocco*, UNCAT, Decision of 19 May 2014, CAT/C/52/D/477/2011, para. 10.4, *Bairamov v. Kazakhstan*, UNCAT, Decision of 14 May 2014, CAT/C/52/D/497/2012, para. 8.7.

<sup>301</sup> UNCAT, *Annual Report of 2008–2009*, UN Doc. A/64/44; UNHRC, *Concluding Observations of Hungary*, UN Doc. CCPR/C/HUN/CO/5, para. 14; *Aarrass v. Morocco*, UNCAT, Decision of 19 May 2014, CAT/C/52/D/477/2011, para. 10.4.

241. The Istanbul Protocol specifies that an investigator should always arrange for a proper medical examination, regardless of the length of time since the alleged torture.<sup>302</sup> This medical examination should include an assessment of the injuries, including a psychological assessment; assessment of the need for medical or psychological treatment; and follow-up measures.<sup>303</sup> All medical investigations should be properly documented with color photographs, and investigators should ensure that the chain of custody of evidence is accounted for at all times.<sup>304</sup> While detainees, their counsel, and relatives have the right to request a medical examination,<sup>305</sup> law enforcement may not request a medical investigation unless they submit an official written request from the public prosecutor or other appropriate official.<sup>306</sup> The results of such medical investigations must be communicated to the public prosecutor, rather than to law enforcement.<sup>307</sup>

#### Failure to conduct proper autopsy

242. Both the Human Rights Committee and the Committee against Torture require an adequate autopsy for any death in custody, in particular where that death may have resulted from torture. Where the initial autopsy is deemed inadequate, the Committees have required that the State exhume the body and perform a proper autopsy.<sup>308</sup> The European Court of Human Rights similarly requires an “autopsy which provides a complete and accurate record of injury and an objective analysis of clinical findings, including the cause of death” and which can lead to the establishment of the “cause of death or the person responsible.”<sup>309</sup>
243. An effective autopsy must “describe any and all injuries to the deceased including any evidence of torture.”<sup>310</sup> The autopsy must be conducted according to “the principles of forensic and medical science” and should be performed by a “specialist in forensic medicine.”<sup>311</sup> The autopsy must also be conducted impartially: the State should not state the manner of death until it has been determined by the autopsy; and if the family seeks a review of the results, a separate institution must perform it or independent experts must observe it.<sup>312</sup>

### **F. Obligation to Provide Reparations**

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<sup>302</sup> Istanbul Protocol, para. 103.

<sup>303</sup> Ibid.

<sup>304</sup> Ibid, para. 103, 105; *Aarrass v. Morocco*, UNCAT, Decision of 19 May 2014, CAT/C/52/D/477/2011, para. 10.5.

<sup>305</sup> Istanbul Protocol, para. 122.

<sup>306</sup> Ibid.

<sup>307</sup> Ibid.

<sup>308</sup> *Eshonov v. Uzbekistan*, UNHRC, Views of 22 July 2010, CCPR/C/9/D/1225/2003, para. 9.6, 9.7; *Ristic v. Yugoslavia*, UNCAT, Decision of 11 May 2001, CAT/C/26/D/113/1998, para. 9.4(b), 9.6.

<sup>309</sup> *Ognyanova and Choban v. Bulgaria*, ECtHR, Judgment of 23 February 2006, para. 105 (citing *Anguelova v. Bulgaria*, ECtHR, Judgment of 13 June 2002, para. 136–39).

<sup>310</sup> *Eshonov v. Uzbekistan*, UNHRC, Views of 22 July 2010, CCPR/C/9/D/1225/2003, para. 2.3, 9.6, 9.7.

<sup>311</sup> *Ristic v. Yugoslavia*, UNCAT, Decision of 11 May 2001, CAT/C/26/D/113/1998, para. 2.5.

<sup>312</sup> *Nikolić v. Serbia and Montenegro*, UNCAT, Decision of 24 November 2005, CAT/C/35/D/174/2000, para. 6.5; *M'Barek v. Tunisia*, UNCAT, Decision of 10 November 1999, CAT/C/23/D/60/1996, para. 9.7, 11.9.

**Note:** This section is intended to both assist you in identifying the violations and in formulating the specific requests to the Committee regarding the victim’s requested remedies.

