

**THE
TORTURE REPORTING
HANDBOOK**

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

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SELECTED ABBREVIATIONS

ACHPR:	African Charter on Human and Peoples' Rights
ACHR:	American Convention on Human Rights
ACNHR	African Commission on Human and Peoples' Rights
CAT:	Committee Against Torture
CEDAW:	Committee on the Elimination of Discrimination Against Women
CERD:	Committee on the Elimination of Racial Discrimination
CPT:	European Committee for the Prevention of Torture
CRC:	Committee on the Rights of the Child
ECHR:	European Convention on Human Rights
ECTHR:	European Court of Human Rights
IACN:	Inter-American Commission on Human Rights
IACT	Inter-American Court of Human Rights
ICC:	International Criminal Court
ICCPR:	International Covenant on Civil and Political Rights
ICRC:	International Committee of the Red Cross
IDPs:	Internally-displaced persons
ILAC:	International Law of Armed Conflict
NGO:	Non-governmental organisation
OAS:	Organisation of American States
OAU:	Organisation of African Unity
OHCHR	Office of the UN High Commissioner for Human Rights
OSCE	Organisation on Security and Co-operation in Europe
SRP:	Special Rapporteur on Prisons and Conditions of Detention in Africa
SRT:	United Nations Special Rapporteur on Torture
UN:	United Nations
UNCAT:	UN Convention Against Torture
UNCEDAW:	UN Convention on the Elimination of Discrimination Against Women
UNCERD:	UN Convention on the Elimination of Racial Discrimination
UNCHR:	UN Commission on Human Rights
UNCRC:	UN Convention on the Rights of the Child
UNHCR:	UN High Commissioner for Refugees

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GLOSSARY OF SPECIALISED TERMS

Admissibility	The stage of an individual complaint procedure at which the judicial or quasi-judicial body decides if the right conditions are present for it to be able to examine a complaint. If a complaint is <i>inadmissible</i> , it cannot be examined any further.
Allegation (of torture)	A claim (as yet neither proved nor disproved) that an incident of torture has occurred.
<i>Amicus curiae</i> brief	A submission by a non-party to judicial proceedings which is designed to inform the judicial body about a specific matter relating to the proceedings.
Applicant	Person making an application under an individual complaint procedure.
Application	Letter or other form of submission asking a judicial body to consider a case under an individual complaint procedure.
Asylum	Asylum is sought by individuals who do not wish to return to a country, usually their own, where they are at risk. If granted, it means being allowed to remain in a country which is not their own. It may be temporary or permanent.
Breach (of obligations)	See VIOLATION
Charter	See TREATY
Communication	Letter or other form of submission transmitting information to an international body. The term is often used within the UN to refer to applications under an individual complaint procedure. The person who writes a communication is often referred to as the author of the communication.
Competence	See JURISDICTION (of a judicial body)
Complainant	Person making a complaint under an individual complaint procedure.
Consultative status	NGOs can apply to the UN for consultative status - this means that they are officially registered as an organisation which the UN can consult. NGOs with consultative status have certain privileges over other NGOs, such as being allowed to attend sessions of the UN Commission on Human Rights.
Convention	See TREATY
Corroboration	Evidence which supports or confirms the truth of an allegation.
Court judgment	Legally-binding decision in which a court expresses its conclusions in a case.
Covenant	See TREATY
Declaration	International law document which is not legally-binding, but sets out standards which states undertake to respect.
Deportation	Expulsion from a country.
Domestic law or legal system	National law or legal system; law or legal system which is specific to a particular country.
Enforcement (of obligations)	Making the obligations effective; ensuring that they are respected.
Entry into force (of a treaty)	The moment at which treaty obligations begin to apply.
Extra-judicial (e.g. execution)	Not imposed by a judge or following a legal process.
Fact-finding	Carrying out an investigation to discover the facts.
Gross violations of human rights	Particularly serious violations of human rights, such as torture or extra-judicial killing.
Implementation (of obligations)	The way in which obligations are carried out or respected, or measures aimed at achieving this.
Impunity	Being able to avoid punishment for illegal or undesirable behaviour.

Incommunicado detention	Being held by the authorities without being allowed any contact with the outside world, and/or without the detention being acknowledged.
Individual complaint	A complaint relating to a specific set of facts affecting an individual or individuals.
Instrument	A general term to refer to international law documents, whether legally binding or not.
Inter-governmental body	A body or organisation composed of the governmental representatives of more than one country.
Judicial procedure	A procedure before a judicial body.
Jurisdiction (of a state)	Area or persons over which a state exercises its authority.
Jurisdiction (of a judicial body)	Matters which fall within the jurisdiction of a judicial or quasi-judicial body are those which it has the power to examine. This may also be referred to as being <i>competent</i> to examine a matter.
Leave (e.g. seeking leave to submit an amicus curiae brief)	Permission.
Legally-binding	If something is legally-binding on a state, this means that the state is obliged to act in accordance with it, and there may be legal consequences if it does not do so. e.g. the state can be brought before an international court and ordered to pay compensation to a victim.
Litigation	The process of bringing and conducting a case before a court.
Lodging a complaint	Registering a complaint.
Mandate	The source of the powers of a mechanism - the document which explains what the mechanism is authorised to do.
Merits	The stage of an individual complaint procedure at which the judicial body examines the facts of a case and decides if a violation has occurred.
Monitoring	Seeking and receiving information for the purpose of reporting on a subject or situation.
Non-governmental actors	Private persons acting independently of the authorities.
Observations	Comments, assessment.
Perpetrator	The person who has carried out an act.
Petition	Request for action, e.g. request for a matter to be investigated.
Provisional measures	Temporary measures which can be requested by a judicial or quasi-judicial body before having completed its consideration of a case, in order to avoid irreparable damage.
Quasi-judicial procedure	A procedure before a body which considers cases in a similar way to a judicial body, but which is not composed of judges and the decisions of which are not legally-binding.
Ratification	The process through which a state agrees to be bound by a treaty.
Recommendation	A suggested course of action. Recommendations are not legally-binding.
Reparation	Measures to repair damage caused.
Reservation	At the time of agreeing to be bound by a treaty, a state can register a <i>reservation</i> : a statement which modifies its obligations under the treaty in some way.
Resolution	Official decision of an international body, often adopted through a vote. It is usually a recommendation and therefore not legally binding.
Rules of procedure	The detailed rules which a judicial or quasi-judicial body adopts, setting out the way in which proceedings before it should be carried out.
Sanction	A penalty imposed for a state's failure to respect its legal obligations.
State responsibility	Holding a state accountable under international law.

State Party (to a treaty)	State which has agreed to be bound a treaty.
Submission	See COMMUNICATION/APPLICATION
Supervisory body	A body set up to supervise the ways in which states implement their obligations under a treaty.
Third party intervention	See AMICUS CURIAE BRIEF
Transmission (of an allegation)	Sending the allegation, e.g. to the state concerned.
Treaty	International law document which sets out legally-binding obligations for states.
Treaty article	The term used to refer to individual sections of a treaty.
Treaty body	A body set up by a treaty.
Violation (of obligations)	Failure by a state to respect its obligations under international law.

PART I - PRELIMINARY MATTERS

- 1. Introduction**
- 2. How To Use This Handbook**
 - 2.1. Outline of core chapters**
 - 2.2. Terminology**
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 - 3.5. In what contexts might you receive or obtain allegations of torture?**
 - 3.6. Can allegations be made against non-governmental actors?**

1. INTRODUCTION

The mention of torture will, to most people, conjure up images of some of the most cruel forms of physical and psychological suffering - the pulling out of fingernails, electric shocks, mock executions, being forced to watch the torture of parents or children, rape. Such images produce feelings of intense revulsion in the average individual, for few can remain unmoved by the infliction of such suffering on a human being. Publicly, torture has been widely condemned, and indeed is absolutely prohibited by every relevant human rights instrument since the Universal Declaration of Human Rights of 1948. Violation of this prohibition is considered so serious that no legal justification may ever be found, even in times of emergency or conflict. Yet a glance at any of the reports of the UN Special Rapporteur on Torture, or of the European Committee for the Prevention of Torture, or indeed many a newspaper, makes it quite clear that torture is not a phenomenon of the past. Whilst any public defence of torture by a state official is unacceptable nowadays, it is undeniable that torture, and its close cousins, cruel, inhuman and degrading treatment and punishment, have quietly shut the door behind themselves to continue their thriving business in private.

The key to this door, however, is within reach of every individual who has ever experienced, witnessed or been told of an incident of torture. It is information. Only by bringing such incidents to the attention of the international community can eradication stand any chance of success. A variety of bodies exist precisely with the aim of making sure that torture becomes a thing of the past. Yet without information their hands are tied. It is rare for them to be able to examine a situation with their own eyes - their powers of first-hand investigation are, for the most part, extremely constrained. How then can the UN Special Rapporteur on Torture report on the scope of the problem world-wide, or in a particular country, if no-one sends him information about it? How can the European Committee for the Prevention of Torture know which categories of detainees are most at risk in any particular country if it receives no reports? The answer to each of these questions is the same, and it is very simple: they cannot.

