

PRACTICE NOTE 2

**HOLISTIC  
STRATEGIC  
LITIGATION  
AGAINST  
TORTURE**

JUNE 2021

**REDRESS**

Ending torture, seeking justice for survivors

This guide is part of a series of **Practice Notes** designed to support holistic strategic litigation on behalf of torture survivors. It is aimed at lawyers, researchers, activists, and health professionals who assist torture survivors in the litigation process.

This Practice Note explains what holistic strategic litigation is, and how to do it in the context of torture and ill-treatment cases, in particular before international and regional human rights treaty bodies. It makes suggestions based on academic commentaries, research reports, and practical experience. It will be useful for those new to strategic litigation, to find out more about the technique, and also for more experienced practitioners, to encourage reflection on how they do it.

**REDRESS** would like to thank the **Matrix Causes Fund** and the **United Nations Voluntary Fund for Victims of Torture** for their generous support of this project. This publication was prepared by a team at REDRESS, including **Rupert Skilbeck**, Director, **Alejandra Vicente**, Head of Law, **Julie Bardèche**, Legal Advisor, **Eva Nudd**, Legal Advisor, and **Eva Sanchis**, Head of Communications. We would like to also thank for **Lina Schmitz-Buhl**, former REDRESS legal fellow, for her contributions which helped preparing this practice note. REDRESS bears sole responsibility for any errors in this practice note.

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# INTRODUCTION

Through strategic litigation, human rights lawyers seek to challenge both the individual acts of torture and ill-treatment and the policies and practices that enabled it to take place. Using this approach survivors can obtain accountability, and campaign for policy and legal reform to make it more difficult for such treatment to occur in the future. In addition to filing legal cases, strategic litigation also uses other civil society techniques to bring about change, such as advocacy (national, regional, international), activism, and engaging the media, academia and public in general.

With such litigation there is a risk that the interests of the individual survivors of torture and ill-treatment are side-lined in the attempt to bring about broader change. To avoid this, lawyers and activists should adopt a holistic approach, where all the needs of survivors are provided for, and they have a central role in the litigation and the strategy.

There are many ways to approach the courts to obtain justice and the different forms of redress. Human rights litigation can be used on behalf of an individual survivor of torture or ill-treatment to hold governments to account before national courts, the regional human rights systems, and the UN Treaty Bodies, and Charter based procedures. Criminal law can be used to punish individual perpetrators on a national or international basis, or through universal jurisdiction. Through civil cases, people can sue individuals and companies to prove their responsibility for torture, ill-treatment and other violations, and obtain reparations.

With strategic litigation, civil society seeks to go beyond individual responsibility and individual representation, to ensure there is impact after the legal decision, a community behind the client, and a cause beyond the case. But change can be slow, and in many cases, litigation seeks social advances that may take a generation or more to achieve.

This practice note explains what holistic strategic litigation is, and how to do it in the context of torture or ill-treatment cases. It makes suggestions based on academic commentaries, research reports, and practical experience. It will be useful for those new to strategic litigation, to find out more about the technique, and for more experienced practitioners, to encourage reflection on how they do it. The note covers:

- *A. Strategic Litigation.* This explores the concept as well as the potential impacts of strategic litigation.
- *B. The Holistic Approach.* Explaining the importance of providing for all the needs of the survivor and accompanying them through the process.
- *C. Torture and Ill-Treatment.* This includes the elements of the definition in international human rights law.
- *D. Legal Avenues for Justice.* Setting out the different legal paths to seek justice and reparation for torture and ill-treatment.
- *E. Evidence.* Exploring the types of evidence usually admitted in relation to torture and ill-treatment cases.
- *F. Reparation in Cases of Torture and Ill-Treatment.* Setting out the different reparation measures relevant to provide redress for harm caused by these crimes.
- *G. Writing Effective Legal Complaints to Regional and UN Bodies.* Including key elements to make legal claims persuasive.
- *H. Further Reading.* A list of additional references on the topics covered in this guide.

# STRATEGIC LITIGATION

## Concept

Strategic litigation can be defined as bringing a legal claim with an objective of change beyond the individual case. As such, litigation is “strategic” because it involves progressing a case within a broader strategic objective to advance a specific legal, social, or human rights change, whether preventing a particular behaviour, or requiring authorities to initiate legal and policy reforms or a general change of attitude. Strategic litigation brings relief to the individual victims, as well as to a broader group of affected communities.

The goals of strategic litigation can generally be achieved by combining casework with other civil society techniques, including research, advocacy for structural reforms, outreach, community organising, public education, and capacity building.

In some situations, deciding not to conduct strategic litigation could be the best course of action, for instance if resources are scarce and other strategies and tools could be more effective, if there is a risk of a negative decision, or if the passage of time could open a more favourable or progressive legal forum.

## Impact

There are several ways in which strategic litigation against torture and ill-treatment can have an impact, beyond the immediate benefit to the survivor or a change in the law. Not all forms of impact will be relevant in a specific context, and lawyers and activists, together with the survivors, will need to deploy different tactics to enhance each impact.

REDRESS has developed a framework for evaluating the impact of strategic litigation against torture and ill-treatment. This identifies the most frequent impacts that result

from such litigation, and then defines the frequent outcomes that are produced. Not all ten will be relevant for every situation.

The ten impacts that are included in the REDRESS impact framework are:

- **Justice.** For many survivors of torture and ill-treatment, a declaration that their rights have been violated is why they brought the case, and the finding of a violation may be sufficient satisfaction. This can also come in the form of a public apology.
- **Truth.** Courts can make definitive factual findings, which may be of crucial importance in a campaign for accountability and recognition of the harm done to the victim. This can be enhanced through strong media coverage of the case.
- **Material.** Specific benefits to the survivors brought about through the litigation can include changes to their situation, employment, health care, education, and financial and non-financial compensation. This may often include physical or psychological rehabilitation.
- **Community.** Beyond the individual survivors, many others in a similar situation are often impacted by a legal decision on a case of torture and ill-treatment, including by declaring the inapplicability of impunity measures or by contributing to build a historic record of the violations committed.
- **The Movement.** Litigation can energise the movement against torture and ill-treatment, act as a catalyst for change, empower networks, and encourage new champions and cases.
- **Stakeholders.** Strategic litigation can lead to changes in the attitudes and practice of stakeholders such as politicians, judges, and the police, which is a pre-requisite to change policies and laws.
- **Policy.** Litigation can result in commitments to change policy on torture and ill-treatment (by the government, police, and courts), including financial commitments.



- **Legal.** Litigation can bring changes in legal standards, whether through caselaw or legislation, such as the criminalisation of torture and ill-treatment in national criminal codes.
- **Governance.** Litigation can trigger practical changes to the relevant procedures, budgets, and institutions, although this tends to take time.
- **Social.** Beyond the specific case, litigation can result in changes in the tolerance of and response to torture and ill-treatment and/or other human rights violations in the country or region concerned.

See the *Practice Note on Evaluation of Impact* for more information on this framework.

### **Case study: Mariam Yahia Ibraheem (Sudan)**

**Facts.** In 2014, Mariam Yahia Ibraheem was sentenced to death for apostasy, and to corporal punishment of 100 lashes for adultery because, as a Christian woman and the daughter of a Muslim man, she married a Christian man. She was detained while pregnant in Omdurman's Womens' Prison in inhuman conditions with her infant son and, following her birth, with her new-born daughter. They were imprisoned for over four months. Mariam was kept shackled most of the time, including while given birth to her daughter.