#### Obligation to provide reparations

244. International law requires access to legal remedies for torture and deaths in custody. The Committee against Torture considers that a comprehensive reparative concept entails restitution,<sup>313</sup> compensation, rehabilitation, satisfaction, and guarantees of non-repetition.<sup>314</sup> Any person who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss, or substantial impairment of his or her fundamental rights, as a result of acts or omissions that constitute violations of the Convention, is considered a victim and is entitled to reparations. A person should be considered a victim regardless of whether the perpetrator of the violation is identified, apprehended, prosecuted, or convicted, and regardless of any familial or other relationship between the perpetrator and the victim.<sup>315</sup> Reparation must be adequate, effective, and comprehensive, and the specificities and circumstances of each case must be taken into consideration; redress should be tailored to the particular needs of the victim and be proportionate to the gravity of the violations committed.<sup>316</sup> Monetary compensation by itself does not constitute an adequate remedy.<sup>317</sup> On account of the continuous nature of the effects of torture, statutes of limitations should not be applicable, as these deprive victims of the redress, compensation, and rehabilitation due to them.<sup>318</sup>

#### Failure to provide compensation (torture and death in custody)

245. The Human Rights Committee has interpreted Article 2(3) of the ICCPR as placing an obligation on States to use their resources not only to investigate and punish violators but also to compensate victims of human rights violations.<sup>319</sup> The Committee has stated that “states may not deprive individuals of the right to an effective remedy, including compensation.”<sup>320</sup> The fact that a family accepts a small payment, for example to assist with the funeral costs, does not waive their rights to establish the truth of how the victim

<sup>313</sup> UNCAT, *General Comment 3, Implementation of Article 14 by States Parties*, 2012, para. 8 (defines restitution as a form of redress to reestablish the victim in his or her situation before the violation of the Convention was committed); *Niyonzima v. Burundi*, UNCAT, Decision of 21 November 2014, CAT/C/53/D/514/2012, para. 8.6.

<sup>314</sup> UNCAT, *General Comment 3, Implementation of Article 14 by States Parties*, 2012, para 2; *Evloev v. Kazakhstan*, Decisions of 5 November 2013, CAT/C/51/D/441/2010, para. 9.7; *Salem v. Tunisia*, UNCAT, 7 November 2007, CAT/C/39/D/269/2005 para. 16.8.

<sup>315</sup> UNCAT, *General Comment 3, Implementation of Article 14 by States Parties*, 2012, para 3.

<sup>316</sup> *Ibid*, para 6; *Evloev v. Kazakhstan*, Decisions of 5 November 2013, CAT/C/51/D/441/2010, para. 9.7.

<sup>317</sup> UNCAT, *General Comment 3, Implementation of Article 14 by States Parties*, 2012, para 9; *Kedar Chaulagain v. Nepal*, UNHRC, Views of 8 January 2015, CCPR/C/112/D/2018/2010, para. 11.6.

<sup>318</sup> UNCAT, *General Comment 3, Implementation of Article 14 by States Parties*, 2012, para 40; *Niyonzima v. Burundi*, UNCAT, Decision of 21 November 2014, CAT/C/53/D/514/2012, para. 8.6.

<sup>319</sup> UNHRC, *General Comment 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 2004, para. 16.

<sup>320</sup> UNHRC, *General Comment 20, Article 7, Concerning Prohibition of Torture and Cruel Treatment or Punishment*, 1992, para. 15.



died and to hold perpetrators accountable.<sup>321</sup> Inadequate compensation that does not reflect the seriousness of the violation will not fulfill the obligation to provide compensation.<sup>322</sup> Further, compensation cannot depend on a criminal conviction of the perpetrator: restricting civil suits for compensation to a time after the conclusion of criminal proceedings violates the right to compensation and redress under UNCAT Article 14.<sup>323</sup>

246. The Committee against Torture highlights the right of the victims to prompt, fair, and adequate compensation that should be sufficient to compensate for any economically assessable damage resulting from torture or ill-treatment. This may include: reimbursement of medical expenses paid and provision of funds to cover future medical or rehabilitative services; pecuniary and nonpecuniary damage resulting from the physical and mental harm caused; loss of earnings and earning potential due to disabilities caused by the torture or ill-treatment; and lost opportunities such as employment and education. In addition, adequate compensation should provide for legal or specialized assistance, and other costs associated with bringing a claim for redress.<sup>324</sup>

#### Failure to provide rehabilitation (torture)

247. The Committee against Torture and the Human Rights Committee have underscored that States should provide for full rehabilitation for victims of torture.<sup>325</sup> Full rehabilitation should be holistic and include medical and psychological care, as well as legal and social services. The term “rehabilitation” refers to the restoration of function or the acquisition of new skills required by the changed circumstances of a victim in the aftermath of torture or ill-treatment.<sup>326</sup> Each State should adopt a long-term and integrated approach to ensure that victims of torture or ill-treatment have prompt access to appropriate, specialized services. This should include a procedure for the assessment and evaluation of an individual’s therapeutic and other needs, based on, among others, the *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the “Istanbul Protocol”). It may also include a wide range of interdisciplinary measures, such as medical, physical, and psychological rehabilitative services; re-integrative and social services; community and family-oriented assistance and services; and vocational training and education.<sup>327</sup>

#### Failure to provide satisfaction (torture or death in custody)

248. The Human Rights Committee has stated that reparation also requires other measures of satisfaction, which can include public apologies, public memorials, guarantees of non-

<sup>321</sup> *Moidunov v. Kyrgyzstan*, UNHRC, Views of 19 July 2011, CCPR/C/102/D/1756/2008, para 8.5;

*Chaulagain v. Nepal*, UNHRC, Views of 28 October 2014, CCPR/C/112/D/2018/2010, para. 11.6.