If information is the key, then it is fair to say that non-governmental organisations (NGOs) are the key-bearers. The dependence of the international bodies on them is such that an absence of unhindered NGO activity in a particular country may very well mean that the attention of the international community will not be drawn to the situation in that country, even where the human rights violations which take place there would merit it. This is because it is easier to focus attention and resources on those states about which information is plentiful. The only way to pry open the eyes of the international community to lesser known situations is to ensure that reliable information reaches it. In this context, it is impossible to overestimate the importance of the role of NGOs in the battle for the eradication of torture. While a few specialised NGOs have adopted excellent methods of reporting, many less experienced NGOs are either unaware of the importance of the information they provide, or have never had the opportunity to learn how best to present it. In the specific context of torture allegations, it is unfortunately the case that a significant portion of the information received from such NGOs is wasted, not because the allegations are unfounded, but simply because important facts are omitted, because the allegation is worded in excessively political language or because it is submitted in a language which the person receiving the allegation does not understand and does not possess the resources to have translated. In other cases, perhaps because of a lack of familiarity with the different functions, and often parallel roles, of the various international bodies, NGOs address their information only to an authority which is not empowered to produce the result they would like - for example, the UN Special Rapporteur on Torture cannot order a state to pay compensation to an individual victim of torture, but the European Court of Human Rights can.

This handbook is aimed primarily at less experienced NGOs, particular smaller NGOs working at a national and community level, who wish to develop and become more involved in torture reporting. It does not attempt to provide technical medical or legal instruction, but focuses rather on the process of reporting itself. In this way, it seeks to enable such NGOs to produce high-quality information on both individual incidents and patterns of torture, with a view to maximising the utility of the information to the international bodies, as well as assisting those NGOs to select the most appropriate procedure or procedures to which to address the information in light of their own desired result. The focus of the handbook is torture, but much of what is said here would be equally relevant in the context of other human rights violations. Even where an allegation may not amount to a violation of the prohibition of torture, it could still be a violation of another human rights norm, such as the right to liberty and security of person, or the right to a fair trial. Although such violations are not the object of this handbook, readers should be aware that remedies also exist for violations of human rights other than torture.

It should be borne in mind that following the guidelines set out in this handbook is not a guarantee of obtaining a particular result from a particular international body, and that it will often seem as if little has been achieved in a particular case. While frustration and disappointment is inevitable on such occasions, it should be remembered at all costs that the struggle for the eradication of torture is a long, slow process, and should not be measured in terms of individual results only. Each piece of reliable information meticulously collected is a weapon in that struggle, and every door thrown open is one less door for the torturers to hide behind.

2. HOW TO USE THIS HANDBOOK

IMPORTANT:

Do not be intimidated by the size of this handbook - You do not have to read all of the book in order to benefit from it and you do not have to be an expert to use it.

If you become aware of information indicating that ill-treatment may have occurred, but cannot or do not wish to take action yourself, pass it on to someone else who can.

In order to acquire a good understanding of the overall process of preparing and submitting a torture allegation, it will be necessary to read the volume in its entirety. However, each section may be read independently of each other, and they do not necessarily need to be read in sequence. This means that it should be possible to dip into the handbook as appropriate according to the particular need of the reader. It is recommended, however, that anyone who is serious about submitting allegations of torture should read each section carefully before too long.

As you will see as you leaf through this handbook, it aims to be as practical as possible. This means that it has avoided exploring the academic or theoretical nature of concepts in too much detail. A large amount of academic writing exists on the subject of torture and associated themes, and it was felt that there was a need for a handbook of a much more practical nature for those who would like to know how to report allegations of torture without feeling as if they need to complete lengthy legal and medical studies to even begin to understand the subject. In addition, for such a handbook to be of practical utility in the field, it needs to be of manageable size, with easy access to each piece of information sought without having to extract it from lengthy passages of dense text. This means that it has proved necessary to be extremely selective in choosing the content of this handbook. There are many areas which those with an interest in learning more about the subject may wish to pursue. A selection of contacts and references has been provided in Appendix 2 for those organisations or individuals who may wish to seek further information or assistance.

Do not forget that, with the exception of the torture-specific procedures, many of the mechanisms described may also receive complaints and allegations concerning a large range of human rights violations other than torture. Much of what is said here would be equally applicable to such complaints. As the focus of this handbook is torture reporting, the discussion will emphasise the requirements for submitting torture-related information, but where such requirements are not fulfilled, it may still be relevant to make a complaint on the basis of another right.

2.1. Outline of core chapters

Submitting a torture allegation is not just about writing a letter to an international body. It is about knowing where to look and what to look for, and it starts with the very first word of the very first interview with the person alleging torture. This is because the quality and consequent credibility of the allegation will depend almost entirely on the information recorded about it. This means knowing which questions to ask, and paying great attention to detail when keeping notes of the interview, because you will not often get a second chance to fill in the gaps. It also requires a certain familiarity with both the

legal and practical contexts of torture, and an understanding of the objectives and likely results of submitting the allegation. The three core sections which address the various stages of the process are the following:

Part I, Chapter 3 - Setting the Context - This chapter provides a background for reporting allegations: it discusses what might be achieved by reporting allegations of torture, explains briefly the concept of torture and other forms of ill-treatment, identifies those places and situations where torture is most likely to take place, and highlights the circumstances in which allegations are most likely to be received. Finally, it addresses the thorny problem of the actions of non-governmental actors, and asks what can be done with allegations concerning them.

Part II - Documenting Allegations - The objective of this part is to offer some guidelines on how to go about collecting information about incidents of torture and other forms of ill-treatment. It highlights those pieces of information which are essential to any allegation, provides some pointers on how to carry out an interview with a victim or witness, and identifies the kind of supporting evidence which should be collected in order to strengthen an allegation or make prosecution possible.

Part III - Responding to the Information Collected - This part introduces the various mechanisms available for reporting allegations of torture and other forms of ill-treatment, particularly at the international level, provides guidance on how to choose between them, and explains how best to prepare and tailor your submission to the particular type of mechanism selected. It also acknowledges that there may be situations where you do not wish to pursue an allegation in person, where you might need support or advice on how to proceed, or where you might wish to seek political as well as legal action. It makes some suggestions on where to turn for help in such cases.

2.2. Terminology

- *He/She*: As a general rule, efforts have been made to use neutral rather than gender-specific terminology throughout the text, unless it was felt that greater precision was necessary in a particular context. In such cases, neutral terminology has usually been replaced by the term ‘he or she’. Exceptional references to ‘he’ or ‘she’ only (in a non-gender specific context) should be understood to encompass reference to both male and female.
- *Torture/Ill-treatment*: As you will see in Chapter 3, the word ‘torture’ has a very specific meaning in human rights law, as a particularly severe form of ill-treatment. The use of the term ‘torture’ throughout the text is not generally intended to be understood in the legal sense unless it is clear from the context that this is the case. Unless otherwise specified in the text, considerations described as applying to torture will apply equally to other forms of ill-treatment.
- *Specialised terms*: Readers should be aware that certain terms may have specialised or legal meanings in their country, but may mean something different in another national system. The terminology used throughout this handbook is not intended to have any legal implications, and should be interpreted in a general sense - for example, the use of the word arrest is not intended to signify a formal arrest, which might require charging the individual with an offence, but merely the deprivation of liberty or holding of an individual by the police, including for informal questioning. Similarly, the names used for certain types of custodial institutions, such as prisons, may refer to a very distinct type of institution in one country, but be used in a more general way in another.

2.3. Essential policy issues

Readers should be aware that there are a number of points which it is impossible to adequately address in a handbook of this nature and size, but which should nonetheless be kept uppermost in their mind as they work their way through it, due to their important implications. It is recommended that some time be spent thinking about these points and if necessary, in the case of organisations, adopting appropriate policies to follow.

- *Security*: Interviewers should exercise great care not to create unnecessary risk for anyone, be it themselves, other members of their organisation, or the persons they are interviewing. It may be stating the obvious to note that there are certain dangers inherent to human rights work, particularly for local NGO staff, but it is important for human rights workers and fact-finders coming either from outside the country or from other regions of the same country not to forget that there may be consequences for those they leave behind. No-one should be placed at risk on account of an over-enthusiastic individual. It is rare to be in a position to offer protection to those persons whose allegations are being recorded, yet those who are not too afraid to come forward often believe that speaking to persons coming from the outside offers some kind of protection. You should make sure that they have an opportunity to give their *informed consent* (see below) to the interview and to the potential use of the information recorded.
- *Professional ethics*: A great deal has been written about the conflicts between duties towards the greater community and the relationship between professionals, be it doctors or lawyers, and their clients. In cases involving ill-treatment, these duties can find themselves in opposition, because while the duty towards the community at large might suggest that all violations be made public for purposes of the greater good, professional ethics generally dictate that confidentiality between lawyers or doctors and their clients be respected in the best interests of the individual. This is a dilemma which is most likely to concern doctors, and a number of ethical codes and declarations exist for the medical profession, but it is present in any professional relationship, including that of a human rights worker and an interviewee.

Doctors and other healthcare professionals who wish to seek advice on how to deal with such ethical conflicts should contact a medical organisation, either national or international, which should be able to provide support and guidance on the best way to proceed. Other professional organisations should be able to provide similar assistance to their members, as should less formal professional support networks or specialised NGOs.