**Legal Action.** REDRESS, the African Centre for Justice and Peace Studies (ACJPS), the Sudanese Organisation for Development and Rehabilitation (SODR), the Sudanese Human Rights Initiative (SHRI) and the Justice Centre (JCALC) submitted a complaint and a request for provisional measures to the African Commission on Human and Peoples' Rights.

**Other civil society techniques.** The above organisations submitted an Urgent Appeal to the African Commission, requesting that it publicly call on Sudan to comply with its obligations under the African Charter on Human and Peoples' Rights. These organisations, and others also continuously advocated with the Sudanese government to bring changes in the law in line with UNCAT and CEDAW.

**Impact for the victim.** Following civil society and international pressure, Mariam was released after her conviction was overturned in appeal by a domestic court. The case before the African Commission was found admissible in 2019 and is still pending.

**Broader impact.** The legal case, the long-term advocacy and changes in Sudan's government led to Sudan repealing its public order laws, abolishing the crime of apostasy, and undertaking important reforms to prevent torture and ill-treatment. In 2021, Sudan ratified UNCAT and is considering CEDAW ratification.

## Legal and Non-Legal Techniques

To be most effective, strategic litigation should take into account the national context in which the violations take place and should include a wide range of legal and non-legal techniques. This approach can ensure that, regardless of the result of legal claims, collective efforts contribute to achieving the long-term objectives of the campaign against torture and ill-treatment.

Filing a case and issuing a press release do not make a case strategic. Casework must be combined with other civil society techniques such as public education, advocacy at the national and international level, activism, community organising, and media work. Since an organisation might not have the capacity to deploy all these techniques, working in coalition with others can yield better results.

Some of the tools often used to conduct strategic litigation challenging torture and ill-treatment are:

- **Legal claims.** In many countries, there is an official denial that torture, and ill-treatment take place. In addition to contributing to the impacts mentioned above, preparing legal claims to a court-room standard creates a body of convincing evidence that can quickly make it difficult for those denials to have any credibility.

- **National advocacy.** Advocacy at the national level can highlight the existence of a practice of torture and ill-treatment. It can also push the relevant authorities to investigate and reform laws and policies that allow torture to take place.
- **Regional Advocacy.** Regional human rights bodies provide opportunities for human rights defenders and civil society organisations to raise awareness about human rights violations in the respective countries or in individual cases. States may be required to submit regular reports on the implementation of the regional treaties. NGOs can engage in advocacy before these bodies. Regional courts and commissions are an important platform to advance the debate on torture and ill-treatment. Civil society organisations can also file complaints of human rights violations in certain circumstances.
- **United Nations Advocacy.** Activists should make full use of the international mechanisms to complement their legal claims. Reports and statements from UN bodies can be immensely powerful when submitted as evidence in a legal proceeding, or where their recommendations match the remedies that are asked for in a case. Additionally, international advocacy can engage the human rights movement to highlight the situation in a given country and amplify the voices of victims. The UN offers several opportunities to advocate on behalf of victims of torture and ill-treatment.
- **Treaty bodies**, such as the Committee Against Torture (CAT) or the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW), accept individual communications in relation to States parties to the relevant treaties, if those States have accepted the Committee's competence to hear such communications. States parties are also obliged to submit regular reports on the implementation of the relevant treaties. Civil society can submit information to the treaty bodies for consideration during the review process. Civil society can participate in the sessions of the treaty bodies and hold formal and informal meetings with their members.

- NGOs can also engage with the UN human rights mechanisms through the **Universal Periodic Review** (UPR) process. All members of the United Nations have their human rights records reviewed on a regular basis by the Human Rights Council. Every five years States must present a report to the Council on the fulfilment of their human rights obligations. Civil society organisations can present shadow reports outlining the human rights situation in the respective country as input during the review process.
- Torture and ill-treatment can also be brought to the attention of the **UN Special Procedures**. The Special Procedures are human rights experts with the mandate to advise on specific human rights issues, countries, or situations. They can act on individual cases brought to their attention, by sending urgent appeals and allegation letters to States. They can also issue press statements, raising public awareness and putting pressure on States. Their mandate allows for country visits and holding hearings to speak publicly about torture and ill-treatment in a particular country and to work with the governments to address the crime. For torture and ill-treatment, the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Special Rapporteur on Human Rights Defenders, and the Special Rapporteur on the Promotion of Truth, Justice, Reparation and Guarantees of Non-repetition, the UN Working Group on Arbitrary Detentions and the UN Working Group on Enforced or Involuntary Disappearances, are especially relevant.
- **Community organising**. When acting on behalf of a group, there is greater ability to connect the cases to a community and to enhance their impact. Victims and survivors' groups and networks can become a powerful and persuasive voice in the campaign against torture and ill-treatment.
- **Capacity Building for Judges and Lawyers**. Raising awareness and building the capacity of lawyers on international human rights law is essential to increase the understanding of the law, build up a meaningful body of experts to litigate human rights cases, and obtain better outcomes for clients.

- **Media and communications.** Survivors and activists can use media and communications tools to raise awareness about torture and ill-treatment in a specific country. A communications strategy can also be useful to highlight a particular case of arbitrary arrest with a view to pressure the authorities and prevent torture or ill-treatment. The voices of survivors can be amplified through media techniques both at the national and international level. In some contexts, media work can prevent retaliation against the victim and their family. Yet, in other situations media might not be possible or desirable due to the safety situation and risks involved for those supporting the case.

### **Case study: Azul Rojas Marín v. Peru**

**Facts.** Azul is a transgender Peruvian, who, whilst living as a gay man, was arbitrarily arrested by police officers in 2008, then raped, beaten, and verbally abused due to her sexual orientation.

**Legal Action.** In 2009, REDRESS, together with the Centro de Promoción y Defensa de los Derechos Sexuales y Reproductivos (PROMSEX) and the National Coordinator for Human Rights (CNDDHH), brought Azul's case to the Inter-American Commission on Human Rights (IAComHR) after exhausting all possibility of obtaining redress domestically. The IAComHR ruled in favour of Azul and recommended that Peru adopt a series of measures to redress both the material and moral damages suffered by Azul and her mother. In 2018, the IAComHR referred the case to the Inter-American Court of Human Rights (IACtHR), as a result of the failure by the Peruvian State to present any proposals for comprehensive reparation.

**Decision.** In 2020, the IACtHR found Peru responsible for the torture and sexual violence committed by Peruvian police officers against Azul. It ordered comprehensive and holistic reparation measures for Azul, including guarantees of non-repetition in the form of training programmes for the police and judicial authorities on the issue, and the elaboration of a protocol for the effective investigation of torture against the LGBT+ community, among others.

**Advocacy.** A large advocacy campaign was organised to support the case and promote the findings of the decision.

**Media and solidarity actions.** Written and audio-visual media content was created on the decision and promoted on social media, so that solidarity movements can refer to the case when campaigning for the promotion of LGBT++ rights.

**Impact.** The decision offered direct redress for Azul. It also prompted pressure for reforms in Peru and in the region, and set important legal standards with the potential to reduce instances of torture committed around the world with a discriminatory intent based on the gender identity and sexual orientation of the victim.

# A HOLISTIC APPROACH

Torture and ill-treatment are particularly egregious crimes that strip the victims of their dignity. They cause profound suffering to the victim and their family. Injuries can take many forms and can be physical and psychological. Very often, this suffering extends for many years and decades, causing great harm to individuals, families, groups, and societies.