<sup>322</sup> *A.S. v. Nepal*, UNHRC, Views of 6 November 2015, CCPR/C/115/D/2077/2011, para. 8.6.

<sup>323</sup> *Evloev v. Kazakhstan*, Decision of 5 November 2013, CAT/C/51/D/441/2010, at para. 9.7, *Bairamov v. Kazakhstan*, UNCAT, Decision of 14 May 2014, CAT/C/52/D/497/2012, para. 8.9.

<sup>324</sup> UNCAT, *General Comment 3, Implementation of Article 14 by States parties*, 2012, para 10.

<sup>325</sup> UNHRC, *General Comment 20, Article 7, Concerning Prohibition of Torture and Cruel Treatment or Punishment*, 1992, para. 15; UNCAT, *General Comment 3, Implementation of Article 14 by States Parties*, 2012.

<sup>326</sup> UNCAT, *General Comment 3, Implementation of Article 14 by States Parties*, 2012, para. 11.

<sup>327</sup> *Ibid*, para. 10.

repetition, and amending laws.<sup>328</sup> The Committee against Torture has identified a broad range of measures of satisfaction that may be appropriate, including effective measures aimed at the cessation of continuing violations; verification of the facts and full and public disclosure of the truth<sup>329</sup>; the search for the whereabouts of the disappeared, the bodies of those killed, and assistance in the recovery, identification, and reburial of victims' bodies; an official declaration or judicial decision restoring the dignity, reputation, and rights of the victim and of persons closely connected with the victim; judicial and administrative sanctions against persons liable for the violations; acknowledging the facts and acceptance of responsibility; and commemorations and tributes to the victims.<sup>330</sup>

#### Guarantees of non-repetition

249. The right to reparations encompasses guarantees of non-repetition.<sup>331</sup> The Committee against Torture has identified a range of measures as contributing to guarantees of non-repetition, including civilian oversight of military and security forces; ensuring that all judicial proceedings abide by international standards of due process, fairness, and impartiality; strengthening the independence of the judiciary; protecting human rights defenders and legal, health, and other professionals who assist torture victims; establishing systems for regular and independent monitoring of all places of detention; human rights training for law enforcement, military, and security forces that includes the needs of vulnerable populations; specific training on the *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (the "Istanbul Protocol") for health and legal professionals and law enforcement officials; promoting the observance of international standards and codes of conduct by public servants, including law enforcement, correctional, medical, psychological, social service, and military personnel; reviewing and reforming laws contributing to or allowing torture and ill-treatment; ensuring the availability of temporary services, for individuals or groups of individuals, such as shelters for victims of gender-related or other torture or ill-treatment.<sup>332</sup>

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<sup>328</sup> UNHRC, *General Comment 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 2004, para. 16.

<sup>329</sup> To the extent that such disclosure does not cause further harm or threaten the safety and interests of the victim, the victim's relatives, witnesses, or persons who have intervened to assist the victim or prevent the occurrence of further violations.

<sup>330</sup> UNCAT, *General Comment 3, Implementation of Article 14 by States parties*, 2012, para. 16.

<sup>331</sup> UNHRC, *General Comment 31, The Nature of the General Legal Obligation Imposed on States Parties to the Covenant*, 2004, para. 16.

<sup>332</sup> UNCAT, *General Comment 3, Implementation of Article 14 by States Parties*, 2012, para. 18; *Bairamov v. Kazakhstan*, UNCAT, Decision of 14 May 2014, CAT/C/52/D/497/2012, para. 8.9.

## PART VI: RESEARCH GUIDE

250. Individual communications to the Human Rights Committee and the Committee against Torture incorporate information regarding relevant human rights standards from a range of sources, including human rights treaties, jurisprudence, United Nations documents, and secondary materials. This research guide provides a brief overview of primary materials, secondary sources, and additional tools for human rights research that are available in text and online. The guide is intended to serve as a selection of key resources to assist with research on torture, death in custody, and related human rights violations.