- *Informed consent*: This involves making sure that when someone consents to something, like giving an interview or submitting an allegation, they are fully informed of both the potential benefits and negative consequences of the proposed course of action. The question is, what does fully informed mean? This is a matter in which it is not advisable to adopt a systematic approach, but to assess each particular situation individually.

There needs to be a balance between making sure that the interviewee is aware of any potential risks involved in providing information and obtaining as much useful information as possible (because that, after all, is the primary purpose of the interview unless it is being carried out for therapeutic reasons). Emphasising the potential risks may discourage the interviewee from talking, but it would be unacceptable to prioritise information over an individual for whom there is a real risk. One approach could be to decide this on the basis of the purpose for which you would like to use the information. The golden rule must be that no-one should ever be named or identified as a source unless they have given their express consent - if your intention is to name an individual, you must obtain his or her consent to that course of action and all its implications, both positive and negative. However, if your purpose is, for example, to have an informal interview with someone you do not

need to identify, perhaps because you are merely seeking corroboration in your own mind of a statement by a previous interviewee or of general information, it may be counterproductive and unnecessary to emphasise the potential risks. Genuine risks should never be concealed, but it is important to assess what that actual risk is in each case rather than overestimating it and unnecessarily reducing the value of the interview.

Do not forget that consent should be not only informed, but also freely given. Individuals should not be pressured into giving their consent where it is clear that they do not wish to after having been fully informed of the implications.

- *Support and rehabilitation of the victim*: For the human rights worker, there is an inevitable sense of excitement involved in fact-finding and collecting allegations, and upon the discovery of evidence. For the victim, however, talking about such personal and often horrific suffering may cause very different responses. In certain ways it may be therapeutic, but it can also reopen very deep wounds and cause profound psychological or even physical stress. It is imperative to offer as much genuine and effective support as possible to the victim, both during and after the interview. In the case of interviews with persons still in detention, this may be difficult, but you can at least take steps to conduct the interview in a sensitive manner (see Part II, Chapter 3.2). In the case of victims interviewed outside a detention context, efforts should be made to provide them with support and rehabilitation. This could mean making available professional counselling, or it could merely involve letting the victim know that the door is always open. Organisations are encouraged to pursue this question further with the specialised agencies listed in Appendix 2. Rehabilitation must be seen as an integral part of working with torture victims. They are sharing something profoundly personal and painful with you, and although you may see it as contributing to positive change, or furthering a cause, it may create suffering for them - in return, your obligation is to make sure that they are offered the support they need to deal with their suffering and to turn the process into a healing one.

3. SETTING THE CONTEXT

3.1. Introduction

This chapter seeks to answer some basic questions which you might have about the process of reporting allegations of torture and other forms of ill-treatment.

- First and foremost, what is the point of the process? Can anything be achieved by using the procedures and mechanisms explained in this handbook? [Part I, Chapter 3.2]
- Next is to ask what we mean by ‘allegations of torture’. What exactly is torture? Is there a formula that tells you what it is? How can you be sure that the information you collect shows that torture has occurred? Do you *need* to know this? [Part I, Chapter 3.3]
- How does torture happen? In order to answer this, we ask who the perpetrators are, where and when they are most likely to act and who are their most likely victims. [Part I, Chapter 3.4]
- Are there any typical situations where information concerning incidents of ill-treatment might be obtained? Are there any particular factors you should be aware of in such situations? What about more unusual sources of information? [Part I, Chapter 3.5]
- What happens where abuses are carried out by persons who do not have a connection to the state authorities, for example, rebel forces in an internal conflict? Can allegations be made against them as well? [Part I, Chapter 3.6]

3.2. What can you hope to achieve by reporting allegations of torture?

Reporting allegations of torture to the international mechanisms can be of benefit both to the general situation in a country and to an individual victim of torture.

3.2.1. Draw attention to a situation/establish a pattern of violations

Governments whose agents commit human rights abuses prefer to keep such practices out of the public eye, in order to escape condemnation. Reporting allegations to the international mechanisms goes a long way towards preventing this, because it raises awareness of the real situation in a country. The international community is most likely to take action with regard to situations about which it receives a lot of information. The only way to increase the possibility of the rest of the world taking action against human rights violations in a country is to make sure that it knows about the situation.

If the information available supports it, you should try to present evidence of a pattern of violations. Consistent and regular information is evidence of such patterns and will raise more concern with the international community than reports of a few isolated incidents. This is because it shows that the problem is a serious one, and makes it more difficult for a state to argue that it is not involved or unaware of the practices.

3.2.2. Seek positive changes in a general situation

Drawing attention to a situation is not just about seeking condemnation or holding a state to account. Even more importantly, it is about seeking constructive and long-term improvements in a country which will contribute to the ultimate elimination of torture. This will often require changes both in the legislative framework and in official attitudes to torture. Many of the international mechanisms make suggestions to states about ways in which they can improve the general situation, for example through the introduction of legal and practical safeguards which give greater protection to detainees. This could involve legislation to reduce the period for which a detainee may be held without access to a lawyer, the introduction of regular medical examinations by independent doctors for all persons in custody, or measures to eliminate impunity (discussed below). Usually, the recommendations of the international bodies are just the beginning of a dialogue with the state in question, the purpose of which is to ensure that the recommendations are implemented.

3.2.3. Combat impunity

Bringing torture into the public eye in order to call *states* to account is one result of reporting torture allegations. On a different level, torture reporting can also help to cast light on the *individuals* who carry out such practices, to make sure that they cannot continue to engage in such behaviour without consequence. Ideally, this should be done by initiating prosecution within the domestic legal system. However, where prosecution is not or could not be effective, many of the international bodies are quick to condemn official tolerance of torture and to require or recommend that a state take measures to eliminate impunity. As long as perpetrators are able to ‘get away with it’, and indeed in some cases find that their chances of promotion are increased by using torture to obtain results in investigations, there is no incentive for them to give up practising torture and other forms of ill-treatment.

If a state allows impunity for perpetrators, this also raises an issue of state responsibility under international law. Many states actually have an obligation under a number of conventions, including the UN Convention Against Torture, to make sure that individuals who have carried out torture are held responsible for their actions. If a state does not prosecute individuals which it knows to have been involved in torture, or does not allow another state to do so, it may well be failing in its obligations under international law.

3.2.4. Seek a remedy for an individual victim

The foregoing objectives may seem somewhat indirect and long-term, and may not appear to provide much of a remedy for individual victims. Apart from the longer-term benefits for the individual of living in a country with an improved human rights record, there are several more immediate or direct remedies which may be obtained by reporting allegations.

3.2.4.1. A finding of violation

Many of the international treaty bodies described are able to pronounce on the question of whether or not torture or a related violation has taken place. This means that they can make an authoritative declaration that the state has breached its obligations under international law in relation to a particular individual. Even if it awards no further remedy to the individual, the effect is that there has been a public finding of the culpability of the state in question, and that the state has been forced to account for its behaviour.

3.2.4.2. *Holding perpetrators to account*

Some of the mechanisms can request or order that an effective investigation be carried out into an allegation of torture, and that the perpetrator be prosecuted for his behaviour. As is the case for eliminating impunity generally, this is important to reassure a victim that a perpetrator is not able to torture without repercussions.

3.2.4.3. *Reparation*

Reparation is about repairing the damage which has been caused to an individual. A number of the international judicial bodies are empowered to order a state to make reparations in cases where they have made a finding of violation. It can be awarded in a number of forms. Traditionally, it has often involved the award of monetary compensation, but it is becoming more common for other types of reparation to be ordered as well. Monetary awards are normally calculated on the basis of actual monetary loss, as well as moral damages, which means estimating the extent of suffering caused to the individual and/or his or her family and giving it a monetary value. Less traditional forms of reparation, which in many ways are a much more appropriate and effective way of addressing the consequences of violations, might include an order to open a school or hospital in a community which has been the subject of violations, requiring the state to inform relatives of disappeared or murdered persons of the location of the bodies of the dead, ordering that the state contribute financially to the rehabilitation of the victim, or even that the state make a public apology for what has taken place.

3.2.4.4. *Preventing the deportation of an individual to a country where he or she would be at risk of torture*

A number of the mechanisms are prepared to take urgent action to prevent the deportation of individuals to countries where they are believed to be at risk of torture. The individual must be able to show that he or she is personally at risk and that the risk is a continuing one - if this can be established, the body may request that the state from which asylum is being sought does not deport the person, at least until the mechanism in question has had an opportunity to consider the case. Such requests are not necessarily binding on the state, but are often respected.

3.3. What is torture?

3.3.1. Introduction

Deciding whether or not a set of facts amounts to torture can be tricky. There are certain types of treatment which most people will instinctively recognise as being unacceptable. There are others, however, which are less clear-cut, or which may depend on cultural factors. It is important to remember that when you submit an allegation to an international mechanism, you are seeking to show that the facts constitute torture or ill-treatment in a legal sense, not merely in your opinion. This section will examine what this might mean, and what the implications are for someone wishing to submit an allegation.

3.3.2. What does international law say about the meaning of torture?

The basic definition of torture is that contained in the UN Convention Against Torture (1984). According to Article 1(1), the term means :

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

From this definition, it is possible to extract three *essential elements* which constitute *torture*:

- The infliction of severe mental or physical pain or suffering
- By or with the consent or acquiescence of the state authorities
- For a specific purpose, such as gaining information, punishment or intimidation

Torture is an emotive word, but one which should not be used lightly. As you can see from the above definition, *torture* is characterised and distinguished from other forms of ill-treatment by the severe *degree of suffering* involved. It is therefore important to reserve the term for the most objectively serious forms of ill-treatment.