Seeking justice and reparation can lead to attacks against the survivor and/or their relatives and others who support them. They can face physical attacks, arrests, stigmatisation and smear campaigns, and other violations that in some cases result in internal displacement and even exile. Additionally, during the investigation, victims often experience re-victimisation by the authorities, especially where the facts are denied, or the victim is blamed for the treatment they received (for instance in the context of the “war against terror”).

Despite this, strategic litigation in itself can bring positive relief to victims, empowering them to act and bring change and contributing to their rehabilitation. But practitioners must adopt a holistic approach to strategic litigation, through which all the needs of the survivor are provided for, and they are accompanied through the process.

## Accompaniment and Victim Centrality

Lawyers and activists must work closely with survivors and their communities to accompany them throughout strategic litigation, which can be lengthy.

Victims and survivors must be placed at the centre of the process, taking a leading role in deciding the strategy and expressing their needs and expectations. Sometimes the goals of the lawyers and the victims may not align, and it is important that the victim’s desires are respected. The role of lawyers and activists should be to provide the expertise required to channel those decisions into effective legal and non-legal actions. This will

require structuring the legal team or the NGO so as to have the capacity to actively consult and support the survivors through the lifetime of the case.

## Psychosocial and Medical Support

Considering the serious harm caused by torture and ill-treatment, victims must have access to ongoing support to cover their psychological, medical, or social needs. Those supporting the victims must ensure that the well-being of individuals is considered and costed when planning the strategy. This may mean collaborating with NGOs who specialise in providing such support to survivors of torture and ill-treatment.



# TORTURE AND ILL-TREATMENT

Article 1 of the Convention against torture and other cruel, inhuman, or degrading treatment or punishment (UNCAT), defines torture by four elements:

- **Conduct** inflicting **severe pain or suffering**, whether physical or mental,
- Element of **intent** (that means, pure negligence does not amount to torture),
- Specific **purpose** (e.g., gaining information, as a punishment, intimidation, coercion, among others – the list given in article 1 of the UNCAT is not exhaustive),
- **Involvement** of a State official, at least by acquiescence.

## Conduct

Torture can be committed both through an **act** or an **omission**. For instance, a State's failure to respond to basic needs of its prisoners, such as heating in winter, proper washing facilities, clothing or medical care or the deprivation of food and water for a prolonged period of time can amount to torture. For instance, a REDRESS case in Latin America (S.L. v. Venezuela) concerned the lack of medical care for the diabetic condition of a prisoner which eventually resulted in her death.

## Harm

Torture does not mean only physical harm. The infliction of severe **mental harm** can constitute an act of torture. Such acts include, sleep deprivation, constant verbal threats of rape, threats of harm against oneself or another person, or forcing the victim to witness a loved one being tortured. Those are all examples of torture methods that generate **mental suffering**, such as fear of being subjected to sexual violence or other forms of

physical harm, feelings of guilt and complete helplessness. Practices such as **enforced disappearance**, which causes severe harms to the disappeared persons, as well as to their relatives and loved ones, generally qualify as torture and ill-treatment under UNCAT.

Acts of torture are **not necessarily committed during interrogation settings**. What matters is that the victim is in a situation of **powerlessness**. In most cases, torture occurs when individuals find themselves in a situation of complete dependency – be it when they are held in police custody, prison, healthcare facilities or deprived of their liberty in any other context.

Because of this element of powerlessness, torture is often linked to other crimes, such as arbitrary arrests, enforced disappearances or human trafficking, where victims are completely at the mercy of their captors and thus particularly vulnerable to any form of abuse. Under certain circumstances, domestic violence can also amount to torture.

## Intention

Article 1 of UNCAT requires that severe pain or suffering must be **intentionally** inflicted on the victim in order to qualify as torture. The perpetrator's intent must be **directed both at the conduct of inflicting severe pain** or suffering and at **the purpose** to be achieved by such conduct.

Intent is assessed objectively, by looking at the nature and gravity of the treatment inflicted. Intent can also be derived from the length of time over which an act/omission is carried out, or from the “coercive and punitive environment” in which an act/omission takes place.

## Purpose

The purposes identified in international and regional jurisprudence include: to obtain a confession; to punish; to intimidate; to coerce; to humiliate; to degrade; as a preventative measure; and for any reason based on discrimination. Article 1(1) of UNCAT contains a

similar, **non-exhaustive**, list of purposes. For instance, in another REDRESS case in Latin America, the victim – a transgender Peruvian person – was arbitrarily arrested by police officers in 2008 (*Azul Rojas Marín v. Peru*). She was raped, beaten, and verbally abused due to her sexual orientation. The Court found in March 2020 that the purposive element of the definition of torture incorporates discrimination based on sexual orientation and gender identity.

The purposive element of torture does not require a subjective inquiry into the motivation of perpetrators. Rather, there must be “objective determinations under the circumstances”, such that the particular purpose can be derived from the circumstances surrounding the treatment (CAT, General Comment No. 2).

### Involvement of a State Official

Article 1 of UNCAT States that the pain or suffering needs to be “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 CAT interprets the required link to encompass State involvement in a **broad sense**.

“Public official” does not only encompass law enforcement officers or security staff, but all those who carry out State functions. Similarly, the reference to “other person acting in an official capacity” covers private contractors acting on behalf of the State, as well as non-State actors whose authority is comparable to governmental authority, such as insurgent groups that exercise *de facto* control over a certain territory.

In cases where the treatment was **not inflicted by State officials**, the State can nevertheless be found to have “consented or acquiesced” to torture where: (i) State officials knew, or should have known, of a real and immediate risk to the personal integrity of a person or group; and (ii) those authorities did not take necessary and reasonable measures to prevent that risk. States are responsible when they do not exercise **due diligence** to stop torture, sanction the perpetrators and provide remedies to victims for acts of torture perpetrated by **non-State actors**. This is how factual obligations relating to domestic or

sexual violence, or modern forms of slavery (forced labour, forced prostitution, etc) can fall within the ambit of UNCAT.

## Definition of CIDTP

There is no definition of CIDTP in UNCAT. International bodies do not all agree on the distinguishing elements (see UNHRC General Comment No.20, at para.4).

The CAT has observed that “the definitional threshold between ill-treatment and torture is often not clear” and that “[t]he obligation to prevent ill-treatment in practice overlaps with and is largely congruent with the obligation to prevent torture” (see CAT General Comment 2, at para.3).

There are several lines of distinction:

- For the CAT (e.g. Keremedchiev v. Bulgaria, at para.9.3) and the Inter-American Court (e.g. Caesar v. Trinidad and Tobago at para. paras 50) the key distinguishing factor is the **severity of the pain or suffering inflicted**.
- For the HRC, the principal criterion is the **purposive element** (e.g. Giri v. Nepal, at para. 7.5).
- The ECtHR has adopted shifting views on the distinguishing element: initially purpose (see the “Greek Case” from 1969), then severity (Ireland v. UK, at para.167) and finally both (Selmouni v. France at para.98).

In the Selmouni case the ECtHR re-iterated that the determination of severity “depends on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and State of health of the victim, etc.” (at para.98).

The ECtHR has held that inhuman treatment covers “at least such treatment as deliberately causes severe suffering, mental or physical, which in the particular situation is unjustifiable.” “Degrading treatment” includes treatment that caused the victim to feel fear, anguish, inferiority, humiliation or debasement (see Ireland v. UK at para.167).

# LEGAL AVENUES FOR JUSTICE

## Criminal Investigation and Prosecution

The most appropriate remedy in cases of torture and ill-treatment is a criminal investigation. The investigation must be aimed at establishing the circumstances in which the crime was committed, the identity and degree of involvement of those responsible, and at obtaining a criminal prosecution, trial, and eventual punishment of all the perpetrators.