### UN Treaty Bodies

251. Below is an overview of human rights treaties from the United Nations and regional human rights systems. These treaties establish key standards regarding the right to life and prohibition against torture and other cruel, inhuman, or degrading treatment.
252. ***United Nations Human Rights Treaties and Corresponding Treaty Bodies.*** The Human Rights Committee and the Committee against Torture monitor the implementation of the Convention against Torture and the International Covenant on Civil and Political Rights, respectively; other core UN human rights treaties have analogous Treaty Bodies. These Treaty Bodies perform a number of functions, including consideration of States parties' periodic reports, consideration of individual complaints, conducting country inquiries, adopting [general comments](#) interpreting treaty provisions, and organizing thematic discussions related to the treaties. The links below provide the text of the treaties this Toolkit discusses and the websites of the committees that monitor them:

Text of Treaty	Treaty Body
<a href="#">International Covenant on Civil and Political Rights</a>	<a href="#">Human Rights Committee</a> (HRC)
<a href="#">Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment</a>	<a href="#">Committee against Torture</a> (CAT)

253. ***United Nations Treaty Body Documents.*** States parties to the above treaties are required to submit periodic reports regarding compliance with the goals outlined in each treaty. Civil society groups often present alternative reports. In response, the respective committees issue official observations and comments on State party reports. The following websites provide these concluding observations, general comments, reports, and other documents relating to the UN Treaty Bodies:

#### [Office of the High Commissioner for Human Rights](#)

This official website provides access to treaties, State reports, NGO reports, comments, and other important documents. To locate a specific treaty, select “Human Rights Bodies” from the top menu and search the list. Search by “Countries – Human Rights in the World” and you can obtain all recent reports on a particular country.

The OHCHR website also contains direct links to the General Comments each

Treaty Body has issued, including the [Human Rights Committee](#) and [Committee against Torture](#).

- [Universal Human Rights Index of United Nations Documents](#)  
This index provides easy access to country-specific human rights information from international human rights mechanisms in the UN system. The index compiles conclusions and recommendations from UN independent experts to specific countries, and is searchable by State party, rights affected, document symbol, and keyword.
- [United Nations Document System](#)  
This website is a resource for PDF versions of UN documents, including Treaty Body materials. It is most useful when you already have a UN document number (e.g., CERD/C/225/Add.1) and need the full text of the document.
- [Bayefsky.com](#)  
For older documents (only up to 2012), this website provides well-organized links to reports, concluding observations, ratifications, reservations, declarations, jurisprudence, and other types of documents on the major UN human rights treaties. It is searchable by type of document, country, and subject matter.

254. Prior decisions on individual communications from the Human Rights Committee, the Committee against Torture, and other UN Treaty Bodies are available online through the Office of the High Commissioner for Human Rights [Jurisprudence Document Search](#). Material can be searched with a simple keyword search, country, region, UN document symbol, treaty, article number, and document type. The pages for each Committee on the OHCHR website also provide access to their jurisprudence:

[Human Rights Committee Table of Jurisprudence](#)

[Committee against Torture Table of Jurisprudence](#)

255. These websites also provide access to decisions from the UN Treaty Bodies.

- [Centre for Civil and Political Rights](#): Information on the ICCPR, including summaries of recent decisions and follow up on implementation.
- [University of Minnesota Human Right Library – Jurisprudence of Treaty Bodies](#): Allows keyword searches of Treaty Body decisions and related documents.

256. **Books.** The following texts analyze key decisions from the Committee against Torture and the Human Rights Committee, and provide commentary regarding trends in the Committees' jurisprudence:

- **Committee against Torture**
  - Manfred Nowak and Elizabeth McArthur, *The United Nations Convention against Torture: A Commentary* (2008)
- **Human Rights Committee**
  - Manfred Nowak, *UN Covenant on Civil and Political Rights. CCPR Commentary* (2nd ed.) (2005)
  - Alex Conte and Richard Burchill, *Defining Civil and Political Rights: The Jurisprudence of the United Nations Human Rights Committee* (2nd ed.) (2009)

- Möller and de Zayas, *UN-Human Rights Committee, Case Law 1977–2008* (2009)
- 257. The World Organization against Torture (OMCT) has issued a [series of manuals](#) specifically on litigating torture and related cases before international and regional human rights systems, including the UN Treaty Bodies. Updated versions of these were issued in 2014:
  - Sarah Joseph, Katie Mitchell, Linda Gyorki, and Carin Benninger-Budel, *A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies: Seeking Remedies for Torture Victims* (2nd ed.) (2014) ([link to PDF](#))
- 258. [UN Subcommittee on Prevention of Torture](#). The Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) is a new kind of Treaty Body in the United Nations human rights system. The SPT makes visits to States parties in which the Government must permit it to visit any place where the State can deprive persons of their liberty. It also has an advisory function that involves providing assistance and advice to States parties on the establishment and functioning of [National Preventive Mechanisms](#) in accordance with the Optional Protocol to the UNCAT. Annual reports of SPT as well as its reports on country visits might be helpful in formulating innovative arguments, especially with regard to the safeguards against torture.
- 259. **UN Special Procedures.** The special procedures of the Human Rights Council, including the Special Rapporteurs and members of working groups (such as the [Working Group on Arbitrary Detention](#) and the [Working Group on Enforced Disappearances](#)) are independent human rights experts with mandates to report and advise on human rights from a thematic or country-specific perspective. Special procedures undertake [country visits](#); act on individual cases and concerns of a broader, structural nature by sending [communications](#) to States and others in which they bring alleged violations or abuses to their attention; conduct thematic studies and convene [expert consultations](#); contribute to the development of international human rights standards; engage in advocacy; raise public awareness; and provide advice for technical cooperation. Special procedures [report annually](#) to the Human Rights Council. The majority of the mandates also [report to the General Assembly](#).
  - [Reports of thematic special procedures](#) offer useful support for innovative claims, reinforcing the arguments.
  - Reports of the [Special Rapporteur on Torture](#) and other cruel, inhuman, or degrading treatment or punishment and of the [Special Rapporteur on extrajudicial, summary, or arbitrary executions](#) might be particularly helpful for drafting arguments related to torture and death in custody.