Cruel treatment, and *inhuman or degrading treatment or punishment* are also legal terms which refer to ill-treatment causing varying *degrees of suffering* less severe than in the case of torture. Forms of ill-treatment other than torture do not have to be inflicted for a specific purpose, but there does have to be an *intent* to expose individuals to the conditions which amount to or result in the ill-treatment. The essential elements which constitute *ill-treatment not amounting to torture* would therefore be reduced to:

- Intentional exposure to significant mental or physical pain or suffering
- By or with the consent or acquiescence of the state authorities

In order for the international bodies to make a distinction between the different forms of ill-treatment and assess the *degree of suffering* involved, they must take the particular circumstances of the case and the characteristics of the particular victim into account each time. This makes it difficult to identify the exact boundaries between the different forms of ill-treatment, because those circumstances and characteristics will vary, but it does make the law more flexible because it allows it to adapt to the circumstances. The important point to remember is that all forms of ill-treatment are prohibited under international law. This means that even where treatment is not considered severe enough (in legal terms) to amount to *torture*, the state may well still be found to have violated the prohibition on ill-treatment.

3.3.3. What does this mean in practical terms?

International law gives us two main guidelines to apply in assessing whether or not a set of facts amounts to torture:

- The *essential elements* contained in the definition of torture should be supported by the facts.
- Torture may be distinguished from other forms of ill-treatment by the severe *degree of suffering* involved and the need for a *purposive element*.

3.3.3.1. Essential elements

You will see from the extract of the UN Convention Against Torture cited above that the legal definition of torture is quite abstract in nature. It does not refer to specific types of ill-treatment or provide a list of prohibited techniques. Instead, it sets out a number of *essential elements* which are required for an incident to be considered as a possible case of torture in the legal sense. The elements necessary for treatment to amount to ill-treatment other than torture are similarly abstract. These elements may be recalled as follows:

- **WHAT WAS DONE?:** Severe physical or mental **pain or suffering** has been deliberately inflicted (*torture*) or intentional exposure to **significant** mental or physical **pain or suffering** has occurred (*ill-treatment other than torture*).
- **WHO DID IT?:** The **state authorities** either inflicted this suffering themselves, or else knew or ought to have known about it but did not try to prevent it.
- **WHY WAS IT DONE?:** The suffering was inflicted for a **specific purpose**, such as gaining information, punishment or intimidation (*torture only*).

What exactly these elements consist of is left for interpretation by the international monitoring bodies. They have the responsibility of developing consistent interpretations of the definition of torture and other forms of ill-treatment and must make sure that they apply the same standards in each case. This means that you, as an individual or organisation (NGO), do not have to decide whether the ill-treatment inflicted on an individual amounts to torture or something else, but by documenting facts which support the *essential elements*, you provide evidence for the international bodies to decide.

3.3.3.2. Degree of suffering

Torture is distinguished from other, lesser, forms of ill-treatment by the severe degree of suffering involved. This is perhaps the most difficult aspect of torture to assess. The two other *essential elements* are to a large extent objectively verifiable - it is generally objectively possible to establish that the perpetrator had a link with the state, or that the torture was inflicted for a specific purpose. The nature and degree of suffering experienced by an individual are another matter. They may depend on many personal characteristics of the victim - for example, sex, age, religious or cultural beliefs, health. In other cases, certain forms of ill-treatment or certain aspects of detention which would not constitute torture on their own may do so in combination with each other.

Certain types of treatment appear objectively to fall into the category of torture - for example, electric shocks to the genitals, or the pulling out of fingernails. Torture is not, however, limited to such familiar examples - it encompasses many forms of suffering, both physical and psychological in nature. It is

particularly important not to forget about psychological forms of ill-treatment - very often these can have the most long-lasting consequences for victims, who may recover from physical injuries yet continue to suffer from deep psychological scarring. Forms of ill-treatment which have been found to amount to torture, either alone or in combination with other forms of treatment, include:

- *Falaka/falanga*: beatings on the soles of the feet
- Palestinian hanging: suspension by the arms while these are tied behind the back
- Severe forms of beatings
- Electric shocks
- Rape
- Mock executions
- Being buried alive
- Mock amputations

There are, however, also many ‘grey areas’ which do not clearly amount to torture, or about which there is still disagreement, but which are of great concern to the international community. Examples include:

- Corporal punishment imposed as a judicial penalty
- Some forms of capital punishment and the death-row phenomenon
- Solitary confinement
- Certain aspects of poor prison conditions, particularly if combined
- Disappearances, including their effect on the close relatives of the disappeared person
- Treatment inflicted on a child which might not be considered torture if inflicted on an adult

One particularly significant factor which may affect an assessment of the severity of the *degree of suffering* experienced is that of culture. It is important to be aware that different cultures, and indeed individuals within a particular culture, have different perceptions of what amounts to torture. This can be relevant in two ways - on the one hand, it can mean that behaviour which is thought of as torture by a culture or individual victim, may not normally constitute torture in the eyes of the international bodies. On the other hand, it can mean that treatment which is consistently considered by the international community to amount to torture is not viewed as such by the person who has been subjected to it. For example, in one country, beatings, even severe beatings, may not be considered torture but rather normal practice, whereas tearing a woman’s clothing (without more) may be. It may even happen that treatment which is considered unlawful at the international level is actually lawful at the national level. In such cases, you should not be dissuaded from reporting the allegation, because the international bodies will be guided by international law. Remember that even where treatment is not found to amount to torture, it may still amount to another form of prohibited ill-treatment.

In order to make sure that possible cultural variations are taken into account when submitting an allegation of torture, you should:

- Explain the significance of cultural attitudes to certain types of treatment in your allegations and reports, because this may affect the international body’s assessment of the degree of suffering.
- Make sure not to omit any details of the treatment to which a person has been subjected, because facts which you may not consider important may actually be very relevant to the allegation.
- Remember that victims too may leave out details which they do not think are important, and that they should be encouraged to be as complete as possible about what has happened to them. (See Part II, Chapter 4 for guidelines on which information may be most relevant)

3.3.4. Conclusion: what is torture?

All of this discussion leads to the question: how can you be sure that the facts in your possession amount to torture or ill-treatment? The answer is quite simple - you cannot be sure, but you do not need to be.

- *Your responsibility, as an individual or NGO submitting an allegation of torture, is to ensure that the information you are providing supports the three essential elements which constitute the legal definition of torture (or two if you are alleging ill-treatment).*
- *It is the responsibility of the international bodies to determine exactly what amounts to torture or ill-treatment and what does not.*

The interpretation of what constitutes torture is constantly evolving. This may appear to complicate matters, but in fact it allows the international bodies to be relatively open-minded when assessing forms of ill-treatment which have not previously been found to amount to torture. For the person wishing to submit an allegation of torture, it means that certainty about whether or not something is torture is not necessary, but this does not mean that there are no minimum criteria. Remember that your task is to try to establish the *essential elements*.

You must show that:

- Severe physical or mental **pain or suffering** has been **deliberately** inflicted (*torture*) or that intentional exposure to **significant** mental or physical **pain or suffering** has occurred (*ill-treatment other than torture*).
- The **state authorities** either inflicted this suffering themselves, or else knew or ought to have known about it but did not try to prevent it
- In the case of torture (though not required for other forms of ill-treatment), the suffering was inflicted for a **specific purpose**, such as gaining information, punishment or intimidation

3.4. How does torture happen?

3.4.1. Who are the perpetrators?

As is emphasised in the section describing what is torture, it is necessary that the behaviour in question be carried out by, or with the approval of, a representative of the authority in power. This means that any state official could potentially be involved in torture or ill-treatment. However, considering the common purposes of torture, which may be to obtain information during an interrogation, or, increasingly, to intimidate the population as a whole in the face of insurrection or disturbance, it is unsurprising that the principal perpetrators are those officials involved in the criminal investigation process, and those responsible for the security of the state.

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

- The police
- The *gendarmarie* (in countries where this institution exists)
- The military
- Paramilitary forces acting in connection with official forces
- State-controlled contra-guerrilla forces

But could also include :

- Prison officers
- Death squads (torture following disappearance and preceding killing)
- Any Government official
- Health professionals - doctors, psychiatrists or nurses may participate in torture either by act (direct involvement which may include certifying someone fit for interrogation) or by omission (falsifying medical reports or failure to give appropriate treatment)
- Co-detainees acting with the approval or on the orders of public officials

In addition, torture often occurs in the context of armed conflicts, particularly internal conflicts involving forces in opposition to the authorities in power, and which control sections of the territory. In such circumstances, torture and other forms of ill-treatment may also be inflicted by:

- Opposition forces
- The general population

(See Part I, Chapter 3.6 for a discussion of allegations against non-state actors)

3.4.2. Who are the victims?

Anybody can be a victim of torture - man or woman, young or old, religious or atheist, intellectual or farmer. Very often the determining factor may be membership of a particular political, religious, or ethnic group or minority. However, no-one should be considered immune.