The obligation to investigate torture and ill-treatment is an international obligation under human rights treaties (including the UNCAT), and under customary international law. This means that all States, regardless of whether they have ratified the UNCAT, must carry out a prompt, impartial and independent investigation when torture and ill-treatment take place.

While the obligation to investigate lies within the State, lawyers and activists accompanying the victims often push for domestic prosecution of torture and ill-treatment. In such cases, lawyers work with victims, gather evidence of the crime, report the crime, and/or provide evidence to national authorities where appropriate. Lawyers have a role to support victims through the process and, in certain cases, to represent victims as civil parties in criminal proceedings.

## Civil Claims

Victims can also pursue civil litigation seeking to prevent torture and ill-treatment, in order to get a determination of responsibility, restitution, and other forms of reparation. Civil claims have different procedural rules depending on the jurisdiction, but the burden of proof in civil claims is generally lower than in criminal cases, requiring the individual to prove by a balance of probabilities that violations occurred. In some countries, civil

claims are joined to criminal claims and cannot be decided until the criminal case has been adjudicated.

### **Case study: COVAW, IMLU et al. v. Attorney General of Kenya et al.**

**Facts.** The case relates to eight individuals (two men and six women), who were subjected to sexual violence during the post-election violence in Kenya in 2007-2008. Women were subjected to rape, attempted rape, defilement, and gang rape, among other forms of violence. Men experienced sodomy, forced circumcision and amputations. The perpetrators included members of the Kenyan Police and other State security agents, as well as non-State actors. The police refused to document and investigate the events.

**Legal Action.** In 2013, four Kenyan civil society organizations (COVAW, IMLU, ICJ and PHR), together with eight survivors, filed a constitutional petition at the Constitutional and Human Rights Division of the High Court of Kenya. REDRESS intervened as *amicus curiae*.

**Impact.** In 2020, the High Court delivered a decision in favour of four survivors, finding the government of Kenya responsible for failure to protect, investigate and prosecute, the violence suffered by the victims, including torture, during the post-election period. It ordered compensation for those four victims.

## **Human Rights Claims**

After exhausting domestic civil and criminal proceedings, lawyers representing victims of torture and ill-treatment can turn to regional and international human rights claims as avenues for strategic litigation to obtain justice and reparations. These typically require that domestic proceedings have been exhausted in the national jurisdiction, unless it can be shown that judicial remedies were not available, were not effective or that there were undue delays. However, some human rights mechanisms are willing to accept claims

directly without exhausting domestic remedies, such as the Economic Community of West African States (ECOWAS) Community Court of Justice.

Depending on a variety of factors (type of violation, geographical location of the violation, treaty ratification status of the country of violation, admissibility criteria, effectiveness of the forum, speed of the proceedings, impact of decisions – including implementation – in past similar cases, preference of the client, etc), a forum can be chosen above another. There are human rights mechanisms within the United Nations (UN) system, and regional human rights mechanisms for the African, American, and European continents, able to hear claims by individuals. To date, there is no human rights mechanism in Asia and the Pacific able to hear such individual complaints against States.

## UN Human Rights System

Victims of torture can submit their complaints to the relevant UN human rights and treaty monitoring bodies. The individual complaints can only be filed after the exhaustion of domestic remedies (although this can be lifted where remedies are not available, it would be futile to do so, or when there is undue delay), and only when the State party has ratified the relevant treaty and accepted the competence of the specific treaty body to review individual complaints. There are several avenues within the UN system that victims can use to pursue justice, including those below.

- The *Human Rights Committee* is an 18-member body of experts tasked with monitoring State parties' compliance with the International Covenant on Civil and Political Rights (ICCPR). The Committee may consider individual communications regarding violations of the ICCPR by any States that are party to the Optional Protocol to the Covenant. 116 States have ratified the Optional Protocol so far. Some States have lodged reservations limiting the HRC's competence to examine particular complaints, despite having ratified the Optional Protocol. Check the list on the [United Nations website](#).
- The *Committee Against Torture* is a committee of 10 international experts who monitor the implementation of the UNCAT. Individuals can file an individual complaint if the

State party ratified the treaty and consented to the Committee's jurisdiction under Article 22: check the list on the [United Nations website](#).

- The *Committee on Enforced Disappearance (CED)* comprises 10 independent experts who monitor the implementation of the International Convention on the Protection of All Persons from Enforced Disappearances (ICPPED). Article 31 of ICPPED provides for the CED to receive individual complaints from victims of enforced disappearance, but only if the State ratified the ICPPED and consented to the competence of the CED to receive individual complaints: check the list on the [United Nations website](#).
- The *Committee on the Elimination of all forms of Discrimination against Women* comprises of 23 independent experts who monitor the implementation of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). Based on Articles 1 and 2 of the Optional Protocol to CEDAW, the Committee may consider individual communications submitted by or on behalf of individuals or groups of individuals against State parties to the Optional Protocol regarding violations of CEDAW. 114 States have ratified the optional Protocol so far: check the list on the [United Nations website](#).
- The *UN Working Group on Arbitrary Detention (WGAD)* was established to investigate cases of deprivation of liberty imposed arbitrarily or inconsistently with the international standards set forth in the Universal Declaration of Human Rights (UDHR), or the international legal instruments accepted by the States concerned. Amongst others, the WGAD considers individual complaints, leading to the adoption of opinions as to the arbitrariness of the detention. The WGAD is an effective forum to denounce the arbitrary detention of an individual, which could exert pressure on the State and prevent torture and other violations.
- The *UN Working Group on Enforced or Involuntary Disappearances (WGEID)* was established in 1980 with a mandate to examine questions relevant to enforced disappearances and provide assistance to the families in determining the fate or whereabouts of their relatives. The WGEID accepts individual reports of disappearances from any State, regardless of whether it has ratified the ICPPED. Upon receipt of a



communication, the WGEID can forward a communication within 1-2 days to the Ministry of Foreign Affairs of the country concerned if the case is less than three months old. If the disappearance occurred more than three months ago, the WGEID may authorise communication to the government requesting to carry out investigations and inform the Group of the results.

There are other special mandates (both thematic and country-specific) which are appointed by the Human Rights Council. Thematic mandates include for instance the Special Rapporteur on Torture and Other CIDTP, the Special Rapporteur on violence against women, its causes and consequences, or the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence. They will often have the ability to receive information and make urgent appeals to States in relation to individuals at risk of violations, or communications on past violations.

## African Regional Human Rights Mechanisms

Within the African Human Rights system, cases of torture can be filed before the *African Commission on Human and Peoples' Rights (AComHPR)*, the *African Court on Human and Peoples' Rights (ACTHPR)* and the *ECOWAS Court of Justice*. The AComHPR was established in Banjul (The Gambia) in 1986. The ACTHPR was established in Arusha (Tanzania) and became operational in 2006. The ECOWAS Court of Justice was established in Abuja (Nigeria) in 1991. The African Union (AU) adopted the Protocol on Amendments to the Protocol on the Statute of the African Court of Justice and Human Rights (Malabo Protocol) in June 2014, to merge the ACTHPR and the African Court of Justice into the African Court of Justice and Human and Peoples' Rights (ACTJHPR). However, this Protocol has not yet entered into force.

- Under its protection mandate, the *AComHPR* can accept complaints from individuals, NGOS, and groups of individuals who believe their rights have been violated under the African Charter on Human and Peoples' Rights (African Charter).