### **Regional Human Rights Law**

- 260. ***Treaties of the Regional Human Rights Systems:*** In addition to the UN treaties and monitoring bodies, Africa, Europe, and the Americas have regional human rights systems. Like the ICCPR and CAT, the regional human rights treaties protect the right to life and prohibit torture and cruel, inhuman, or degrading treatment. The links below provide the treaties of the main regional human rights systems:

- **The African System:** [African Charter on Human and Peoples' Rights](#) (Banjul Charter) and [Protocol to the African Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights](#)
  - **The European System:** [Convention for the Protection of Human Rights and Fundamental Freedoms](#)
  - **The Inter-American System:** [American Convention on Human Rights](#) and [American Declaration on the Rights and Duties of Man](#)
261. **Online Resources.** A number of regional human rights courts regularly post their decisions online.<sup>333</sup> The websites below provide case law that you can cite in submissions to the Human Rights Committee and Committee against Torture. Although UN decisions are the preferred authority for such submissions, reference to this jurisprudence may provide extra support.
- **[African Union](#)**
    - [The African Commission on Human and Peoples' Rights](#) and the [African Court on Human and Peoples' Rights](#): The official websites of the African Commission and Court periodically publish recent decisions.
    - [African Human Rights Case Law Analyser](#): This regularly updated collection of decisions from the African Human Rights System allows users to search by country, outcome, keywords, and article numbers.
  - **[European Court of Human Rights](#)**
    - The Court's official [website](#) includes [the HUDOC database](#), an extensive [database of judgments](#) as well as Information Notes (case digests), press releases, and a range of other case-related materials.
  - **[Organization of American States](#)**
    - [Inter-American Commission on Human Rights](#): This official website includes full-text Commission annual reports and country reports as well as other basic documents.
    - [Inter-American Court of Human Rights](#): This official website provides some court jurisprudence (including very recent judgments) in Spanish, and sometimes English.
    - [Inter-American Human Rights Database at American University](#): AU Washington College of Law's database. Includes links to Inter-American Commission on Human Rights documents since its first session in 1960.
    - [Inter-American Human Rights System at the University of Minnesota](#): Part of the University of Minnesota's Human Rights Library. Includes links to many Court and Commission documents.
262. The OMCT manuals on litigating torture and related cases also cover the regional human rights systems:

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<sup>333</sup> In contrast, domestic court decisions are only available on the internet to a limited extent, through databases such as the [WorldLII International Courts and Tribunals Collection](#) and other Legal Information Index partners listed [here](#).

- Frans Viljoen and Chidi Odinkalu, *The Prohibition of Torture and Ill-treatment in the African Human Rights System: A Handbook for Victims and Their Advocates* (2nd ed.) (2014) ([link to PDF](#))
- Diego Rodríguez-Pinzón and Claudia Martín, *The Prohibition of Torture and Ill-Treatment in the Inter-American Human Rights System: A Handbook for Victims and Their Advocates* (2nd ed.) (2014) ([link to PDF](#))
- Alexander Morawa et al., *Article 3 of the European Convention on Human Rights: A Practitioner's Handbook* (2nd ed.) (2014) ([link to PDF](#))

### **Human Rights Organizations**

263. NGOs and other international organizations involved in anti-torture litigation and advocacy produce a range of information on torture, death in custody, and related human rights issues. This information may be used to provide context for submissions to the Committee against Torture or the Human Rights Committee. The links below have some of this information:

- [Amnesty International](#)
- [Association for the Prevention of Torture](#)
- [Human Rights Watch](#)
- [REDRESS](#)
- [The Center for Justice and International Law](#)
- [The Open Society Justice Initiative](#)
- [World Organisation Against Torture](#)
- [Anti-torture Initiative University Washington College of Law](#)
- [Penal Reform International](#)
- [Track Impunity Always](#)
- [DIGNITY](#)
- [FIDH](#)

The UN website provides a comprehensive, searchable [NGO database](#); other organizations that address torture may have additional information. Duke University also hosts a [database](#) with brief descriptions of human rights NGOs worldwide.

### **Country Reports on Human Rights Practices**

264. Leading NGOs and the U.S. State Department publish periodic reports that provide a valuable source of information on torture, death in custody, and related human rights issues, as outlined below:
- **Annual NGO Reports:** Amnesty International, Human Rights Watch, and the International Committee of the Red Cross produce annual reports on human

rights conditions in countries around the world, which are available electronically on each organization's website.