There is a tendency among those who report allegations of torture and other forms of ill-treatment to concentrate on information relating to “political prisoners”, those involved in politics and usually in opposition to the authorities in power. However, common criminals, particularly those accused of serious crimes, are very typically the victims of torture, perhaps for the purpose of obtaining information or a confession, or simply for the purpose of extortion or intimidation. Where the purpose is to spread terror among a population, all are equally at risk. It is very important not to give the impression that only “political prisoners” are at risk, by focusing on them to the exclusion of other victims who may also be very much at risk.

The identity of the victim is important because:

- Specific groups, such as children, women, the elderly, or religious persons, may be more vulnerable to the effects of ill-treatment, making it easier to consider that the degree of suffering is severe enough to amount to torture.
- It helps to identify patterns of abuse being directed at a particular group of victims.
- Additional international mechanisms which are specific to particular groups can be used - e.g. UN Special Rapporteur on Violence Against Women.

Specific examples where the identity of the victim may be of particular relevance include:

- Children: These are considered an especially vulnerable group. In particular, it should be emphasised that the effects of a certain type of ill-treatment on a child may be different to the effects which would be suffered by an adult undergoing the same treatment. It should also be noted that one form of ill-treatment which may have very far-reaching effects on a child is being made to witness the

torture of a parent or close relative. Similarly, threatening or forcing parents to witness the torture of their child may have severe psychological effects on the parents.

- **Gender specific torture:** Rape as a method of torture is not exclusive to female victims, but it is nonetheless commonly used in a gender-specific form, as a means of emphasising feelings of weakness and subordination in the victim or in the community. Cases of male rape may also be under-reported for many reasons, among which is the lack of awareness of the interviewer. Further examples where the gender of the victim may be relevant include the case of pregnant women, who are especially vulnerable, and women of child-bearing age, who may become pregnant as an aggravated effect of rape.
- **Religious persons:** There are examples where ill-treatment has been found to amount to torture or inhuman treatment on account of the religious character of the victim e.g. devout persons subjected to religious taunts; the plucking of the beard of an Orthodox priest.
- **Ill-treatment targeting a person's profession:** In one case, psychological torture was found to have occurred where a piano player was forced to undergo simulated amputations of his hands.

A more complete list of the types of characteristics which should be noted will be provided in Part II, Chapter 4.1.

3.4.3. Where is torture most likely to occur?

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

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

Remember that torture does not have to be confined to a place of detention and may occur in the victim's own home or during transportation to an official place of detention.

3.4.4. When is torture most likely to occur?

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

- The greatest risk of torture and other forms of ill-treatment to individuals is in the first phase of arrest and detention, before they have access to a lawyer or court. This risk persists as long as the investigation lasts, irrespective of where a suspect is being held.
- **Incommunicado detention** (i.e. detaining somebody either without acknowledgement or without allowing them access to anyone, such as their lawyer or family) is probably the single highest risk factor for torture because it means that there is no external monitoring of the interrogation process. Sometimes, the security forces only officially register the individual once they have completed the initial interrogation.

- Torture is usually less common in regular prisons for convicted prisoners as the investigation process has been completed, but it should be noted that many prisons also hold remand prisoners who are pending trial, as well as sentenced prisoners. A risk for remand prisoners should not be ruled out, especially if the security forces themselves run the prison or are known to be closely associated with it. The risk to remand prisoners may not necessarily exist within the institution itself, but instead with the possibility that they may be transferred back into the custody of the investigating authorities.
- In both the initial detention phase and also after transfer to a prison, it should be remembered that the **conditions of detention** themselves may amount to inhuman or degrading treatment, and thus should also be documented (See Part II, Chapter 4.1)
- Torture may also occur following **abductions**. In temporary abductions the victim is released several hours or days later. In the case of a ‘**disappearance**’ evidence indicates that the victim is held by or with the acquiescence of the authorities, yet this is not acknowledged by the authorities. The victim may not be found, or may be found dead. Both forms of abduction may involve torture and are used as a means of instilling fear or intimidation in the community. While cases of disappearance involve violations other than torture, (e.g. right to life, right to liberty and security of person) any evidence that torture occurred during the disappearance should be documented. The disappearance could also itself be found to amount to torture, either for the victim or for the relatives of the victim.

3.5. In what contexts might you receive or obtain allegations of torture?

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

General contexts in which you may receive or obtain allegations could include:

- Situations of political unrest or generalised violence
- Conflict zones

Specific contexts in which you may receive or obtain allegations could include:

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

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

- Court files
- Prosecution files
- Medical reports

- Records of admission and release in police stations and prisons (inconsistencies and gaps in such records are often a sign of an irregular practice)
- Records of attendance at a place of employment or education (this could help to confirm a claim that an individual was unable to attend for a certain period because of injuries resulting from torture)
- Local newspapers or news reports
- Community support groups, e.g. youth groups
- Religious personnel
- Other detainees

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

- Conflict zones: You should be aware that violations in such areas are likely to be perpetrated by both parties to the conflict, whether governmental or not, and it is important to keep accurate records of the alleged perpetrators in each case, or of any characteristics which may help to identify them. Remember also that the fear and intimidation factor is likely to be very great as civilians are often subject to persecution by both parties to discourage them from offering support and assistance to the opposite party. See Part I, Chapter 3.6 for possible courses of action in response to allegations of torture by non-governmental actors.
- Visits to custodial institutions:

Detainees are understandably less willing to make allegations of ill-treatment while still in the custody of the investigating forces (pre-trial detention), and in such settings you should be especially aware of the security of the individual. As a general rule, detainees are more willing to discuss their experiences at the hands of the investigating authorities once they have been convicted and are held in a regular prison.

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

Access to custodial institutions is difficult, but certain NGOs may have privileged access by agreement with the authorities, usually to convicted prisoners only, to provide health care, food or as part of a system of prison visiting. In such cases, however, it should be borne in mind that confidentiality may be a condition of access (see in particular the activities of the International Committee of the Red Cross, Part III, Chapter 7.2). Other persons who may have access to prisons include lawyers and healthcare professionals.

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

First, particularly in the case of new arrivals, allegations may be received about treatment experienced prior to arrival at the institution, whilst in the hands of the investigating authorities.

Second, allegations may be received about individual incidents which have occurred within the institution, such as abuse of an individual by a guard or by other inmates with the approval or encouragement of guards, a specific event such as a riot in which named individuals were attacked

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

Lastly, information can be obtained about general conditions in the institution, such as the living space, hygiene, a particularly distressing aspect of the institutional regime, unacceptable methods of punishment such as the use of chains or fetters, or prolonged isolation. Where possible, interviewing prisoners individually, rather than in groups, allows allegations about the institution to be better corroborated. It is worth bearing in mind that prisoners who have been in the institution for a long time will be more familiar with the general conditions than those who have just arrived.

A talk with the doctor at the institution can be very informative, particularly if he is willing to show you the medical files of prisoners. Of course, such access to medical files should be consistent with the need to protect the identity of individuals where confidentiality is expected (see note on confidentiality in Part I, Chapter 2 above). Where medical examinations are carried out upon arrival at a prison, it is particularly useful to ask to see the medical report of this first examination, as it may provide evidence of injuries received while in police custody, or show that the individual was in good health on arrival and may have received injuries or become ill subsequently. Doctors may be more inclined to show you evidence of events which occurred outside of their institution as this is less likely to have implications for them.

IMPORTANT : You should be aware that there may be repercussions for the doctor depending on how you intend to use this medical information. If possible, this should be discussed with the doctor or other health staff, and consent obtained if names of either the staff or the victim are to be used (see note on informed consent in Part I, Chapter 2 above).

- Medical settings:

In countries where torture is a regular occurrence, doctors are sometimes early witnesses, when they are called to treat the resulting injuries or psychological trauma of ill-treatment. In some countries there is an area of medicine, known as forensic medicine, in which the doctors have specialised knowledge of types and probable causes of injuries or disease. For legal reasons the forensic doctor is often asked by the police or courts to examine victims of violence and should keep detailed records. While doctors may be too afraid to report cases themselves, requesting a medical file, either from the forensic doctor, the family doctor, hospital or prison doctor, if this is possible, could yield valuable information. Again the issues of **consent** and **confidentiality** should be discussed (see Part I, Chapter 2).

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

- Camps and centres for refugees and internally displaced persons:

Camps and centres for forcibly displaced persons, whether within or outside their own country, particularly in conflict zones, are inevitably home to many deeply traumatised persons who have both experienced and witnessed torture, and who may wish to make allegations of such. If information is sought in connection with a specific incident or series of events, these camps will often contain persons originating from the same region or village who can provide corroboration. Some caution will nonetheless need to be exercised in consequence, first because there may be a possibility of obtaining an unbalanced account of events if the population of the camp consists mainly of one

group, and secondly because perpetrators may also have concealed themselves in the camp and may give misleading information. Where information obtained from refugees appears to indicate that widespread torture is one of the causes of the refugee flow, you should consider passing on the information to the UN High Commissioner for Refugees - see Part III, Chapter 7.2.

- **Asylum applications:** Allegations of torture of an individual in his home country may form the basis of a claim for asylum in a second country. Although the elapsed time since the alleged ill-treatment can mean that collecting evidence is more difficult, the basic principles outlined in this handbook should still be followed (see Part II, Chapter 5). It is also worth being aware that individuals may sometimes inaccurately claim that they have been tortured, solely in order to avoid deportation.