- The *ACtHPR* has jurisdiction to hear cases involving torture and other human rights violations in relation to the 30 African States that have ratified the Protocol to the African Charter on the Establishment of the Court. However, only the AComHPR can refer cases to the ACtHPR. Additionally, six States have authorised the ACtHPR to hear complaints submitted directly by individuals or NGOs with observer status before the AComHPR. These States are Burkina Faso, Gambia, Ghana, Malawi, Mali, and Tunisia.
- The *ECOWAS Court of Justice* has competence to hear individual complaints of alleged human rights violations, including rights deriving from the UDHR, the African Charter, and the ICCPR. However, only individuals whose countries are members of the ECOWAS can file a complaint within the court (see the [list here](#)).

## European Regional Human Rights Mechanism

The *European Court of Human Rights (ECtHR)* was established in 1959. It is located in Strasbourg (France). It rules on applications made by individuals, groups of individuals, NGOs or States on violations of the rights and freedoms set forth in the European Convention for the Protection Human Rights and Fundamental Freedoms (ECHR). There are 47 State parties to the ECHR. For the Court to have jurisdiction, the State must have ratified the ECHR before the violation occurred (or ended in the case of continuous violations).

Before filing a case within the ECtHR, domestic remedies should be exhausted, unless such remedies would be unavailable, ineffective or cause undue delay. There is a time-limit of four months from the last domestic decision on the case to file a claim before the ECtHR.

An enforcement mechanism was introduced by Protocol 14 to the ECHR. This mechanism enables the Committee of Ministers to ask the Court for interpretation of a judgement or bring a non-compliant member State back before the Court.

## Inter-American Human Rights Mechanism

The *Inter-American Commission on Human Rights (IAComHR)* was established in 1959 under the umbrella of the Organisation of American States (OAS). It is located in Washington DC (United States). The Commission is made up of seven independent experts elected by the General Assembly of the OAS. It rules on applications made by individuals, groups of individuals, or NGOs on violations of the rights and freedoms enshrined in the American Declaration of the Rights and Duties of Man (American Declaration), the American Convention on Human Rights (ACHR), and other inter-American human rights treaties (including the Inter-American Convention to Prevent and Punish Torture). There are 35 member States in the OAS (see the list [here](#)).

The AComHPR examines petitions that allege violations of the ACHR, only in relation to States which have ratified it. For the other OAS member States, individuals can allege violations of rights contained in the American Declaration. They can also allege violation of a right under another human rights treaty of the OAS system to the extent that the State has ratified it.

Similarly, for the IAComHR to have jurisdiction, domestic remedies must have been exhausted, unless such remedies would be unavailable, ineffective or cause undue delay; there is a time-limit of six months from the last domestic decision on the case to file a case.

The *Inter-American Court on Human Rights (IACtHR)* was established in 1979. It is made up of seven judges who are independent experts. It is located in San José (Costa Rica). Only States parties to the ACHR which have accepted the IACtHR's jurisdiction can be brought before it (20 states – see the list [here](#)). Individuals cannot directly bring a case to the IACtHR: they have to bring it to the AComHR, which will decide whether or not to refer it to the IACtHR.

Table: Comparison of Admissibility Criteria Per Mechanism

	Add. protocol/ declaration	Complaints from individuals	Complaints from NGOs	Complaints from states	Interim measures	Exhaustion of domestic remedies	Time limits
CAT	✓	✓	✓	✓	✓	✓	✓
HRC	✓	✓	✓	✓	✓	✓	✓
CEDAW	✓	✓	✓	✓	✓	✓	✓
CED	✓	✓	✓	✓	✓	✓	✓
UN Special mandates		✓	✓	✓	✓		
AComHPR		✓	✓	✓	✓	✓	✓
ACtHPR	✓	Referred by the AComHPR or individuals from 6 African States	Referred by the AComHPR or individuals from 6 African States	✓	✓	✓	✓
ECOWAS CJ		✓	✓		✓		
ECtHR		✓	✓	✓	✓	✓	✓
IACmHR		✓	✓	✓	✓	✓	✓
IACtHR	✓	Referred by AComHR	Referred by AComHR	✓	✓	✓	✓

Across the board, for individual complaints to be admissible, the same complaint must not be substantially the same as another petition submitted or considered by the same or another international or regional body. Also, these bodies do not operate as appellate bodies for domestic decisions.

## EVIDENCE

Evidence is essential when building a legal claim, in order to prove that torture and ill-treatment occurred. Lawyers must consider the required elements to prove offences under the relevant national and international laws and the variety of sources available to build the case. The sources of evidence include victim statements, statements from witnesses, expert reports, documents, video or audio recordings, medical and psychological reports, physical and forensic evidence, UN and NGO reports documenting patterns of violence, and various forms of media, including newspapers and secondary sources. What evidence is needed depends on the type of proceeding and the burden of proof required.

When documenting cases of torture and ill-treatment, lawyers and other experts will find useful guidance in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) and the International Protocol on the Documentation and Investigation of Sexual Violence in Conflict (FCO Protocol). See *Practice Note on Istanbul Protocol Medico-Legal Reports*.

What evidence is needed depends on the type of proceeding and the burden of proof required. As stated above, in criminal cases, it is necessary to prove ‘beyond reasonable doubt’ that the accused has committed the crime.

In relation to civil and human rights claims, in principle the victim has the burden to present a *prima facie* case of torture and ill-treatment. However, in cases of torture, the burden of proof might shift in some circumstances (see below).

**Courts and human rights bodies have accepted the following type of evidence in cases of torture and ill-treatment:**

- Victim testimony
- Testimony of witnesses
- Medico-legal reports
- Forensics reports, i.e., DNA evidence, telephone data analysis, satellite imagery, etc.
- Testimony of experts to provide evidence on patterns of torture and ill-treatment in a particular context or country
- Government documents and reports
- Various forms of media, including newspaper articles, videos, press releases
- Secondary reports, i.e., NGO reports, UN reports and State's human rights reports, reports of Truth and Reconciliation Commissions

The evidence presented should establish: (a) the treatment received; (b) the context in which it was received; (c) the intent; (d) the purpose; (e) that the treatment was carried out by the State or someone acting on behalf of the State or with its knowledge or acquiescence.

The evidence presented should be reviewed as a whole and not in isolation. The evidence that is useful to prove torture and ill-treatment can be divided into three categories:

- a. evidence used to support a finding of a context, State pattern or practice of torture and ill-treatment;
- b. evidence used to support a finding of an individual instance of torture and ill-treatment linked to a State pattern or practice; and
- c. evidence used to support a finding of an individual instance of torture and ill-treatment when no State pattern or system of disappearances has been discovered.

### Case study: Women Victims of Sexual Torture in Atenco (Mexico)

**Facts.** the case relates to violence committed by the police against 11 women in the context of a public demonstration in Mexico in 2006. During the police operation the women were arbitrarily arrested. During the detention and while being transferred to a penitentiary centre, the women were subject to various forms of violence, including rape. Later, several victims were subject to degrading treatment by the doctors who attended them at the penitentiary centre and who refused to undertake proper medical checks, gynaecological exams and to report or register the acts of sexual violence.

**Action and outcome.** the case was referred to the IACtHR, which issued a landmark judgement in 2008, finding Mexico responsible for acts of sexual violence, rape, torture and arbitrary arrest against the 11 women. The Court also found that the acts of torture were used in the case as a tool of social control, which increased the gravity of the violations. The Court ordered individual reparations for the 11 victims, as well as measures to prevent this type of violence in the future.