- **U.S. State Department Country Reports on Human Rights Practices:** These reports are submitted annually by the U.S. Department of State to the U.S. Congress. PDF copies of the reports are available [online](#), organized by country and year.



## ANNEX: STRUCTURES AND EXAMPLE CLAIMS

1. The structures that appear on the following pages can be used in claims to the Human Rights Committee or to the Committee against Torture.

Select the structure that is most appropriate for the claims that you are presenting, and then add and remove headings depending on the particular facts and legal issues that your claim raises. It is important that you adjust the structure so that you are presenting all of the elements of your case, but are not including headings or presenting arguments that do not arise in your case.

2. Once you have adjusted the structure, prepare your claim by filling in each section using the guidelines presented in Part III and using the model legal arguments in Part V.
3. The links below provide claims that the Justice Initiative has filed with the Human Rights Committee and the Committee against Torture and in which the committees issued decisions finding violations in those cases. These claims generally follow the guidelines and structure set out in this Toolkit and present arguments similar to those in the model legal arguments. They may be useful as models.
  - ***Gerasimov v. Kazakhstan (April 2010)***. Communication to the Committee against Torture raising claims of torture, failure to provide safeguards against torture, failure to investigate effectively, and failure to provide redress ([PDF of communication](#))
  - ***Ernazarov v. Kyrgyzstan (March 2011)***. Communication to the Human Rights Committee raising claims of failure to protect vulnerable prisoner, arbitrary killing, torture by private actors, failure to investigate effectively, and failure to provide redress ([PDF of communication](#))
  - ***Akmatov v. Kyrgyzstan (April 2011)***. Communication to the Human Rights Committee raising claims of torture, death resulting from torture, failure to provide safeguards against torture, failure to investigate effectively, and failure to provide redress ([PDF of communication](#))
  - ***Akunov v. Kyrgyzstan (September 2011)***. Communication to the Human Rights Committee raising claims of arbitrary killing, torture, failure to provide safeguards, failure to investigate effectively, failure to provide redress, and torture/killing for discriminatory or political motive ([PDF of communication](#))
  - ***Askarov v. Kyrgyzstan (November 2012)***. Communication to the Human Rights Committee raising claims of torture, failure to provide safeguards against torture, failure to investigate effectively, failure to provide redress, arbitrary detention, and detention and torture for discriminatory or political motive; as well as inadequate conditions of detention and violation of rights to fair trial ([PDF of communication](#))

**ANNEX A: STRUCTURE OF CLAIM TO THE HUMAN RIGHTS COMMITTEE,  
TORTURE AND/OR DEATH IN CUSTODY, WITH RELATED VIOLATIONS**

**Communication to the United Nations Human Rights Committee**

**In the case of**

**[*Name of Client*]**

**against**

**[*Name of State*]**

*Submitted for consideration under the Optional Protocol to the  
International Covenant on Civil and Political Rights*

to

The United Nations Human Rights Committee

c/o Petitions Team

United Nations Office

8-14 avenue de la Paix

1211 Geneva 10

Switzerland

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3. <i>[subheading, if required]</i> .....	78
B. <i>[Title of the second violation, from the list above]</i> .....	78
1. <i>[subheading, if required]</i> .....	78
2. <i>[subheading, if required]</i> .....	78
C. <i>[repeat for each of the subsequent violations]</i> .....	78
1. <i>[subheading, if required]</i> .....	78
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## **I. THE AUTHOR OF THE COMMUNICATION**

1. [...]

## **II. THE VICTIM**

**Name:** [insert]  
**First name:** [insert]  
**Nationality:** [insert]  
**Profession:** [insert]  
**Date and place of birth:** [insert]  
**Address:** [insert if victim is still alive and is the author]  
**Relationship to the author:** [insert if victim is not still alive or is not the author]

## **III. STATE PARTY**

2. This communication is submitted against [insert state name]. [Set out when the state ratified or acceded to the ICCPR and to the Optional Protocol].

## **IV. SUMMARY OF THE CLAIM**

### **Summary of the facts**

3. [...]

### **Summary of domestic remedies exhausted**

4. [...]

### **Violations of the ICCPR**

5. The [state] has violated the ICCPR in the following ways:
  - A. [...]
  - B. [etc.]

## **V. FACTS OF THE CLAIM**

6. [...]

### **[heading – e.g. Background]**

7. [...]

### **[heading – e.g. Detention of [the person]]**

8. [...]

### **[heading with different elements – e.g. Official Investigation]**

9. [...]

[subheading – e.g. to describe the major steps in the investigation]

10. [...]

[subheading – e.g. to describe any time the investigation is suspended, closed, restarted, or challenged]

11. [...]

