Open Society Justice Initiative

LEGAL WRITING FOR HUMAN RIGHTS CLAIMS PRACTICE NOTES

CONTENTS

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The Open Society Justice Initiative bears sole responsibility for any errors in this practice note.

This Practice Note provides guidance on how to prepare a human rights claim. It includes tips on the process of writing complex legal filings, practical guidance on how to prepare compelling applications, and an overview of the specific technical requirements of the regional human rights jurisdictions.

This Practice Note will assist both national and international civil society organizations to file persuasive human rights claims before the regional human rights courts and United Nations Treaty Bodies, and is useful for claims in domestic courts.

This note is part of the Justice Initiative series of Practice Notes on Human Rights litigation, which provide practical assistance to human rights practitioners for effective strategic litigation on issues such as planning, ethics, case management, remedies, and security.

INTRODUCTION

1. **Effective human rights litigation relies on persuasive and clear legal writing in the claims presented to the courts.** This practice note describes the experience of the Justice Initiative in working with a wide range of lawyers and experts to prepare cases in national courts in both common law and civil law systems, and cases for the regional human rights tribunals and the UN Treaty Bodies. There are many national traditions relating to legal writing and no single way to do it. The guidance presented here will be useful for most jurisdictions, and for clear legal writing in any language.

2. **This guidance is provided primarily for human rights lawyers who will apply it to their own legal system and in accordance with their own professional rules.** Individuals who are not lawyers should seek legal advice before filing a legal claim in a domestic court or a human rights tribunal.

Writing for Human Rights Claims

3. **The issues addressed in a human rights claim are often complicated, and may be unfamiliar to a domestic judge.** Conversely, if you are submitting your claim to a regional or international tribunal, the context of the case and many domestic legal concepts and terms may be unfamiliar to the international judge, who may be reading the submissions in a second language or relying on a translation. A clear and well-structured claim is particularly important in cases where there is no subsequent opportunity to clarify any ambiguity in your submission.

4. **Part 2 proposes a number of key principles of legal writing, including general guidelines and specific tips for the facts and the legal arguments**. The principles of good legal writing apply across all claims and jurisdictions, and are particularly useful for systems in which legal arguments are advanced predominantly in the written form.

5. **Part 3 makes suggestions on the process of preparing legal submissions, and reviews the four key stages that are needed to:**
    - A: identify the issues and the potential arguments
    - B: structure the document and plan the legal writing
    - C: write the document
    - D: edit the document.

6. **Part 4 provides a survey of the particular technical requirements for filing claims before the regional human rights tribunals.**

7. **The Note concludes with suggested further reading on legal writing specifically, and on clear writing in general.**

PRINCIPLES OF GOOD LEGAL WRITING

General guidelines

1. **Consider your tone.** Legal writing must always be persuasive, but the tone will vary depending on the audience. It may be appropriate to take a more neutral and objective tone for an amicus brief or third party intervention, but you might be more argumentative when filing a complaint on behalf of a victim. Do not talk down to your audience: good writing makes the problem seem simple and the reader seem smart.

2. **Advocate, but remain objective.** You need to persuade the court, but be dignified. Even when arguing on behalf of a victim of serious violations, use professional and respectful language, and do not be dismissive or disrespectful. Do not accuse the state of bad faith unless you have solid evidence to do so. Avoid embellishing your language with terms like "egregious", "outrageous", or "the worst violation".

3. **Draft concisely.** Use short paragraphs—one point per paragraph—to make it easier to absorb. Use short sentences, without sub-clauses. Avoid excessive adjectives or adverbs. Cut repetition. Keep your language clear and direct with active verbs rather than passive verbs ("The police tortured Mr. B", instead of "Mr. B was tortured").

4. **Number your paragraphs.** It is much easier for people to read, review, and discuss your claim if the paragraphs are numbered, particularly when the review may take place over the phone or by email. It also makes it easier to refer back to facts that you have discussed in detail when you get to the argument, or points that you made in your initial claim when you draft your reply.

5. **Respect language differences.** Many international judges will be reading in a second language or through translation. Keep sentences short and language direct. Use the same term for the same concept throughout the document. Remember that judges may not be familiar with your domestic legal terms or structures, so if you must use them then explain what they are.

Guidelines for writing the facts

6. **Structure your facts.** Structure and headings are particularly important in the facts. You are often dealing with complicated sequences of events, over extended periods, with many different actors. A clear structure requires you to explain the sequence of events in simple terms: what are the basic components of this story, how do they fit together, and are any pieces missing?

7. **Headings.** Use headings and subheadings to separate and highlight the major events in the case. Divide the facts into sections to make them easier to understand. Organize facts thematically, and use the headings to forecast what these facts will show.

8. **Chronological.** The easiest way to structure your facts is usually chronologically (the ECHR specifically requests that facts be set out this way). However, you may wish to group some facts together, for example, by arranging all of the medical examinations in a torture case in one section.

9. **Present facts objectively.** Facts are generally most compelling when they are presented in a neutral, objective way. The judges must trust your presentation of the facts, and have confidence in your writing. It is easier to present your case objectively when you separate the facts from the legal argument. Do not over-state your case or you will lose the confidence of the court.

10. **Be clear and specific.** Give details, and be as concrete as possible. Provide as much detail about what happened as you can.

    - If possible, provide specifics such as places, names, and times. Give specific dates, especially of court decisions (which may be important for time limits where they apply).
    - In general, refer to your client and any other victims or witnesses by name. Where there are a lot of people involved, it may be easier to use their title as well (especially where the role is important: Prosecutor Toktanov; Sergeant Guillo)

11. **Avoid legal labels.** Part of an objective and compelling presentation of the facts is to avoid including legal characterization or labels, e.g. do not say the person was tortured. Instead, describe what the police did to the person; explaining how this is torture is part of the legal arguments.

12. **Support your facts with evidence.** Show the judge how you know the facts that you are presenting. Often this will be a witness statement, but refer to all of the corroborating documents that you have (e.g. court documents, detention records, medical records). If you do not have documents to support your claim then explain why you do not have them.