**Evidence.** In order to reach a finding of torture in this case, the IACtHR considered the following evidence.

- The fact that Mexico had not contested the facts during the proceedings.
- The testimonies of the victims, and their consistency in relation to the events.
- The medical evidence available and the expert appraisals conducted in application of the Istanbul Protocol.
- The broader context in which it had been determined that sexual and physical forced had been used against most of the women detained that day.
- The investigations and reports conducted by several national institutions.

## Burden of Proof in Cases of Torture

In civil and human rights claims, the complainant bears the burden of presenting *prima facie* evidence of torture or ill-treatment. If the evidence presented is credible and corroborates the allegations, then the complainant's allegations may be considered substantiated unless rebutted by the State party.

The presentation of *prima facie* evidence of torture or ill-treatment creates a strong presumption that the victim was tortured.

However, the burden of proof shifts when the individual suffers injuries or dies in custody of State agents, in which case it is for the State to provide a satisfactory and plausible explanation of what happened to the individual, supported by evidence. In these cases, the State party must give a thorough explanation.

In this regard, the burden lies on the State if the complainant demonstrates that "they have no possibility of obtaining documentation relating to their allegation of torture or have been deprived of their liberty". The rationale is that it would not be appropriate to expect persons deprived of their liberty at the material time to be able to gather the necessary evidence, whereas the State would have access that information.

Additionally, there is a reversed burden of proof in cases of forced confessions, where the State should prove that the statements made by the individuals were made in their own free will.

Where the burden of proof is reversed, it is the responsibility of the State to investigate the allegations and verify the information on which the communication is based. In order to avoid liability, State authorities must provide sufficient information to prove that they are not responsible for the allegations against them.



# REPARATION

Both regional and international law instruments and jurisprudence require States to provide redress to victims of torture or ill-treatment. Specifically, Article 14 of UNCAT requires every State party “to ensure in its legal system that the victim of torture obtains redress and has an enforceable right to fair and adequate compensation”. The UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of Humanitarian International Law offer guidance on the right of victims to redress.

*Regional human rights instruments.* The ECtHR, the AComHPR, ACtHPR, ECOWAS Court of Justice, the IACoMHR and IACTHR all have jurisdiction to award reparations to complainants.

*Domestic/constitutional provisions.* The right to reparation is included in the constitutions of some States, or in domestic anti-torture law or criminal legislation. For example:

- Art. 113 of the Constitution of Bolivia provides all victims whose rights have been violated with “the right to timely indemnification, reparation and compensation for damages and prejudices”.
- Art. 6 of Uganda’s Prevention and Prohibition of Torture Act, 2012, provides for victims’ right to “compensation, rehabilitation or restitution”.

States have a dual obligation with regard to the right of survivors to redress: a substantive obligation (reparation) and a procedural obligation (effective remedy). CAT’s General Comment no. 3 provides for five forms of reparation; namely: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. These should be envisaged in complementarity, rather than alternatively.

## Forms of Reparation

The UN Basic Principles provide for five types of reparation.

**Restitution.** This consists in reinstating the victim to the situation they were in before the violation was committed. Given the nature of torture, full restitution is not possible in most cases, but it can be provided in relation to other violations perpetrated alongside torture. In any event, it should be accompanied with measures to address the structural causes behind the violation. This can include such things as restoring a person's liberty or reputation, employment, or property.

In the Loayza Tamayo v. Peru case (arbitrary arrest, incommunicado detention and torture and ill-treatment, including sexual violence by the authorities), the IACtHR ordered as measures of satisfaction: that the victim that she be reinstated in her teaching position with all benefits attached to it; that she be entitled to her full retirement benefits (even those which should have been accrued during her time in detention); and that no civil decision issued against her by domestic courts have any adverse effect on her whatsoever.

**Compensation.** This is monetary in nature and should cover both pecuniary and non-pecuniary harm. It is not sufficient by itself to provide relief to victims of torture and should be provided together with other forms of reparation.

**Rehabilitation.** This form of reparation is particularly important in cases of torture, given the long-lasting impacts suffered by survivors. It should be holistic and include psychological and medical care as well as legal and social services. This should enable the victim to reintegrate into society and restore their independence. This is a long-term form of reparation that cannot be fulfilled by the provision of a one-time service. It should be tailored to each individual, according to their needs and the circumstances surrounding their case, and their social context etc.

In the Purna Maya v. Nepal case (torture of a woman in detention by the army for the purpose of obtaining information and on a discriminatory basis), the Human Rights Committee ordered that the victim be awarded the entire array of reparation measures, including full psychological rehabilitation and medical treatment.

**Satisfaction.** This entails cessation of the violations, disclosure of the truth (for instance, the whereabouts of a disappeared person, or the search for the bodies of persons killed). The search for and disclosure of the truth should not jeopardise the victims' or witnesses' security. It also entails taking administrative sanctions where warranted, the release of public apologies, the building of memorials and other such collective and commemorative measures that acknowledge the violations. Again, this should be in addition to criminal prosecutions and other forms of reparation.

In the IHRDA and ors v. DRC (Kilwa) case (case of massacre, arbitrary detention and torture of a community), the AComHPR decided that public apology, contributing to the promotion of social justice and peace, was an appropriate measure of reparation, amongst other measures.

**Guarantees of non-repetition.** These are measures to prevent the future recurrence of the crime of torture and other violations. These measures can mean legislative change, such as ratifying and implementing the UNCAT into domestic law to require measures such as oversight of places of detention. The measures can also include training and awareness-raising for the police, detention officials, the armed forces, judicial authorities, medical staff and all other relevant actors to better understand and apply anti-torture standards. Non-repetition also refers to the transformation of social norms to end the climate of permissibility and impunity for such acts and removing barriers to the absolute prohibition of torture.

In the Azul case (rape of an LGBT+ person in detention), the IACtHR ordered measures such as adopting a protocol on the investigation of such cases, a training plan for State official on the prevention of violence against the LGBT+ community, and a system to collect statistics on violence against the LGBT+ community.

## Effective Remedy

This right includes access to justice and fair and impartial proceedings for victims of torture. It entails the criminalisation of torture in domestic law, as well as providing victims with avenues to seek and obtain redress. Perpetrators of torture should be either prosecuted or extradited.

This right has close ties to the States' due diligence obligations under UNCAT. In particular, States have a duty to investigate cases of torture. In addition, mechanisms to seek relief should be made known and accessible to victims of torture. This includes setting up adequate protection mechanisms and ensuring that the system to obtain reparation does not deter victims from making use of it (financial accessibility for instance or other obstacles). These mechanisms and proceedings should be non-discriminatory and gender sensitive.

## Obstacles to Reparations

Obstacles for victims of torture to obtain reparations can be both legal and factual. Some legal challenges are limitation periods within which you must initiate proceedings, whether criminal or civil, immunities, amnesties and pardons, lack of domestic criminalisation of torture, lack of avenues for victims to access reparations, etc.

Factual obstacles refer to the inability of the State to deliver reparations, lack of due process and judicial independence, the cultural and social norms which may get in the way of victims obtaining redress, the inability to locate a perpetrators' assets or seize them, and others.

States must strive to lift these barriers by implementing changes in the domestic legal system and policies. It should also develop “coordinated mechanisms” to enable the implementation of reparation measures for victims.

For instance, after the conviction of former Chadian President Hissène Habré by the Extraordinary African Chambers, victims of torture were meant to receive millions of dollars in compensation. A trust fund was established by the African Union to disburse these reparations. However, because of many challenges, including a lack of contributions to the trust fund, victims have yet to receive any compensation.

## Beneficiaries

The impact of torture is complex, affecting the victim, their family, and the wider community. The UN Basic Principles define victims as those who individually or collectively suffered harm. The term “victim” also includes the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims or to prevent victimisation.