## **VI. ADMISSIBILITY**

12. This communication is admissible under Article 5 of the first Optional Protocol to the ICCPR because (A) the violations fall within the jurisdiction of the Committee, (B) the violations have not been submitted to any other international forum, and (C) *[the person]* has exhausted all available and effective domestic remedies because *[include a sentence summarizing what the person or their family did to exhaust the domestic remedies.]*

### **A. Jurisdiction**

13. [...]

#### **B. No other international complaint**

14. No complaint has been submitted to any other procedure of international investigation or settlement regarding *[the torture of the person and the failure of the state to prevent and to adequately investigate that torture]*.

#### **C. Exhaustion of domestic remedies**

15. *[Topic sentence.]*

16. *[Any relevant legal submissions.]*

17. *[How the facts satisfy the legal requirements.]*

18. As a result, the communication is admissible before the Committee.

## **VII. VIOLATIONS OF THE ICCPR**

19. The *[state]* violated the ICCPR in the following ways:

A. *[Repeat here the list of violations which is in the summary (part IV) above].*

B. [...]

**A. *[Title of the first violation, from the list above – e.g. Mr. Applicant was Killed; or State Failed to Protect Mr. Applicant's Right to Life]***

20. *[Topic sentence.]*

21. *[Any relevant legal submissions.]*

22. *[How the facts satisfy the legal requirements.]*

1. [subheading, if required]

23. *[Topic sentence.]*

24. [*Any relevant legal submissions.*]

25. [*How the facts satisfy the legal requirements.*]

2. [subheading, if required]

26. [*Topic sentence.*]

27. [*Any relevant legal submissions.*]

28. [*How the facts satisfy the legal requirements.*]

3. [subheading, if required]

29. [*Topic sentence.*]

30. [*Any relevant legal submissions.*]

31. [*How the facts satisfy the legal requirements.*]

**B. [Title of the second violation, from the list above – e.g. Mr. Applicant was Tortured; or Unlawful and Arbitrary Detention of Mr. Applicant]**

32. [*Topic sentence.*]

33. [*Any relevant legal submissions.*]

34. [*How the facts satisfy the legal requirements.*]

1. [subheading, if required]

35. [*Topic sentence.*]

36. [*Any relevant legal submissions.*]

37. [*How the facts satisfy the legal requirements.*]

2. [subheading, if required]

38. [*Topic sentence.*]

39. [*Any relevant legal submissions.*]

40. [*How the facts satisfy the legal requirements.*]

**C. [repeat for each of the subsequent violations – e.g. Failure to Conduct an Effective Investigation; or Failure to Provide Redress]**

41. [*Topic sentence.*]

42. [*Any relevant legal submissions.*]

43. [*How the facts satisfy the legal requirements.*]

1. [subheading, if required]

44. [*Topic sentence.*]

45. [*Any relevant legal submissions.*]

46. [*How the facts satisfy the legal requirements.*]

2. [subheading, if required]

47. [*Topic sentence.*]

48. [*Any relevant legal submissions.*]

49. [*How the facts satisfy the legal requirements.*]

### **VIII. REMEDIES**

50. In light of the facts and submissions above, the Author respectfully requests the Committee to:

- a. [*List the remedies that you are asking for.*]
- b. [...]
- c. [...]

### **IX. LIST OF SUPPORTING DOCUMENTS**

Exhibit 1 [*description*]

Exhibit 2 [*description*]

Exhibit 3 [*description*]

**ANNEX B: STRUCTURE OF A TORTURE CLAIM TO  
THE COMMITTEE AGAINST TORTURE**

*Communication to the United Nations Committee against Torture*

*In the case of*

*[Name of Client]*

*against*

*[Name of State]*

*Submitted for consideration under Article 22 of the  
United Nations Convention against Torture  
and Other Cruel, Inhuman or Degrading Treatment or Punishment*

*to*

*The United Nations Human Rights Committee  
c/o Petitions Team  
United Nations Office  
8-14 avenue de la Paix  
1211 Geneva 10  
Switzerland*



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<b>V. FACTS OF THE CLAIM .....</b>	<b>76</b>
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[heading – e.g. Detention of <i>[the person]</i> ] .....	76
[heading with different elements – e.g. Official Investigation] .....	76
<i>[subheading – e.g. to describe the major steps in the investigation]</i> .....	77
<i>[subheading – e.g. to describe any time the investigation is suspended, closed, restarted, or challenged]</i> .....	77
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A. Jurisdiction .....	77
B. No other international complaint .....	77
C. Exhaustion of domestic remedies .....	77
<b>VII. VIOLATIONS OF THE ICCPR.....</b>	<b>77</b>
A. <i>[Title of the first violation, from the list above]</i> .....	77
1. <i>[subheading, if required]</i> .....	77
2. <i>[subheading, if required]</i> .....	78
3. <i>[subheading, if required]</i> .....	78
B. <i>[Title of the second violation, from the list above]</i> .....	78
1. <i>[subheading, if required]</i> .....	78
2. <i>[subheading, if required]</i> .....	78
C. <i>[repeat for each of the subsequent violations]</i> .....	78
1. <i>[subheading, if required]</i> .....	78
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## I. THE AUTHOR OF THE COMMUNICATION

1. [...]