13. **Use the details from these documents.** The facts section should be the full story compiled from all of your evidence, not just a rephrasing of the witness statement. It is your job to bring all of the evidence together into a single, compelling narrative —the judge will not do it for you.

14. **Match your facts with your arguments.** Make sure that all of the facts that you need to support your case are included in the facts section —you do not want to be introducing new facts in the legal arguments section. Do not include irrelevant facts that do not relate to your arguments, unless they are necessary to understand the overall narrative, when you can include them in a background section. Irrelevant facts will distract the reader. The ECHR's notes on how to complete its application form explains the key principles well:

> *"Be concise. Put down the essential information concerning your case: the key facts and decisions, and how your rights have been violated, without irrelevant background or side issues. Do not include lengthy quotations: you can always give a reference to an accompanying document. The facts of your case and your complaints should be set out in the space provided in the application form so as to enable the Court to determine the nature and scope of the application without reference to any other material."*

Guidelines for writing the legal arguments

15. **Draft in clear, simple language. As** with the facts, the objective in writing the legal arguments is to present your case clearly and to persuade the reader. As a result, many of the same principles for drafting facts apply to drafting legal arguments.

16. **Identify the legal basis.** Clearly identify which right you claim as violated, and explain as precisely as possible how the facts that you have set out establish a violation of that right. Where the court has set out a legal test, use its own language.

17. **Do not repeat yourself.** It is better to make an argument once, and make it really well. Saying the same thing four times does not make it more persuasive.

18. **Avoid legal jargon.** Not everyone considering a human rights claim is a judge or lawyer (e.g. members of some of the UN Treaty Bodies). It can be confusing, especially as some legal terms might mean different things in different legal systems (e.g. dolus eventualis).

19. **Use quotations selectively.** When citing legal sources, do not simply set out long quotations. Quote only the most relevant portion, and explain to the court how it supports your argument.

20. **Explain comparative sources.** When using legal sources from other systems, explain to the court what their relevance is, why it should take note of it, and how it relates to the decision of your case. When referring a human rights court to the law of other tribunals, explain how it relates to their case law. Where using regional human rights law or comparative law before a domestic court, explain its legal status in that system, and why the court should consider it.

PROCESS: THE FOUR STAGES OF LEGAL WRITING

1. Preparing a complex human rights claim is a substantial undertaking. A number of different things need to be done, and each requires a slightly different focus. As a result, trying to do them all at the same time runs a real risk of doing none of them well. Separating the different stages of preparing a claim or response also helps to coordinate work where more than one person is involved.

2. The major stages in preparing a claim are:

    - **Identify the issues and potential arguments.** Identify the big-picture issues raised by the case, and the potential arguments that you will raise, without worrying about how to structure them or whether every argument would succeed.
    - **Structure the document and plan the writing.** Identify the main theme of your case and the most important or promising arguments, organise these into a logical structure, and plan the writing of the claim (timing, length, who will contribute).
    - **Write the document.** The actual work of writing the claim, which in complex claims includes bringing together sections written by different people.
    - **The importance of editing.** Revising the document is critical. Editing requires looking at structure, content, language and length, and then proof-reading and checking citations.

3. A number of other tasks are often involved, depending on the nature of the filing, such as gathering evidence (discussed in a separate Practice Note) and researching legal points. The stages at which these happen will vary from case to case. Ideally, the evidence is gathered before you draft the claim, but often during the writing you will identify points on which you need additional evidence. The stage at which the legal research is done depends on whether you have conducted similar cases before. Some research will generally take place in advance of identifying the arguments, and then additional research becomes necessary once a detailed outline is prepared.

THE FOUR STAGES OF LEGAL WRITING

Betty Flowers has a creative image for the four stages as distinct and different characters:

- ***Madman:*** **full of ideas, highly creative, but not organized; let your creative juices flow without self-editing yet.**
- ***Architect:*** **organized; select which of those ideas are sustainable, and arrange them into a logical structure.**
- ***Carpenter:*** **disciplined; methodically working through each section of the structure that the Architect laid out.**
- ***Judge:*** **critical: look over the work of all three and test it, question it, look for any way to improve it.**

These are four very different personalities and approaches. They could not all co-exist and each do their job; what makes one effective in their role would undermine the task of the others. So each must play their part in turn, rather than trying to do it all in one step.

Identify the issues and potential arguments

4. The first step in preparing any claim is to identify the various arguments that you could make. This is a time to think broadly, and ask yourself:
    - What is your key objective in the case?
    - What are the issues that your case raises and what arguments could you make.
    - What are the possible themes that you could emphasise in your filing?
    - What emotion are you trying to instil in the judges through your claim?
    - What particular opportunities does the case present, legally or factually? What are the biggest challenges (evidence, procedural, legal, practical)?
    - What remedies could you ask for, in light of the facts, the violations, your objective, and your clients' needs and wants?

5. It is often easier to do this at the outset, before you set out the structure of your filing: you are more likely to think of creative arguments if you think broadly without trying to impose a structure on your thoughts, or to test whether every argument will succeed in this case. It is also simpler to identify the right structure and prioritise arguments if you have all of the options before you, instead of having to rearrange things when you think of a new point half-way through writing.

6. This is the time to brainstorm, discuss the case with colleagues, ask them what you might have missed, and what they think is the most promising approach to the case.

DEVELOPING NOVEL LEGAL ARGUMENTS

7. Human rights claims frequently rely on well-established legal principles, and the primary objective is to demonstrate how those principles apply to the facts of the case, or perhaps to argue for the incremental development of established principles. Occasionally you may have an opportunity, or the need, to argue for a substantial extension of existing legal principles or the development of a new principle entirely. Where can you find such opportunities, or where can you look for new arguments if the need arises?