3.6. Can allegations be made against non-governmental actors?

Many human rights abuses, including torture, occur in the context of political unrest, tensions and conflict. In such circumstances, it is often the case that the perpetrators of torture are not only state officials, but also private persons with no connection to the state (usually referred to as non-governmental or non-state actors). This is a very difficult and very real problem from many angles, but for the purposes of this handbook, the question is: **Can any action be taken in response to allegations of torture by non-governmental actors?**

3.6.1. Can action be taken under human rights law?

You will have seen earlier in this chapter that the basic definition of torture contained in the UN Convention Against Torture makes reference to the actions of ‘a public official or other person acting in an official capacity’. Does this mean that international human rights law considers private acts of cruelty to be acceptable? No - the definition is limited to persons acting in an official capacity because states are expected to deal with the actions of private persons themselves through their own domestic law.

Human rights law does foresee the possibility that states might not do this, however - consequently, a state can be held responsible not only for its actions (the deliberate practice of torture), but also for its omissions (failure to take effective measures to prevent torture from occurring/ failure to prosecute perpetrators/failure to investigate allegations).

What consequences does this have for the possibility of taking action in response to allegations of torture by non-governmental actors? It means that:

- International bodies responsible for implementing international human rights law **cannot** in principle examine the possible responsibility of a non-governmental actor for the **act of torture**. This applies particularly to treaty bodies, which can only assess the responsibility of States Parties to the conventions which created them.
- They **can** examine the possible responsibility of the state in which the act took place for its **failure to take effective measures to prevent** the act of torture.
- They **can** also examine the possible responsibility of a state wishing to **expel** a person to a country where he or she is at risk of torture, including at the hands of non-governmental actors.

3.6.2. Do other types of law prohibiting torture apply to non-governmental actors?

3.6.2.1. *International law of armed conflict*

The international law of armed conflict (ILAC) is a type of law which applies only in situations of armed conflict, both international (where the conflict involves two or more states) and non-international (where the conflict takes place within the territory of a single state, and may involve governmental forces and one or more opposition forces, or only non-governmental forces divided into opposing factions).

ILAC prohibits the torture, cruel, inhuman or degrading treatment of any person in the power of the other party including, in the case of non-international armed conflict, where that party is non-governmental in nature. (Common Article 3 of the Geneva Conventions of 1949)

This appears promising - here is a legal obligation binding on non-governmental actors not to practise torture. Unfortunately, there are difficulties in implementing this obligation, because ILAC relies mainly on domestic criminal law for its enforcement, which means that either perpetrators have to be captured and tried by the governmental party, or the non-governmental forces need to have their own legal system incorporating such obligations.

Certain particularly grave violations of ILAC are considered so serious that it is also possible for any state to try a perpetrator in its domestic courts (*universal jurisdiction*), but only if its domestic legislation allows this. Few states are as yet willing to do this, but this may change in the future. In recent years, it has proved possible to establish international tribunals on two occasions specifically to examine possible violations of ILAC - in the case of the Former Yugoslavia and that of Rwanda. However, they can only examine matters arising from those particular conflicts. An even newer development is the creation of a permanent International Criminal Court (ICC) which will be able to examine, among other things, matters relating to violations of ILAC. However, the ICC has not yet begun to function and it is not yet clear what role, if any, NGOs will have in the process.

3.6.2.2. *Crimes against humanity*

Crimes against humanity are particularly grave violations of human rights committed on a large scale. They are generally considered to include torture and other inhuman treatment, when committed as part of a widespread or systematic attack directed against a civilian population, with knowledge of the attack. They do not have to be committed in the context of an armed conflict and the policy to commit the attack can be carried out by a non-governmental group. This means that it may be possible to hold non-governmental actors responsible for acts of torture committed in the context of a wider policy.

As with ILAC, there are difficulties with the enforcement of crimes against humanity. It will be possible for the ICC to examine allegations of such crimes when it begins to function, but it is difficult to predict how this will work. This entire category of crimes is considered so serious that it is also possible for states to exercise *universal jurisdiction* over them, but only where their national law allows this, as with grave violations of ILAC. A further consequence of their seriousness is that there is no time limit for the prosecution of perpetrators - with some crimes, prosecutions must be started within a certain amount of time, e.g. 10 years after the incident, but such limits do not apply to crimes against humanity.

3.6.2.3. *National law*

Like public officials, non-governmental perpetrators of torture and other forms of ill-treatment can be prosecuted under the national law of the country where the torture or ill-treatment occurred. The exact law under which this may be done will vary from one country to the other, and could include legislation implementing ILAC or crimes against humanity as previously mentioned. More commonly it could take the form of, for example, a prosecution for assault, causing grievous bodily harm or rape.

3.6.3. **Conclusion: how can you use information alleging torture by non-governmental actors?**

This will depend on what you hope to achieve with the information. Possible courses of action are far more limited than where your allegation concerns official action, and you should be aware that the likelihood of obtaining concrete results is low. Nonetheless, if you present your information the right way, you may be able to increase the possibility of achieving something.

- If you are seeking an individual remedy:

You should start by seeking a remedy under the domestic law of the state in which the torture took place (as you will see in Part III, this is the usual first step to seeking an individual remedy). Remember to check if there is any implementing legislation which allows prosecution on the basis of ILAC or crimes against humanity.

If this is unsuccessful, you may be able to apply to an international body. Under human rights law, it is not possible to hold non-governmental actors directly accountable, so you should proceed against the state as you would with a regular allegation, but you will need to base your submission on an argument that the state has failed in its obligations by omission - that it has failed to take steps to prevent torture, to investigate the allegation adequately or to prosecute the perpetrator.

It is also possible to apply to an international body to prevent the expulsion of a person to a country where he or she is believed to be at risk of torture, even if this risk is at the hands of non-governmental actors. This has been confirmed only quite recently, and has been applied by both the Committee Against Torture and the European Court of Human Rights in the case of proposed expulsions to Somalia. It is possible that this will prove to be a special case because of the complete absence of central governmental authority in that country, such that the non-governmental actors could be considered to be carrying out the functions of a Government and thus “acting in an official capacity”. However, these are encouraging precedents suggesting that the important factor is the risk itself rather than the origin of the risk.

- If you are seeking a remedy of a more general nature:

As with those which receive individual cases, international bodies examining a state’s general human rights situation are not really in a position to take concrete action in relation to violations by non-governmental actors, but it is very important for them to be informed of the role of non-governmental actors in that general situation. This helps them to understand the context and to know what the Government should in fact be held responsible for. Very often, governments will try to argue that any abuses which occur are perpetrated by opposition forces - if you can provide accurate information about what those forces do and do not do, the international body will be better equipped to respond to such arguments.

Ultimately, it may be that the most effective course of action is to make sure that the actions of the non-governmental actors are public knowledge - both by sending the information to the international bodies for context-setting purposes, and through active lobbying (see Part III, Chapter 7 for suggestions regarding lobbying). Where international human rights law cannot provide a great deal of assistance in cases involving non-governmental actors, public pressure may still do so.

SUMMARY

PART I - PRELIMINARY MATTERS

1. What can you hope to achieve by reporting allegations of torture?

- **Draw attention to a situation/establish a pattern**
- **Seek positive changes in a general situation**
- **Combat impunity**
- **Seek redress for an individual victim:**
 - A finding of violation
 - Holding perpetrators to account
 - Reparation
 - Preventing the deportation of an individual to a country where he or she is believed to be at risk of torture

2. What is torture?

Torture can be difficult to define, but you do not need to do so for the purpose of reporting allegations. You must, as a minimum, be able to show that:

- Severe physical or mental **pain or suffering** has been **deliberately** inflicted (*torture*) or that intentional exposure to **significant** mental or physical **pain or suffering** has occurred (*ill-treatment other than torture*).
- The **state authorities** either inflicted this suffering themselves, or else knew or ought to have known about it but did not try to prevent it.
- In the case of torture (though not required for other forms of ill-treatment), the suffering was inflicted for a **specific purpose**, such as gaining information, punishment or intimidation.

3. How does torture happen?

Who are the perpetrators?

- **Anyone acting in an official capacity:** This might include police, gendarmes, security forces, prison officers, military personnel, Government officials or civil servants, political superiors, 'death squads', medical personnel.
- **Members of armed opposition groups**

Who are the victims?

- **Anyone**

Where is torture most likely to occur?

- **Any location (including during transportation or in a victim's own home), but especially any place where interrogation is likely to take place.**

When is torture most likely to occur?

- **In the early stages of being held, particularly if being held *incommunicado* (without access to a lawyer or family). The risk persists as long as an investigation lasts.**

4. In what contexts might you receive or obtain allegations of torture?

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

Don't forget to look in more unusual places too. See main text for suggestions.

5. Can allegations be made against non-governmental actors?

The responsibility of non-governmental actors is limited under international law, but:

If seeking an **individual remedy**, you could:

- **Seek a remedy under national law:** This could include prosecution on the basis of the International Law of Armed Conflict or crimes against humanity, if national legislation exists which makes this possible
- **Apply to an international human rights body:** As non-governmental actors cannot be held directly accountable under human rights law, you will need to bring your application against the state in which the incident took place, arguing that it has failed in its obligations to take steps to prevent torture, to investigate the allegation adequately or to prosecute the perpetrators.