## II. THE VICTIM

**Name:** [insert]  
**First name:** [insert]  
**Nationality:** [insert]  
**Profession:** [insert]  
**Date and place of birth:** [insert]  
**Address:** [insert if victim is still alive and is the author]  
**Relationship to the author:** [insert if victim is not still alive or is not the author]

## III. STATE PARTY

2. This communication is submitted against [insert state name]. [Set out when the state ratified or acceded to the Convention against Torture and when it made its declaration under Article 22].

## IV. SUMMARY OF THE CLAIM

### Summary of the facts

3. [...]

### Summary of domestic remedies exhausted

4. [...]

### Violations of the CAT

5. The [state] has violated the Convention against Torture in the following ways:
  - C. [...]
  - D. [etc.]

## V. FACTS OF THE CLAIM

6. [...]  
[heading – e.g. Background]
7. [...]  
[heading – e.g. Detention of *the person*]]
8. [...]

**[heading with different elements – e.g. Official Investigation]**

9. [...]

[subheading – e.g. to describe the major steps in the investigation]

10. [...]

[subheading – e.g. to describe any time the investigation is suspended, closed, restarted, or challenged]

11. [...]

## **VI. ADMISSIBILITY**

12. This communication is admissible under Article 22 of the Convention against Torture because (A) the violations fall within the jurisdiction of the Committee, (B) the violations have not been submitted to any other international forum, and (C) *[the person]* has exhausted all available and effective domestic remedies because *[include a sentence summarizing what the person or their family did to exhaust the domestic remedies.]*

### **A. Jurisdiction**

13. [...]

### **B. No other international complaint**

14. No complaint has been submitted to any other procedure of international investigation or settlement regarding *[the torture of the person and the failure of the state to prevent and to adequately investigate that torture]*.

### **C. Exhaustion of domestic remedies**

15. *[Topic sentence.]*

16. *[Any relevant legal submissions.]*

17. *[How the facts satisfy the legal requirements.]*

18. As a result, the communication is admissible before the Committee.

## **VII. VIOLATIONS OF THE ICCPR**

19. The *[state]* violated the Convention against Torture in the following ways:

C. *[Repeat here the list of violations which is in the summary (part IV) above].*

D. [...]

### **A. *[Title of the first violation, from the list above – e.g. Mr. Applicant was Tortured]***

20. *[Topic sentence.]*

21. *[Any relevant legal submissions.]*

22. *[How the facts satisfy the legal requirements.]*

1. [subheading, if required]

23. *[Topic sentence.]*

24. [Any relevant legal submissions.]
25. [How the facts satisfy the legal requirements.]
2. [subheading, if required]
26. [Topic sentence.]
27. [Any relevant legal submissions.]
28. [How the facts satisfy the legal requirements.]
3. [subheading, if required]
29. [Topic sentence.]
30. [Any relevant legal submissions.]
31. [How the facts satisfy the legal requirements.]

**B. [Title of the second violation, from the list above – e.g. Failure to Adopt Safeguards to Prevent Torture]**

32. [Topic sentence.]
33. [Any relevant legal submissions.]
34. [How the facts satisfy the legal requirements.]
1. [subheading, if required]
35. [Topic sentence.]
36. [Any relevant legal submissions.]
37. [How the facts satisfy the legal requirements.]
2. [subheading, if required]
38. [Topic sentence.]
39. [Any relevant legal submissions.]
40. [How the facts satisfy the legal requirements.]

**C. [repeat for each of the subsequent violations – e.g. Failure to Conduct an Effective Investigation; or Failure to Provide Redress]**

41. [Topic sentence.]
42. [Any relevant legal submissions.]
43. [How the facts satisfy the legal requirements.]
1. [subheading, if required]
44. [Topic sentence.]
45. [Any relevant legal submissions.]
46. [How the facts satisfy the legal requirements.]
2. [subheading, if required]
47. [Topic sentence.]

48. *[Any relevant legal submissions.]*
49. *[How the facts satisfy the legal requirements.]*

#### **VIII. REMEDIES**

50. In light of the facts and submissions above, the Author respectfully requests the Committee to:
- *[List the remedies that you are asking for.]*
  - *[...]*
  - *[...]*

#### **IX. LIST OF SUPPORTING DOCUMENTS**

Exhibit 1 *[description]*

Exhibit 2 *[description]*

Exhibit 3 *[description]*

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The Open Society Justice Initiative uses law to protect and empower people around the world. Through litigation, advocacy, research, and technical assistance, the Justice Initiative promotes human rights and builds legal capacity for open societies. Our staff is based in Abuja, Brussels, Budapest, The Hague, London, Mexico City, New York, Paris, and Washington, D.C.

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