    - Reason from **basic principles**: return to the underlying principle and intent behind a right or the entire body of law, or the object and purpose of a Convention set out in the preamble, e.g. the principle from the European Convention on Human Rights that rights must be interpreted and applied in a manner that makes them practical and effective.
    - Apply **principles developed in another jurisdiction**, whether national or international. Comparative law or practice can show that a principle is not only legally sound, but is also practical.
    - Apply **principles developed for another right** by analogy, e.g. the arguments presented to the US Supreme Court that denying marriage to gay couples is discriminatory based on the same reasoning that struck down bans on inter-racial marriage.
    - Argue for the **application of different rights** altogether: think beyond the obvious rights, e.g. focusing on the "death row phenomenon" as inhuman treatment, rather than capital punishment itself as a violation of the right to life.
    - Develop from **prior dissenting judgments**: dissenting judgments or separate opinions sometimes set out ambitious legal principles that take time to be accepted by courts.

- Use **soft law principles**: expert bodies issuing soft law guidelines and recommendations can sometimes foreshadow points that will later become legal obligations; these are especially useful for providing detailed and specific content to general rights, e.g. safeguards against torture and conditions of detention.
- Use **academic commentary**: academic writings, much like soft law, can propose new legal theories that creative lawyers can persuade courts to adopt.

Structure the document and plan the writing

8. Once you have all of the potential arguments in front of you, the next stage is deciding which of them you should make, and how to structure the filing.

SELECTING THE ARGUMENTS

9. It is not always helpful to make every possible argument in a given case. Some may be too weak, may risk backfiring, or they may undermine each other. Even if the arguments are sound in themselves, sometimes a case is stronger when it addresses a smaller number of the most important violations, rather than including every possible violation. Many courts will not respond to all of your arguments, but will choose those which they think are most important. By making that selection for them, you are more likely to have your key argument resolved in the final judgment.

10. When selecting the arguments, start by considering the main strategic objective of your case, and then consider what the theme of the case might be. For instance, if the objective is to obtain reforms to the Criminal Procedure Code to prevent torture in the early stages of investigations, the theme might be to highlight the way that police and prosecutors take advantage of weaknesses in the system to act in an arbitrary manner. Consciously identifying the objective and theme of your case will assist in selecting which facts, violations, or arguments to prioritise.

STRUCTURING CLAIMS

11. It is important that claims have a logical structure. A key consideration that should run through all decisions in preparing your claim is to make the reader's job as easy as possible; it is much easier when the document follows a logical structure. With a good structure, the table of contents becomes a roadmap that guides the reader through your case. This makes

it simpler for them to see the relevance of a submission to your case as a whole. If they are busy, then they can also focus immediately on the sections that they are most interested in.

12. Structure, including the use of subheadings, is particularly important when discussing complex factual and legal issues – subheadings act as signposts so that the reader knows how a section of text fits together. Each section should begin with a "topic sentence" or introductory paragraph that explains up-front the essential point that the section will make (see below).

13. The structure of your filing will sometimes be dictated by the specific requirements of your court (see Part 4 below) and ultimately you should use a structure which best presents your case. Unless there are specific and formal requirements, a common and useful structure for human rights claims to international or regional bodies is as follows:

    - **Lead Paragraph.** A claim might typically start with a "lead" paragraph that presents the essence of the case in a single, vivid paragraph.
    - **Introduction.** Any document that is longer that 5-10 pages will need an introduction that sets out the basis of your case in 1-2 pages. This should include an overview of the facts, a summary of why the case is admissible, and a list of the violations claimed with a sentence or two regarding each. This summary can also serve to explain the case to a wider audience.
    - **Details of the Applicant, Legal Representative and State.** These details are often formally required, and the basis for representation is something that the court will often examine in registering the case.
    - **Facts.** In most cases, it is more persuasive to separate the description of the facts of the case from the legal arguments. You should present facts in an objective way, based on the evidence, so that the judge is confident that they are accurate.
    - **Admissibility.** International human rights courts dismiss a substantial number of cases by declaring them inadmissible. Given the pressure on many of these courts to reduce a backlog of cases, it is important to clearly set out to the court why your case is admissible.
    - **Legal Arguments.** Succinctly set out the law, and then apply the law to the facts. The structure of the arguments will depend on the nature of your case and the court. Put the most important violation first, present violations in the order that they occurred, or even follow the order of the Articles that you claim have been violated if that is how the court structures its judgments. In a long application, it is useful to re-state at the beginning of this section the list of violations that you will present.

WHAT GOES IN A DETAILED OUTLINE?

An outline should set out *how* the arguments will be made, identifying the steps that you will use to make your arguments, both legal and factual. To be useful, it should have more than a statement of what argument will be made ("Mr. X was tortured in violation of Article 7"; or "This was discrimination in violation of Article 14"), but should not be a full draft of the filing.

The outline will start with an introduction to the case, which will incorporate most of the key facts.

Include all of the headings and subheadings that will be included. Write the topic sentence or introductory paragraph for each section, setting out the essential point that the section will make.

For the relevant law, there is generally no need to recite the text of provisions, but do identify the key cases that you will rely on, and explain briefly how they are relevant for the argument.

Outlining your legal arguments will depend on the nature of the evidence and violations. In simple cases you may only have three points to make. In complex cases, you will have several arguments and will have to structure them and prioritize them.

Outlines should include the remedies that will be requested, as the discussion of the outline is an opportunity to get colleagues to consider and engage on this question early in the process.

This is where you will develop your arguments as to why there has been a human rights violation.

- **Remedies.** Lawyers often leave the request for remedies until the last minute, but in human rights litigation it is important that you justify your claim at an early stage. This will often include comparative standards, which take time to prepare.
- **Conclusion.** End with a clear statement of what you want from the court, including the violations that you are asking the court to find, and the remedies that you are asking the court to order.

PREPARING A DETAILED OUTLINE

14. Once you have identified your arguments, and have a structure of the claim, it is worthwhile to develop a detailed outline. In simple cases, this may be little more than setting out the structure of the filing, the order of arguments, and the headings that you will use. Including a bit more detail about the key points in your case creates a more valuable document: not just what arguments you make, but how you will make them (see side-box –"What Goes in a Detailed Outline"). As a result, preparing a detailed outline is useful even when you have a set structure that the court requires you to use. A detailed outline might be around 4-5 pages, though it might be longer in particularly complicated cases or shorter for a 10-page third-party intervention.