If seeking a **remedy of a more general nature**, you could:

- **Keep the international human rights bodies informed of the activities of non-governmental actors**
- **Engage in lobbying**

PART II - DOCUMENTING ALLEGATIONS

- 1. Introduction**
- 2. Basic Principles of Documentation**
 - 2.1. Why do these principles matter?**
 - 2.2. What does good quality information consist of?**
 - 2.3. What can you do to maximise the accuracy and reliability of information?**
- 3. Interviewing the Person Alleging Torture**
 - 3.1. Introduction**
 - 3.2. General considerations**
 - 3.3. Conducting the interview**
- 4. Information Which Should Be Recorded**
 - 4.1. Model information**
 - 4.2. Specific contexts**
- 5. Evidence**
 - 5.1. Medical evidence**
 - 5.2. Statement of person making allegation**
 - 5.3. Witness evidence**
 - 5.4. Other types of evidence**

1. INTRODUCTION

The object of this chapter is to provide guidelines on how to go about documenting an allegation of torture. This handbook deals specifically with documenting and reporting torture, but allegations of disappearances, extra-judicial killings and other human rights violations can also be documented using broadly similar information, collected using these guidelines.

The individual allegation forms the backbone of any submission. Even if your final goal is to compile a report which discusses the general situation in a country, you will need to start by collecting individual allegations as this is the best way to establish and build up patterns and general trends. Individual allegations are not necessarily made by the victim him or herself - in cases where the victim has disappeared, been killed, or is being detained incommunicado, an individual allegation may be made by witnesses or relatives who last saw the person, and may have noted injuries or altered behaviour that indicate ill-treatment had occurred.

In order to establish guidelines for documenting allegations of torture and other forms of ill-treatment, this chapter will consider the following issues:

- There are some basic principles which should be borne in mind when documenting allegations of human rights violations. In particular, the key to making such allegations is accurate, reliable, good quality information. What exactly does this mean? Does it vary according to the mechanism or procedure to which you wish to submit the information? What steps can you take to make sure that your information has the right characteristics? [Part II, Chapter 2]
- In many cases, you will need to interview the person making the allegation. This might be the victim, a member of the victim's family, a witness to the incident of torture, or some other person wishing to report the incident. Are there any special considerations you should be aware of when carrying out the interview? [Part II, Chapter 3]
- What kind of details should be recorded during an interview? Is there a minimum amount of information which must be obtained wherever possible? What kind of questions should you ask? How can you make sure that you obtain the information you need? [Part II, Chapter 4]
- Why is supporting evidence important? What kind of evidence should you be looking for and where can you find it? [Part II, Chapter 5]

2. BASIC PRINCIPLES OF DOCUMENTATION

The primary goal of documenting allegations of human rights violations is to create an accurate, reliable and precise record of events. The uses to which this record may be put are varied, but all rely equally on the quality of the record which has been established. This means that when you are documenting allegations, you should:

- Seek to obtain good quality information
- Take steps to maximise the accuracy and reliability of the information

2.1. Why do these principles matter?

Unless you are making an allegation based on your own experience, it can be difficult to always be certain of the quality, accuracy and reliability of the information you collect. Human rights violations often occur in contexts where emotions and allegiances are very strong, and can influence the reports and allegations received. It is important to do your best to remain objective when assessing the nature of the information - no matter what opinion you may hold about the general situation or however strongly you might feel about the content of the allegation, you need to consider if, objectively, the information is sufficiently accurate, reliable and of good quality to initiate action before a domestic authority or an international body. As you will see below, the degree of quality, accuracy and reliability necessary may vary according to the course of action selected, but you should always aim to reach the highest standard possible in the circumstances. How rigorous you choose to be is a decision for you or your organisation, but remember that the information you submit is a reflection of your own reliability - this will affect your reputation with the international bodies, and the seriousness with which your allegations are considered.

2.2. What does good quality information consist of?

The quality of information necessary in relation to a particular allegation depends on the purpose for which it is to be used. For example, judicial procedures, whether domestic or international, usually require a high standard of proof. By contrast, reporting procedures may be able to act with little or no supporting documentation or fewer details. You should aim to obtain the best information possible under the circumstances - this does not mean that you must always reach the highest standard before submitting information, but it does mean that you should do your best to put together a strong allegation using all the information available to you.

Factors which contribute to the quality of your information are:

- The source of the information: Where was the information obtained? Directly from the victim, from the victim's family or friends, from a witness present at the scene of the incident, from someone who heard it from someone else, from a media report? The further away from the victim or incident you get, the less dependable the information is likely to be.
- The level of detail: Is the allegation very detailed? Are there unexplained gaps in the account? Do you only know the very bare facts? The more detail you can obtain, the better, because it helps others to understand what happened.

- The absence or presence of contradictions: Is the account consistent throughout? Are there contradictions in the account or elements which do not make sense? Good information should be consistent, or at least try to provide a reason for any inconsistencies - for example, if a victim or witness has made two statements which contradict each other, it may be that this is a result of intimidation. Minor inconsistencies are common and may not affect the overall quality of the information, but major inconsistencies should prompt you to seek further verification of the information.
- The absence or presence of elements which support (corroborate) or disprove the allegation: Are there witness statements which confirm the victim's account? Is there a medical certificate or autopsy report which confirms the victim's injuries? The more supporting documentation you can provide, the more likely it is that the allegation will be found credible.
- The extent to which the information demonstrates a pattern: Is the allegation one of many alleging similar facts? Is it the only one of its kind which has ever been received in a particular area? Where there is evidence of a commonplace practice, there may be a higher presumption that the information is true.
- The age of the information: Is the information very recent? Does it relate to facts which occurred several years previously? The fresher your information, the easier it is to investigate or verify the facts alleged.

FIRST HAND + DETAILED + INTERNALLY CONSISTENT + CORROBORATED FROM SEVERAL ANGLES + DEMONSTRATING A PATTERN + FRESH = HIGHEST STANDARD

Remember that this is an indication of what the very highest standard would be. It is often not possible to obtain information of this quality - this does not mean that you cannot use it. Instead, the quality of your information will be a factor when the time comes to select the procedure(s) to which you wish to send it. The emphasis in this chapter is placed on documenting the allegation in such a way that you should in principle be able to submit it to virtually any available procedure. Any minimum requirements or restrictions specific to a particular procedure are noted in Part III.

2.3. What can you do to maximise the accuracy and reliability of information?

Verifying the accuracy and reliability of information can be a difficult and sensitive task and it is true that to a large extent you are dependent on the good faith of those who supply you with information in the same way that the international bodies are on yours. It is, however, possible to maximise the likelihood that information is accurate and reliable by taking certain general precautions, by seeking corroboration of specific cases, both at the time of an interview and subsequently, and by exercising good judgement.

General precautions which you can take to maximise reliability include:

- knowing your sources and being familiar with the context in which allegations are being made
- maintaining contact with sources - you may need to obtain or verify details at a later stage
- asking for victims' names and contact details even if you keep them confidential
- being more cautious and thorough with vague or general information
- avoiding the basing of allegations purely on media reports or rumours without first seeking corroboration

When carrying out interviews, you can maximise both accuracy and reliability by:

- using precise questions
- approaching the account in a chronological fashion so that it is easier for you to pick out and address inconsistencies
- reviewing apparent inconsistencies from several angles, rewording your questions if necessary - the interviewee may be confused or may not understand your question
- asking if there were any witnesses to the alleged incident or if there is any supporting documentation, such as a medical report or a copy of a petition lodged as a result of the incident - explain that supporting documentation can help to make an allegation stronger and increases the opportunities available to seek a remedy
- observing and noting the interviewee's demeanour and body language, asking yourself - does this person seem credible? In this context, you should be aware of the influence of culture, gender and psychological state.

Whenever possible, where an interviewee has indicated the existence of potential corroborative evidence, you should try to obtain it.

Ultimately, you should exercise judgement - where you have doubts about the accuracy or reliability of an allegation, it is worth spending a little more time seeking corroboration than when you are convinced of its sincerity. If you have reservations about the allegation, it is likely that others will have them too, because they can only see it through the perspective you present in your submission. If you cannot resolve your doubts, you may be wasting more time and resources preparing the allegation than you would in either dispelling or confirming them.

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

3. INTERVIEWING THE PERSON ALLEGING TORTURE

3.1. Introduction

In many ways, recording the allegation of torture is the most crucial step in the entire reporting process, because it dictates what you are able to do with the information in the later stages, yet it is also the one which can be most difficult either to learn or to explain in a universally applicable manner. Training of personnel in interview techniques should form part of the preparation any NGO makes before attempting to document allegations and is beyond the scope of this handbook. The following guidelines and suggestions are designed to be used as an *aide memoire* and not intended to replace proper training of personnel.

Remember that an allegation of torture may be made by:

- the victim
- the relatives of a victim
- witnesses, such as a doctor who examined the individual, or individuals who saw the victim being taken into custody or were present during the incident of torture.