In this regard, victims are those who have suffered harm as a direct consequence of being tortured.

Additionally, victims are also those who have suffered harm as an indirect consequence of torture. This includes family members but can also include members of the community or a targeted ethnic minority.

For instance, civil party admissibility before the ECCC (Cambodia) has not been restricted to direct victims but also includes indirect victims who personally suffered injury as a direct result of the crime committed against the direct victim. Indirect or secondary victims can include family members and extended family members, and people from the same community or ethnic group.

In the context of enforced disappearance, the IACtHR found in the Chitay Nech et al v. Guatemala case that the forced disappearance of indigenous leaders was used to “punish indigenous communities in their struggle to claim their rights as an indigenous people,” thereby extending the concept of victimhood to communities. The WGEID also considered that persons who have suffered harm in intervening to assist victims in distress or prevent victimisation are also to be considered victims.

Certain categories of victims such as refugees, victims of sexual violence, child victims, or victims of violence in conflict should be provided with specific types of reparations measures. This is the case in particular in the context of rehabilitation, where care services should be adapted to their particular vulnerability. In addition, asylum seekers or refugees should receive support in relation to their asylum claim.

## Legal Ethics

**Survivor-centred approach.** The reparation measures that are being put forward in the claim should be tailored to the survivor’s situation and needs. Their opinion on what they want out of the proceedings should lead the strategy, be prioritised and taken into account at all stages of the proceedings. This means that lawyers have a duty to inform victims of what exactly they entail.

**Holistic care.** In formulating the reparation measures, a holistic approach should be taken. This means that lawyers should focus on all aspects of the well-being of the survivor in the reparation claim. For instance, if the survivor suffers from trauma or PTSD, ensure that the claim includes rehabilitation in the form of psychological care.

**Documenting the claim.** To make the claim for reparation strong, it must be supported with evidence. Human rights courts may adopt a flexible approach in cases of torture, and psychological harm is often presumed. (e.g. Bueno-Alves v. Argentina). However, a claim should be supported with psychological and medical reports, property titles for lost property, salary slips to show income gained before the violations happened, witness

testimonies, reports, media clippings and research papers on patters of violations in the country, etc.

**Reparations must be:**

*Accessible.* Authorities must ensure that victims have access to reparations and are aware of, or have information on, reparations. Authorities must eliminate any obstacles that would prevent victims from accessing reparations.

*Adequate.* Reparations must be appropriate and proportionate to the gravity and circumstances of the violations.

*Victim-centred and non-discriminatory.* Reparations should take into account the unique harm suffered by the victims of torture and ill-treatment and their wishes and expectations on how that harm can be redressed. Reparations should be holistic, consider a gender perspective, and include the physical, psychosocial, economic, social and cultural dimensions of harm.

Reparations can have both individual and collective character. Collective reparations respond to the collective harm or harm caused to the society or a particular group.

**Case study: Magdulein Abaida (Libya)**

**Facts.** Magdulein Abaida is a Libyan human rights defender, focusing on the rights of women. In 2012, Magdulein was abducted from her hotel in Benghazi by five men, who were presumed to belong to the 17<sup>th</sup> February Brigade, a militia group. She was detained and interrogated, kicked all over her body, verbally abused, beaten with a gun and received death threats. She could hardly move after the beatings. Following her release, Magdulein was unable to continue her work due to the constant death threats and was forced to leave Libya.

**Action for Justice.** In October 2013, REDRESS filed a complaint to the Libyan Prosecutor General, but an investigation was never known to have been initiated. With support from REDRESS, Magdulein filed a complaint with the CEDAW Committee.

**Outcome.** The CEDAW Committee issued a landmark decision in 2021, finding Libya responsible for failing to investigate and prosecute Magdulein’s arbitrary arrest and torture.

**Reparations ordered.** The CEDAW Committee recommended the following individual reparations and non-repetition measures, among others:

- A prompt, thorough and independent investigation into the events.
- Appropriate reparation to Magdulein, including compensation.
- Comprehensive anti-discrimination legislation to be adopted by Libya.
- Effective legislative, executive, and judicial measures to prevent gender-based violence against women.
- Public policies, programmes, institutional frameworks and monitoring mechanisms to ensure the effective application of such legislation.
- Measures to stop arbitrary detention and all forms of violence against women, by security forces, armed groups, and militias.
- Measures to ensure a safe and favourable environment for women’s human rights defenders.
- Ensure claims of violence against women are properly investigated.
- Measures to protect and promote women’s participation on equal terms with men in public life.



# WRITING EFFECTIVE LEGAL COMPLAINTS

An individual complaint offers an opportunity for anyone to file a claim against a State with the relevant regional or international bodies alleging violations of the rights of torture survivors (subject to the conditions below). There are several important aspects to the preparation and submission of a human rights complaint.

## Structure

Each international or regional body has specific requirements for filing individual complaints and their structure. It is therefore important to check the specific body's website and rules of procedure to identify these requirements.

Most complaints follow a similar structure and should contain the following sections or information:

### Structure of a Claim

- *Claimant and Respondent.* The victim, the legal representative, and the State party.
- *Summary of the claim.* Provide an overview of the violations the victims suffered.
- *Facts of the case.* Explain the acts that led to the violations, including by whom, where the abuse occurred and what injuries the victim/s has/have suffered.
- *Admissibility.* Explain how local remedies have been exhausted, or the reason why those could not be exhausted. Show that the claim is filed within reasonable time and within the time limit provided by the rules of procedure of the specific human rights organ. Show that the specific State has agreed to the body's jurisdiction to hear individual complaints.

- *Violations.* Explain what rights under the specific treaty were violated, how they were violated, and the impact of these violations on the complainant.
- *Remedies.* Set out the remedies or redress that the victim is seeking to address the human rights violations they have endured.
- *Conclusion.* A clear statement of what the human rights body should decide, including the violations and the remedies.
- *List of supporting documents.* List any supporting documents relevant to the case, including medico-legal reports, reports from the United Nations or civil society, witness or victim statements, documents to support financial claims, and any other relevant documents.

## Claimant and Respondent

This section includes:

- Information on who the victim is (first, middle and last names), date of birth, nationality, occupation, contact information and ethnic or religious background if relevant to the claim.
- The legal representative of the victim, with their name and contact details.
- The State party against which the claim is brought.

## Summary of the Claim

This section offers an opportunity to provide an overview of the case. The following topics should be covered: an overview of the facts; a summary of why the case is admissible; a list of the violations the victim has suffered and the rights under the specific treaty that were violated (including the article numbers); the nature of these violations and the

impact of these violations on the victim's life. The summary can also be useful to explain the case to a wider audience.

## Facts of the Case

This section outlines the description of the facts of the case. It should answer the “5 Ws” (when, where, why, who and what): when did the violations occur? Where did they occur? Why was the individual subjected to these violations? Who violated the victim's rights? What have the consequences of these violations been?

You should present facts in an objective way, based on the evidence available, so that the narrative looks accurate and persuasive for the human rights organ considering it. Where possible, refer to the dates and times of events. You can use headings to divide the facts in stages of events that occurred (for example, background, detention, torture, denial of medical assistance, release, investigation, harm to the victim).