15. An outline can serve a number of purposes:

    - The outline serves as a basis to consult with the client, keep them properly informed, and ensure that the drafting of the document will align with and reflect the client's needs and preferences.
    - It allows you to obtain more detailed input from colleagues or external partners at the outset of the process. It is easier to have this input at the beginning, before you spend time on the writing.
    - An outline enables you to identify gaps in your case, which may require obtaining additional evidence or conducting further research. Identifying such gaps early in the process gives you time to fill them, for example, by planning a mission to gather evidence or requesting pro bono assistance.
    - Where multiple people will contribute to the draft, the outline provides a central reference and framework to ensure that everyone knows how their piece relates to the overall document and makes it much easier to integrate pieces at the end.

16. The outline should therefore be detailed enough for reviewers to be able to understand and discuss the choices the lawyer has made about which legal arguments to make, what cases support those arguments, and how (or whether) the evidence supports the case which is being put forward.

17. The outline can include estimates of the length of each section. This is particularly important when there is a page limit for your claim, but is good practice to help focus your arguments and make them persuasively.

RESPONSES AND REPLIES

18. When the government responds, you should not feel compelled to reply to every point raised, or to follow the structure of their arguments. Instead, look at their submission in the context of your case:

    - Are there any new facts that they have raised that you need to address?
    - Are there any developments in the case that you should bring to the attention of the court?
    - Have they attempted to undermine your facts in a way that requires you to clarify or challenge?
    - Have they raised legal arguments that require a response?
    - Are there facts or arguments that you have raised which they have not addressed or disputed, which you want to highlight?
    - Is there anything that they have said which you can use to strengthen your case?

19. Not everything that the government includes in its submissions will always need a response, especially if they are just flatly denying the conduct of a violation. Often, a reply will be more effective if you address only the most important points, rather than rearguing your entire case by addressing everything the government says. However, in some national systems you may need to include a formal denial of each point, as otherwise it might be deemed to be admitted.

20. One effective structure for replying to the government's submission can be:

    - Challenge any factual inaccuracies, or provide context to explain facts that they have raised.
    - Respond to any specific legal arguments raised by the government by directly addressing them.
    - Reiterate the key points of your claim (briefly), explaining why they should still prevail in light of the government's submissions. This is also the place where you can highlight anything in the government's response that actually strengthens or confirms any aspect of your case, including key facts or arguments that they have not disputed.

21. When responding to specific arguments that the government has raised, it is often effective to set out briefly the nature of the arguments that they made. Your document should be self-contained – the reader should be able to understand it without the need to refer back to the government's

submissions. While you should not strengthen the government's arguments by repetition, it is often easier to address them (and for the reader to understand your response) if you summarise their argument in one sentence before explaining why it is incorrect.

TIMETABLING THE WORK

22. It is good practice to set out a timeline for the legal writing and editing. As with outlines, this is critical when multiple people are involved so that you can co-ordinate their work. It is also useful where the lawyer or organization is conducting multiple cases (as most are), as it allows you to see potential conflicts between commitments to different cases, or when delays will become particularly problematic.

23. When setting out the timeline, do not forget to allow time (and allocate responsibility) to:

    - Obtain input from partner organisations, and get their review of the document.
    - Translate documentary evidence, or the claim itself.
    - Organize supporting documents and prepare them for submission.
    - Edit the substance of the arguments and the claim.
    - Cite-check the references and proof-read the final document.

Getting it done: writing the document

24. This is typically what lawyers think of by legal writing – putting pen to paper (or fingers to keyboard) and producing the actual submission. This is a lot easier and more efficient if you have gone through the previous steps.

25. *Structure*. It is easiest to follow the structure of the filing, starting with drafting the introduction; writing a summary of the case and the claim creates a clear sense of the most important components. Writing the facts before the legal arguments makes it easier to use all of the most relevant facts in your arguments, rather than having to go back and add facts that came in late. For the same reason, it is good practice to gather all of the evidence (or as much of it as possible) before you start writing the facts. The structure should not become a straightjacket. Sometimes there will be good reasons to deviate from it in the course of writing: because of new evidence, because of results of additional research, or simply because the original structure was not compelling when put into practice.

TOPIC SENTENCES

You always want the reader to know why they are about to read a particular fact or argument, and how it relates to and supports your case. This should be done through a topic sentence or in a longer document an introductory paragraph.

Including topic sentences makes it easier for the reader to follow the document. If they are aware of the conclusion that you will demonstrate, and have in mind a map of how you will get there, they are more likely to understand the relevance of the points that you make, less likely to be confused, and more likely to agree with you.

A topic sentence also allows a busy reader to skim the filing so as review all the key points and lets them to focus on those which are most important.

When writing a topic sentence:

- **Set out the conclusion for the reader up-front.**
- **Use one at the beginning of each new section or argument, by stating what the section will demonstrate.**
- **Summarize your argument on each point in one sentence before you go on to explain it.**
- **Use clear, concise, plain language, without ambiguities.**

26. *Topic sentences*. Begin each section of your filing with a topic sentence or an introductory paragraph, which clearly and concisely set out for the reader the key points that you will make in this section, including the conclusion and main steps that you will take to get there.

27. *Comments*. If colleagues or partners will review your document before filing (**see "The importance of editing"**), then comments are very effective. It saves time to anticipate questions that later reviewers might have, explaining certain choices, and why points are presented in a particular way (e.g. because of limitations in the evidence, to get around other potentially problematic decisions, etc.). Comments are also useful to explain the reasoning behind changes made to an earlier outline.

WHAT GOES IN A STYLE GUIDE?

- **Document layout (font, size, spacing, margins) and paragraph and page numbering**
- **Format for headings and subheadings**
- **When to use italics, underlining, and bold for case names, emphasis, etc.**
- **Any particular rules of spelling and grammar (use of parentheses, single v. double quotation marks, capital letters, abbreviations, acronyms)**
- **Appropriate formatting for dates, numbers, spacing**
- **Format for citations and cross-references**
  - **— For each type of source (internet, books, magazines, official publications, codes and statutes, conventions, cases) include both general directions and examples for how to cite the source**
  - **— Referencing pages, paragraphs, and cross-referencing within a document**
  - **— Footnotes v. endnotes**
  - **— How to reference evidence**
- **Any specific formatting requirements for different jurisdictions you work in.**

28. *Recycling*. A case may sometimes raise the same legal issues that you have argued in previous cases, and it might be efficient to re-use the same legal arguments or rely on earlier legal research. If you do so, carefully review the text and the substance of the submissions to check: (a) that the argument is actually the same and can be adjusted for the context of the particular case (including the name of the claimant), (b) that the legal sources are the most up-to-date, (c) whether you need to change anything if you are in a different jurisdiction, and (d) that any cross-references are still accurate after "cut-and-paste".

29. *Presenting the law*. Presenting the relevant case law that supports a legal argument is key to persuade a Court of ruling in your favour. You should provide the Court with the most recent case law applicable to the issue, succinctly described, and avoid too many case law references. Your submission should demonstrate that you know the law while respecting the principle of iura novit curia ("the court knows the law").

ENSURING CONSISTENCY: STYLE GUIDES, TEMPLATES, AND REFERENCES

30. Consistency is important in filings. Refer to people, places, documents, and cases in the same way, and use the same approach for headings, emphasis, and other formatting. Inconsistency within a document can look careless, whereas consistency in the look of your filings across multiple cases looks professional.

31. The best way to ensure consistency, especially if you have multiple lawyers working on your cases, is to set out in a style guide how to approach the presentation of all documents. This avoids time consuming disputes and editing of minor points.

32. If you file a significant number of cases, you can also develop a template to make it easier to ensure a consistent style.

33. To ensure consistent references to the most frequently used legal sources, develop a list of common references, with the full title and any "short title" that you use. Lawyers can then just copy the reference from one place, and get it right.

The importance of editing

34. No matter how much care you take, your document will never be perfect the first time. Careful editing can improve any piece of writing, no matter how good it is. Lawyers think of themselves as writers, but authors spend much more time and effort editing their work than writing the first draft. It is useful to view lawyers (and legal offices, including NGOs who put out legal documents or file cases) as publishing houses, producing legal briefs. A publishing house dedicates extensive time to editing their publications. Why should lawyers not do the same?

35. Editing is difficult, it takes time, and it is most effective when fresh eyes read the document. Just as there are different stages to drafting, there are several stages to editing a document:

36. **Editing for format**. Errors in formatting can be a huge distraction when you are trying to review the content, and so it can be more effective to correct any formatting problems first.

LAWYERS AS PUBLISHERS

Lawyers do not think of themselves as publishers, but as Goldstein and Lieberman explain in *The Lawyer's Guide to Writing Well*, they should. One of lawyers' key products is the documents that they "publish" to court and tribunals. Indeed, a busy law office will often publish the equivalent in filings and legal correspondence of many books per year. Publishers devote extensive staff and time to editing the work that they produce. NGOs should give the same priority and devote the same time to the editing of their legal work before "publishing" (filing) it with a court.

37. **Editing for structure**. Is the structure logical? Are the arguments in the right order? A couple of useful strategies for this stage include:

    - Check whether there is an effective topic sentence or introductory paragraph for each section. If you read only the first paragraph of each section, can you understand the case?
    - Note the main point of each paragraph in one word in the margin. This will help you to quickly spot an argument that needs restructuring to flow more logically; if you have more than one word for a paragraph think about how to divide the content.

38. **Editing for content**. Are the arguments made in the most effective way or could they be stronger? Have any key points been missed? Alternatively, and more commonly, are the strongest arguments obscured with minor points, unnecessary details or irrelevant arguments? Is there repetition?

    - At this stage, you may well cut entire points, especially if they are out of proportion to their importance to your case and distract from the core objective.
    - It is also helpful to go back and review the introduction and conclusion. Does the introduction reflect the strongest arguments, and highlight the key features and objectives of the case?

39. **Editing for length and language**. Are the arguments made directly, and is the language clear? Could you make the points more succinctly? Cut any repetition and unnecessary details, including excessive references.

    - Look critically at whether sentences or paragraphs are too long and could benefit from being cut or divided.

- Sometimes, the main point of a sentence is included half-way through and the reader needs to come back and re-read details from the beginning, once they reach the main point. This is common when a sentence has subordinate clauses; revise any sentence that you need to read twice to fully understand.

40. **Editing for grammar and citations**. Proof read everything, after all of the other editing. Do this with a "clean" version of the document, having accepted any tracked changes or comments made during the editing process. Check all citations, and ensure that the use of "Ibid" (or similar) and internal cross references are still accurate; things are often moved around during the editing process.

THE EDITING PROCESS

41. *Tracked Changes*. If another person is doing the editing, or if a number of people are contributing to a single claim, the use of tracked changes and comments is very helpful. If you receive a document with tracked changes and will send it back to the same person, review and accept all of their changes before making your own, otherwise it becomes difficult to see where the new changes are. Comments are useful for a range of functions: for the original drafter to explain why a particular approach was taken, for the editor to explain specific changes, or for the editor to suggest issues to address further or more structural changes.

42. *Stages of editing*. Each of these stages focuses on something different, and it is impossible to focus effectively on all of them at the same time: if you try to check that the structure is right at the same time as proof-reading sentences, you will miss things in both.

43. *Editing yourself*. It can also be difficult to edit your own work. You should review and revise your own work, but it is best if you also have someone else review and edit it (especially for structure and content). If you are editing your own work, make sure to take some distance from it, before reviewing it. If you try to revise a document that you have just drafted, there is a risk that you will read what you meant, not what you actually wrote.