When drafting a claim related to torture, often the complaint would address the issue of detention – if the torture was perpetrated in a detention setting; how was the individual detained? Who detained them? Where was the victim detained (name of the location or description of the place of detention)? Was the victim informed of their rights when detained? Did the victim receive medical services where needed? If so, is there a medical report that shows the extent of injuries and treatment? If the direct victim died, is there an autopsy report? In addition to any reports, the complaint should contain the following information on the issue of torture: what injuries did the victim suffer, both medical (i.e., broken ribs or leg) and psychological (post-traumatic stress disorder, anxiety disorder or depression)? What was the mental and physical state of the victim prior and post torture?

The complaint should address the question of safeguards against torture, including access to the competent judicial authorities. It should indicate, for example, if the victim's detention was registered properly by the authorities, if the person had access to a lawyer or was able to contact a relative, or if the victim was brought in front of a judge or other competent authority. If so, how long after the detention did the victim see the judge? If

the victim was not seen by a judge, why were they not seen by the judge and how long was the individual detained without access to judicial proceedings? Did the State carry out any investigations and if so, what was the outcome?

The facts should also include a description of how torture took place. This should include details of the harm to the victim and the physical or psychological abuse. In addition, you should provide information on how long the abuse lasted and who inflicted it. To the extent possible, you should include details of the perpetrators and the language used by them while torturing the victim, so the purpose can be established (confession, discrimination, etc).

This section should also include any medical evidence, including forensic and autopsy reports, as these are relied upon by the human rights bodies. These reports could refer to physical injuries or psychological harm, including ongoing treatment and the costs of it.

## Admissibility

To argue that your claim is admissible before a human rights body, you would usually have to prove that: 1) the violations fall within the jurisdiction of that particular human rights body; 2) that the violations have not been submitted to another human rights body; and 3) that the victim has exhausted all available domestic remedies.

The complainant must show that the State against whom the complaint is launched consented to the jurisdiction of the human rights body to accept an individual complaint and the violations occurred after the State consented (unless the violation is continuing, such as cases of enforced disappearance). Further, the rights violated must be rights prescribed under the specific treaty and the complaint must be filed within a reasonable time frame after the exhaustion of domestic remedies. For instance, the HRC notes that individuals must file complaints within five years after the exhaustion of domestic remedies, while the IACoMHR and other treaty bodies require the complaint be filed within six months. Finally, some bodies require that the complaint must not have been filed with any other international body to be considered.

The regional and UN bodies all require that before submitting a complaint, the victim must exhaust domestic remedies. This requirement means that the victim must have first used those judicial and administrative remedies available at the national level that are effective to address the specific violation. However, there are exceptions to this requirement if the victim can show that the domestic remedies are unavailable, the process is unduly delayed, or the process would not yield a result as the remedies are ineffective.

The section should include any information and dates of judicial domestic proceedings, types of proceedings, the outcome and reference to any relevant documents to support these.

## Violations

The section explains in detail which rights protected by the specific treaty were violated, including the number of the articles. For example, depending on the circumstances of the case, violations of UNCAT could include freedom from torture and other ill-treatment, right to liberty, right to life and right to a remedy.

Further, the section should address the legal standards applicable to establish violations of these rights and how the facts of the case meet these standards. The standards should refer to the regional and international bodies' jurisprudence on the specific right – and in particular the jurisprudence of the body before which the claim is made. It can refer to customary international law, other treaties, rules, decisions, guidelines and literature on the matter. Most treaty bodies have online databases which should enable you to access the relevant standards free of charge. A few also have digests recapitulating issues of procedure and substance by reference to the relevant case law.

Finally, this section of the complaint must also indicate how the State against which the complaint is made is responsible for these violations. This can be done by reference to the obligations of the State to protect and prevent human rights violations and explaining how the State has failed to fulfil one or more of these.

## Remedies

This section outlines what redress the victim is seeking for the violations. International law provides for five types of remedies: restitution, rehabilitation, guarantees of non-repetition, satisfaction of compensation.

Common remedies requested in legal claims include the following: 1) a finding of one or more violations; 2) the investigation of the case; 3) the release of a victim still detained; 4) compensation for all victims for material and moral harm; 5) medical and psychological assistance to rehabilitate the victims from the harm suffered; 6) a public apology or other symbolic measure to acknowledge the violations; 7) measures to avoid the repetition of the violations in the future (legislative reforms, training of public officials, protocols to investigate, etc).

## Conclusion

This is a clear statement of what you request the human rights body to decide, including the violations that you are asking the body to find, and the remedies you are requesting in the case.

## List of Supporting Documents

The evidence that you will submit will vary depending on the nature of the violations, but a few sources that you might consider include the following: statements from the victim and relatives, witness statements, medical evidence of injuries, official records, copies of legal proceedings, reports from NGOs, national institutions and UN bodies, and media clippings.

## Structure and Legal Writing

Throughout the claim, use simple language and short sentences. It is important that language is easy to understand and follow. Do not use jargon as some people reviewing the complaints may not be lawyers or may not understand the jargon.

Check the requirements of each treaty body regarding the length of the complaint. Some treaty bodies will have model complaint forms which you can use to file the complaint.

Do not repeat yourself.

When citing legal sources, quote only the most important portion to avoid long and unnecessary quotes. When referring to jurisprudence from other human rights bodies, always note why those are important in the specific case.

Always use headings and sub-headings to separate the sections and sub-sections. It makes the document easier to read and follow. For example, in the section explaining what rights were violated, use sub-heading for each right that was violated, i.e. right to life or freedom from torture.

Make sure you review and edit your draft to ensure it is easy to read and persuasive. This includes checking the format, the structure, the content, and grammar.

Check what the standard of proof is and make sure that the evidence submitted meets the requirements.

## FURTHER READING

### On Strategic Human Rights Litigation

- OSJI, Strategic Litigation Impacts, Insights from Global Experience, 2018.
- OSJI, Legal Writing for Human Rights Claims, Practice Notes.
- Helen Duffy, *Strategic Human Rights Litigation – Understanding and Maximising Impact*, Hart Publishing, 2018.

### On the crime of torture and ill-treatment

- APT-CEJIL, Torture in International Law: A Guide to Jurisprudence, 2008.
- REDRESS Summary of the Convention Against Torture.
- REDRESS Report on Examining the Use of Torture Evidence.
- IRCT, REDRESS, Action Against Torture: A Practical Guide to the Istanbul protocol – for Lawyers, 2007.
- OHCHR, Istanbul Protocol, 2004.
- UK FCO, International Protocol on the Documentation and Investigation of Sexual Violence in Conflict, 2017.
- UN Basic Principles and Guidelines on the Right to a Remedy and Reparations for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, 2005.
- UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), 2015.

Committee Against Torture:

- General Comments



## Committee on the Elimination of All Forms of Discrimination Against Women

- General Recommendations

## European Continent

- European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment

## American Continent

- Inter-American Convention to Prevent and Punish Torture
- Principles and Best Practices on the Protection of Persons Deprived of Liberty in The Americas.

## African Continent

- Resolution on the Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines), 2008.
- Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, 2003.
- Guidelines on the Conditions of Arrest, Police Custody and Pre-Trial Detention in Africa (Luanda Guidelines), 2015.

List of countries that have ratified the following conventions:

- Convention against Torture and Other Cruel, Inhuman, Degrading Treatment or Punishment
- International Covenant on Civil and Political Rights
- Convention on the Elimination of All Forms of Discrimination against Women
- International Convention on the Protection of All Persons from Enforced Disappearance

**REDRESS** is an international human rights organisation that delivers justice and reparation for survivors of torture, challenges impunity for perpetrators, and advocates for legal and policy reforms to combat torture. Our cases respond to torture as an individual crime in domestic and international law, as a civil wrong with individual responsibility, and as a human rights violation with state responsibility.

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Ending torture, seeking justice for survivors