44. *Checklists*. Use a checklist of items to look for when proof-reading and cite-checking a document. In addition to items such as spelling, grammar, and repetition, this can also include checking that the references are correct (both in substance and in their format), and that there is evidence cited for every fact that you include, with corresponding legal sources cited for each submission, where necessary.

45. All of this takes time. That is why building time for editing into the timetable for drafting is so important.

REQUIREMENTS FOR SPECIFIC TRIBUNALS

This part of the guide provides a review of the key features for legal writing at each of the regional human rights tribunals. However, the courts frequently update their practice directions and rules of procedure, and those preparing a legal claim should check for the latest information on the appropriate website.

United Nations Treaty Bodies

1. Any person may submit a complaint to a United Nations Treaty Body (UNTB) if their State has ratified the relevant treaty, as well as the provision that allows for individual complaints or recognizes the competence of that UNTB to receive and consider complaints. Although UNTBs do not have a required complaint format, applicants may use the Model Complaint Form when filing a complaint to the Human Rights Committee, Committee Against Torture, and the Committee on the Elimination of Racial Discrimination. The United Nations Office of the High Commissioner for Human Rights has provided detailed guidance for applicants submitting complaints to UNTBs, including a Fact Sheet (7) on the Complaints Procedure, and answers to 23 Frequently Asked Questions. The UN also provides guidelines for submitting complaints before certain UNTBs, including the Committee for the Elimination of All Forms of Discrimination Against Women, the Committee on the Rights of Persons with Disabilities, and the Committee on Enforced Disappearances.

2. Complaints should include all the relevant facts of the case in chronological order, in addition to explaining which rights the Respondent State allegedly violated (listed by reference to the articles of the relevant treaty), the requested relief, and details regarding how available and effective domestic remedies were exhausted. Submissions should also include written evidence and copies of any relevant documents.

3. Complaints should not be longer than 50 pages, and those that are longer than 20 pages should include a short summary (up to five pages) setting out the main elements.

4. Applicants generally should not submit original documents as evidence. Instead, applications should include a numbered list of all of the supporting evidence and copies of that evidence. Where evidence is not in one of the working languages of the Secretariat (English, Spanish, French or Russian) you should submit a translation in one of the working languages, or at least a translated summary or extract of the document, to avoid delays in consideration of your case.

5. If the complaint is missing any information or requires clarification, the secretariat of the UNTB will contact the applicant, typically by post at the address on record. For that reason, it is important to keep the Committee advised of any change of address. Applicants must submit any requested documents within one year or the file will be closed.

6. Additional information for applications can be found on the website of the United Nations Office of the High Commissioner for Human Rights: http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx.

African Commission on Human and Peoples' Rights

7. To initiate a complaint at the African Commission on Human and Peoples' Rights (African Commission), the complainant must send a letter of introduction of the complaint to the Secretary or Chair of the African Commission. Rule 93(2) of the African Commission's Rules of Procedure sets out the requirements for that letter, including the name, nationality, and address of the applicant (and the name of the victim if they are not the applicant), a brief description of the facts, the State responsible, an outline of the violations of the African Charter on Human and Peoples' Rights (there is no need to specify articles), and details of any attempts to exhaust domestic remedies. The letter of introduction should specify if the applicant wishes to remain anonymous, and the complaint must use respectful language when referring to a Member State or the African Union. The communication must be signed by the applicant, or by a legal representative where the applicant is an NGO. There is a helpful information sheet prepared by the African Commission that briefly sets out guidelines for submission of complaints.

8. Based on the initial communication or letter of introduction, the African Commission will decide whether to seize itself of the matter, and if it does so, it will then seek submissions on admissibility. The applicant is given two months to present evidence and arguments on admissibility. If a case is declared admissible, the African Commission will invite separate submissions on the merits within 60 days. Submissions are detailed and should include evidence to support the alleged facts, as submissions are often considered without a hearing. The evidence submitted can include witness testimony, expert opinions, reports, photographic evidence etc. At each stage, the State may respond to the submissions within two months (admissibility) or 60 days (merits); and the applicant may provide further comments on that response within one month (admissibility) or 30 days (merits). Most time limits may be extended for one period of one month (Rule 113); however, the 30 day time limit for a reply to the State's merits response cannot be extended (Rule 108).

9. A party may request a hearing on both the admissibility of a complaint and the merits (Rule 99). In order to do so, the party must make the request at least 90 days before the beginning of the session in which the complaint is to be considered. However, it is sometimes difficult to determine whether the Commission will consider a complaint at a given session.

10. The complainant's manual produced by the Egyptian Initiative for Personal Rights contains useful and detailed information on seizure requirements, admissibility, the procedure and law applicable to the consideration of merits, and remedies.

African Sub-regional Systems

EAST AFRICAN COURT OF JUSTICE

11. The East African Court of Justice (EACJ) has created a detailed court manual that sets out the procedure before the EACJ, including information on the preparation and filing of documents.

12. Because the EACJ holds oral hearings, the initial application need only contain a brief statement of the case, including:

    - The name and address of the applicant(s) and respondent(s)
    - A concise statement of the material facts on which the claim is based
    - A summary of the points of law on which the claim is based
    - The remedy sought and supporting evidence.

13. Rule 38 of the EACJ's Rules of Procedure lists a series of other matters that must be specifically submitted.

14. The main presentation of evidence will be at the oral hearing. You should not plead the evidence which you will use to prove you case, but rather the facts that you will demonstrate. Nevertheless, Rule 39 does provide that certified copies of documents in support of your contentions must be annexed to the submissions.

15. When responding or replying to the submission of another party, be careful to expressly deny any allegations that you intend to dispute; if you fail to do so, you may be considered to have admitted them (Rule 43(1)).

16. Formal requirements for documents filed are set out in Rule 8 of the EACJ's Rules of Procedure:

    - All documents prepared for use in the EACJ shall be on paper of durable quality, shall be clear and easily legible.
    - The pages of every document shall be numbered consecutively and shall be bound in book form where appropriate.
    - Whenever applicable, in all submissions and all documents annexed thereto, the tenth line of each page shall be indicated on the right hand side.
    - Every submission shall be divided into paragraphs numbered consecutively, each allegation being so far as appropriate contained in a separate paragraph.
    - Dates, sums and other numbers shall be expressed in figures and not words.
    - Every submission filed before the EACJ shall indicate the address of service of the party making it and be signed by that party or by the party's advocate or a person entitled under Rule 17 to represent the party.

ECONOMIC COMMUNITY OF WEST AFRICAN STATES (ECOWAS) COURT OF JUSTICE

17. Similar principles apply to filings with the ECOWAS Court which, like the EACJ, holds oral hearings where the parties will have the opportunity to present evidence. Therefore, the application under Article 11 of the ECOWAS Court's Protocol must contain:

- The name and address of the applicant, and the designation of the party against whom the application is made;
- The subject matter of the proceedings;
- A summary of the pleas in law;
- The relief sought by the applicant (the "form of order").

18. According to Article 33(1) (e) of the Rules of Procedure, the application need only contain a summary of the argument and the request of the applicant. The application may also set out the nature of any evidence in support. Article 32(3) requires that all submissions have annexed a list of documents relied upon and copies of those documents (or extracts in the case of long documents).

19. Under Article 32 of the Rules of Procedure, any pleading filed with the ECOWAS Court must bear its date; must be signed by the party's agent or lawyer; and in addition to the original and its annexes, the party filing must submit five copies for the court plus one copy for each other party to the proceedings (all certified by the party filing).

20. If a document is filed by fax or other electronic means, the signed original of the submission, accompanied by the annexes and copies, must be filed with the ECOWAS Court's Registry within 10 days.

Court of Justice of the European Union

21. Requirements for filing an observation or application at the Court of Justice of the European Union (CJEU) are set out in the Rules of Procedure (in particular Articles 36-38, 94-97 and 120-132) and the Practice Directions to Parties Concerning Cases Brought before the Court.

22. It is generally encouraged that any document filed before the CJEU is drafted in a form that allows the structure and scope of the application to be understood in the first few pages. On the first page, in addition to stating the title of the document, the case number, and the parties concerned, a brief summary of the argument or a table of contents should be included. All documents should end with the orders that you would like the court to make (the desired forms of order) or, in preliminary ruling proceedings, by the answers the author proposes to the questions referred by the national court.

23. Applications and observations must be submitted in the language of the case: in a preliminary reference, this is the language of the referring court. The submissions must be written on white, unlined, A4-size paper, with text on only one side of the page and not double-sided. The text must be

in a commonly used font, such as Times New Roman, Courier, or Arial. The body of the text must be at least 12 point and footnotes at least 10 point. The document must have 1.5 line spacing with 2.5 cm margins on all sides. Paragraphs should be numbered consecutively and all pages, including annexes, should be numbered consecutively at the top right-hand corner. The CJEU has a dedicated application for filing documents, e-Curia, which it encourages applicants to use. Documents may also be filed by fax, email, post, or delivered in person to the CJEU Registry. However, applications sent by email or fax will only be considered sent within the time-limit if the signed original, together with the annexes and required copies, is sent to the CJEU Registry no more than 10 days after the email or fax.

24. Only documents mentioned in the actual body of the application or observation, and that are necessary to prove or illustrate its contents, may be included as annexes. An annex will only be accepted if accompanied by a schedule of annexes, including the number of the annex, a short description of the document, and the page or paragraph of the pleading or observation in which the document is cited. It is important that any legal arguments appear in the written pleadings or observations and not in the attached annexes, as annexes are generally not translated.

25. When a national court refers to the CJEU, all parties to the action and any institutions allowed to intervene in the national proceedings have a right to make written observations to the CJEU. Written observations must be sent within two months from the CJEU Registry's issue of the notice of reference (with an extra 10 days available on account of distance). This time limit is not extendable. Observations should be comprehensive, but concise, setting out the party's point of view on the request in a non-adversial manner - clarifying the scope of the request and appropriate answer to the questions posed. Nothing from the order for reference should be repeated in the observation, but the observation can set out relevant facts or national law omitted from the order. Observations should not exceed 20 pages.

26. Requirements for direct actions are slightly stricter. The initiating application must, in addition to stating the name and address of the applicant and the party against whom the application is made, state the subject-matter of the proceeding, the pleas in law, arguments relied on, and a summary of those pleas in law, the form of order sought by the applicant, and, where appropriate, any evidence produced or offered. Failure to comply with these requirements will render the application inadmissible. The summary of the pleas in law relied upon must not exceed two pages of the application. Applications should not exceed 30 pages.

27. Once the written stage of the proceedings is completed, no further pleadings may be submitted without an order of the CJEU. This is only granted in exceptional circumstances.

European Court of Human Rights

28. The requirements for an application to the European Court of Human Rights (ECHR) are set out in Rule 47 of its Rules of Procedure and in the Practice Direction on Institution of Proceedings.

29. Since 1 January 2014, all applications require the use of the new Application Form, and the original, signed application form must be sent by post. Failure to use this form, or to complete any part of the form (including the summary of the case and basic information such as the sex of the applicant) can lead to rejection of application as incomplete. Such applications can be resubmitted, but in most cases this will not be possible because of the six-month time limit for filing cases, which continues to run until a complete application is submitted.

30. In addition to the Application Form itself (11 pages), applicants may submit a maximum of 20 pages of additional details (A4 pages, 12 point font, 1.5 spaced, 3.5cm margins). However, your entire case must be contained in the Application Form, and the additional 20 pages (Additional Pages) can only be used to supplement and expand on points that are made in the Application Form. You cannot start your submissions on the Application Form and just continue drafting in the additional pages, or simply say "see additional pages" in the Application Form and provide the key submission in the 20 pages.

31. Given the very tight page limits, it is strongly recommended that you avoid repetition between the Application Form and the Additional Pages. Carefully identify the portions that will require the additional details, and then provide a 1-2 paragraph summary of the essential points in the Application Form and note that further details are provided in the Additional Pages.

    - This will generally include the legal arguments: if you are alleging more than one violation, the Application Form provides room only for a one or two paragraph version of each argument, and the detailed submissions will have to be made in the Additional Pages.

    - This may also include exhaustion of domestic remedies or other admissibility criteria if they are contentious.

- It is not advisable to present more detail on all aspects of the facts in the Additional Pages; if necessary, select specific portions of the facts (such as contextual information, which might have a lot of sources to refer to) to present only very briefly in the Application Form and to lay out fully in the Additional Pages.

32. If the case is communicated to the respondent government, applicants will have an opportunity to provide additional arguments on the merits of the case, and on the remedies requested. The ECHR's list of common mistakes in completing the form provides some useful examples of how to succinctly explain the basic parameters of the case and to summarise the exhaustion of remedies for each component of the claim.

33. Applicants must include copies of evidence, including domestic decisions which demonstrate that they brought their claim before domestic courts, and submitted it to the ECHR within six months of the exhaustion of those domestic remedies. If an applicant cannot obtain copies of the relevant documents, they must explain why, including the steps that they took to try to obtain the documents.

34. All of this information, including notes on the new application form, is available on the ECHR website's page for the application forms.

Inter-American Commission and Court

35. The requirements for an application to the Commission are set out in the Rules of Procedure of the Inter-American Commission on Human Rights, as amended in 2013. The applicable rules for cases before the Court are set out in the Rules of Procedure of the Inter-American Court of Human Rights, in particular Articles 28 and 40.

36. The requirements to file a petition before the Commission are defined in Article 28 of the Rules of Procedure. Petitions shall contain: contact information and identification of petitioner and victims; an account of the facts or situation specifying the place and date of the alleged violations; name of the victim and of any public authority who has taken cognizance of the facts alleged; the State considered by the petitioner as responsible for the violation (there is no need to specifically refer to the articles); evidence that demonstrates the steps taken to exhaust domestic remedies, or the impossibility of doing so, and that the petition has been submitted within the time allowed (usually six months after exhaustion); and an indication of whether the complaint has been submitted to another international settlement proceeding.

37. Precautionary measures can be requested as part of a petition or can be filed in a separate request from the full petition, and are governed by Article 25 of the Rules of Procedure. The measures must be justified by a serious and urgent situation with risk of irreparable harm to persons, or to the subject matter of a pending petition or case. For both precautionary measures and ongoing complaints, the alleged victims must be identified or easily identifiable, in the past both the Commission and Court applied more flexible rules with regards to groups of victims and beneficiaries of precautionary measures, but after increased objections of States, both the Court and Commission have reduced the flexibility when determining groups. In general, the identity of the alleged victim is communicated to the State; however, the identity of the petitioner or victim can be kept confidential through an express request with a proper explanation.

38. Applicants need to be mindful of which articles of the American Convention they base their petition on, crafting concrete and persuasive arguments, that narrowly define the claims to concrete legal issues. However, the Commission and Court may include and decide on additional rights through use of the principle of *iura novit curia ("the court knows the law")*. While it is important to set out your case comprehensively in the initial application, the Court and Commission have also accepted new arguments and issues beyond those included in the initial petition by characterizing under the right to access to justice, and in some cases new facts have been considered in later stages of the proceedings.

39. In order to substantiate the legal claims, it is helpful to refer not only to the applicable treaties, but also to country reports by the Commission, previous Commission cases and thematic reports by special rapporteurs of the Commission. Both the Court and the Commission are also receptive to, and commonly cite, decisions by other treaty bodies and international courts, particularly the European Court of Human Rights. Both organs have also made use of comparative constitutional law, between countries in the region. If there are comparable facts or legal precedents within the region that might help a particular legal argument, these should be used in an illustrative manner.

40. Even though petitions must only be submitted in the official language of the respondent country, it is good practice to submit the brief in both English and Spanish to cut down on the burden of translation for the Commission. Petitions can be submitted in electronic form, email, fax or hard copy (although the Commission encourages petitioners to only submit petitions through one of these means).

FURTHER READING

LEGAL WRITING

Flowers, Betty, *Madman, Architect, Carpenter, Judge: Roles and the Writing Process*, 44 Proceedings of the Conference of College Teachers of English 7-10 (1979), cited in Garner (2013), below, at page 6.

Garner, Bryan A., *Legal Writing in Plain English* (2nd ed) (University of Chicago Press, 2013)

Garner, Bryan A., *The Elements of Legal Style* (2nd ed) (OUP, 2002)

Goldstein, Tom and Lieberman, Jethro K., *The Lawyer's Guide to Writing Well* (UC Press, 2002)

Guberman, Ross, *Point Made: How to Write Like the Nation's Top Advocates* (OUP, 2011)

Scalia, Antonin and Garner, Bryan A., *Making Your Case: the Art of Persuading Judges* (Thomson/West, 2008)

Stark, Steven D., *Writing to Win: The Legal Writer* (Main Street Books/ Doubleday 1999)

Wydick, Richard C., *Plain English for Lawyers (5th ed)* (Carolina Academic Press, 2005)

GENERAL PRINCIPLES OF GOOD WRITING

Clark, Roy Peter, *Writing Tools: 55 Essential Strategies for Every Writer* (Little, Brown and co, 2008)

Pinker, Steven, *The Sense of Style: The Thinking Person's Guide to Writing in the 21st Century* (Viking, 2014)

Strunk Jr, William, *The Elements of Style* (Grammar Inc., 2014)

Williams, Joseph M., *Style: Towards Clarity and Grace* (University of Chicago Press, 1990)

Zinsser, William, *On Writing Well* (Harper, 2006)

EXAMPLES OF HUMAN RIGHTS LEGAL CLAIMS

The Justice Initiative has prepared many claims to human rights tribunals on a variety of issues, and examples of these documents are available on the litigation pages of the Justice Initiative website at www.justiceinitiative.org.

Open Society Justice Initiative

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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