In all cases the information can be collected by interviewing the person making the allegation. The interview may lead you to seek further witnesses, such as co-detainees, or a doctor who may have examined the person (see Part II, Chapter 5.3)

3.2. General considerations

When conducting an interview, you should bear in mind the following general considerations:

- You need to balance two important requirements, which should be complementary, but may sometimes conflict: the need to obtain a useful account, and the importance of respecting the needs of the person being interviewed.
 - ⇒ On the one hand, the guiding principle should be that you are attempting to obtain the most logical, precise and detailed account possible of the incident, so as to enable you or anybody examining the allegation to understand clearly what happened, as well as to make it possible to seek verification or investigation of the information.
 - ⇒ On the other hand, it can easily happen that an interviewer, intent on reconstructing a sequence of events, forgets that the interview itself can be very difficult for a person who has already undergone a traumatic experience once and is being asked to focus on it in detail. Interviewers should show sensitivity in their questioning and watch out for signs of tiredness or distress. They should also be aware of culturally taboo subjects, particularly sexual abuse. Not only may the interview become unpleasant for the person being interviewed, but it is also possible that the account may become less reliable if the person is tired or upset.
- A balance must also be struck between the need to obtain as many details as possible and the importance of not over-directing or influencing the account. The facts which you record should be those which occurred, not those which you suggest might have occurred.
- Each person interviewed, whether the victim or a relative or other witness, is an individual with a distinct story. Even if you are aware of the patterns of violations that are prevalent in your area in

the greatest detail, or you are fairly certain what happened to a particular victim, you should not assume that each person will have the same story. You must treat each interview as a unique record.

- Members of the documentation team might find interviewing victims of torture and other witnesses to be very stressful. They should be prepared to discuss their responses and feelings amongst themselves, and if necessary seek professional help.

3.3. Conducting the interview

3.3.1. Before you start

Remember to review in detail the discussions in Part I, Chapter 2.3, relating to informed consent, professional ethics and security. They are central to the interview process and there are certain aspects which you will need to explain carefully to the interviewee.

3.3.2. How should you begin the interview?

You should begin by introducing yourself, your organisation, your objectives, and the possible uses to which the information you are gathering may be put. If you requested a particular individual by name, you should explain to that individual how you obtained his or her name. Make sure that the interviewee has no objection to note-taking or the use of recording-machines or interpreters. Address the issue of *informed consent* and emphasise the confidentiality of the interview itself, subject to the consent of the individual to its use. It is also important not to build unrealistic expectations for the interviewee - you should make sure that they understand that any potential allegation process may take time and can yield limited results.

3.3.3. Should you keep notes of the interview?

Keeping a detailed record of your interview is important to ensure accuracy, but you should explain to the individual how these notes will be used and who will have access to the information contained in them. There may be some instances when it is more appropriate to just listen (e.g. in a small police station) and make your notes immediately afterward.

3.3.4. By whom should the interview be conducted?

Interviewing an individual, particularly a victim, about an incident of torture is both emotionally and physically tiring. It is especially difficult where the interviewer is alone, because this requires an ability to ask questions, listen, develop a rapport with the interviewee, handle difficult emotional situations, take notes and watch out for gaps and inconsistencies all at the same time, an almost impossible task. Where the circumstances permit, it is best to interview as a pair, with one person asking the questions and the other taking notes. Even better is where the two individuals have complementary skills, e.g. medical and legal expertise. This helps to make sure that no important points are missed and that the right questions are asked. In order to avoid confusion for the interviewee and to facilitate the establishment of a rapport, however, you should make sure that one of the interviewers has primary responsibility for questioning, giving the second interviewer an opportunity to intervene towards the end.

3.3.5. Are there any special considerations to keep in mind when using interpreters?

- Make sure that the interviewee agrees to the use of an interpreter and is aware that the interpreter has a professional duty to respect the confidentiality of the interview.
- Be aware that the interpreter may find the content of the interview difficult to deal with
- Make sure that the interpreter is aware of the need for absolute confidentiality - this is particularly important if you are using non-professional interpreters.
- Be aware that non-professional interpreters may be more easily drawn into the conversation than professional ones - it is important to explain to them that their job is to relate the interviewee's words exactly. If they have also had a personal experience which they wish to tell you about, let them know that you can arrange a separate interview with them.
- Avoid using local persons unless absolutely necessary. It can create mistrust on the part of the interviewee, and may also place the interpreter at risk. This applies equally to co-detainees, family members and other relatives, and anyone involved in the situation in any way. Remember in addition that while family members may be viewed as supportive in certain cultures, in others it may be highly inappropriate to discuss certain matters in their presence. For example, it may be culturally taboo for a female victim to discuss sexual matters in the presence of a male member of her family. If you or your organisation are of local origin, you should probably already be aware of any sensitivities - do not forget to take them into account.
- Remember not to switch off during interpretation: even if you are not speaking directly to the interviewee, it is important to establish a rapport with them and to show that you are interested in what you are being told.

3.3.6. What can you do to make the interviewee feel more at ease?

Interviews about very personal experiences, such as ill-treatment, can be extremely intimidating. You may not have much control over the setting in which the interview takes place, but even small considerations on your part can help an interviewee to feel more comfortable.

- Establish as comfortable and private a setting as possible - preferably alone, unless the interviewee would feel more at ease with someone else present and that person agrees not to interfere with the conversation.
- If the interview cannot take place in private, try to ensure at least that others are out of hearing.
- Be aware that your posture and how you sit in relation to the interviewee can affect how comfortable they feel - for example, in a confined space, leaning forward may appear threatening, while under other circumstances, not doing so may convey a lack of interest. Some may prefer to sit closer to the interviewer, others may be very protective of their personal space or shy away from being touched. Be aware of your surroundings and observe the body language of the interviewee to gain a sense of what may be most appropriate in a given case.
- Allow for the possibility of taking breaks.

3.3.7. How can you deal with people who are too afraid to talk?

Some interviews may be conducted in a relatively safe place, but in many cases the surroundings will not be secure. This is particularly the case where interviewees are still in the custody of the authorities. You cannot ensure their safety (see Part I, Chapter 2.3, for a general consideration of security issues), but you can take steps not to place individuals at greater risk than necessary.

- Make sure that individuals have given their *informed consent* to the interview (see Part I, Chapter 2.3).
- Never name individuals alleging ill-treatment to the authorities without their express consent.
- Avoid identifying individuals, even inadvertently, as being those who have given you information - for example, in a location with a very small number of detainees, like a police station, you should make sure to interview all detainees in the same way, and not to react immediately to allegations in a way which makes it possible for the authorities to identify the source of information. If you feel that an issue should be immediately taken up with, for example, a police station chief, you should first consult with the interviewees, and should never approach the official without their consent.
- Make it very clear to interviewees that if they or any of their relatives or friends are subject to intimidation or pressure of any kind as a result of the information they have provided, they should let you know - give them a card with your contact details, and emphasise the importance of contacting you.
- Do your best to follow-up individual cases if you feel they may be at risk in any way - keep records of all the persons you have interviewed, and ask for them by name if you are able to carry out subsequent visits.

3.3.8. Are there any special considerations to keep in mind when conducting interviews in prisons or other places of group custody?

Awareness of group dynamics and prison structures is important when choosing how to go about interviewing individuals in such an environment.

- Where there is a ward or prisoner representative, it can be helpful to interview and seek the co-operation of this person first - similarly, there may be a certain hierarchy among persons in long-term custody which it may be useful to be aware of.
- If it is feasible, you should try to interview all detainees. In a large facility, this may not be possible, but you should try at least to interview a significant group of detainees of a particular category.
- If interviews must be carried out in a ward or dormitory environment, it can be helpful to begin with a general group interview introducing yourself and what you are looking for, but you should also interview each individual. Even if there are others in the same area and privacy is not possible, you should try to talk to each individual one at a time.

3.3.9. How can you address the sensitivity of the subject-matter?

Interviews about experiences of torture can be very sensitive and painful, but you can take steps to minimise the risk of re-traumatisation of victims. For example:

- Show regard and respect for the interviewee in your tone, language, and attitude.
- Be aware of cultural factors and exercise particular sensitivity towards culturally-taboo subjects.
- Advise the interviewee about the possibility of obtaining support or a referral.
- Listen and allow expression of personal and family concerns.
- Acknowledge pain and distress, but maintain professional boundaries - do not create unreasonable expectations that you can respond to their needs.
- Do not press interviewees if they become distressed - be aware that some victims might not be ready to talk about their experience.
- Where possible, it may be better to carry out several shorter interviews rather than one long and intensive one.
- Try not to end an interview suddenly without bringing the conversation around to a less sensitive subject.

3.3.10. What can you do to maximise the reliability of information?

You can:

- Avoid leading questions - these are questions which already suggest the answer you are looking for, e.g. asking 'were you tortured in custody?' would be a leading question, but 'did anything happen to you?' would not. It is important that the account given by the interviewee is his own, not yours.
- Encourage the interviewee to use his or her own words.
- Avoid the use of lists where possible, as they can lead to inaccuracies where the items on the list do not correspond exactly to the experience of the interviewee.
- Be aware that inconsistencies do not necessarily mean that an allegation is false. The interviewee may be confused or have found your question difficult to understand. You can sometimes resolve inconsistencies by asking the same question in a different way.
- Observe the interviewee carefully - make a note of your impression of his or her credibility or otherwise.

3.3.11. Are there any special gender considerations to take into account when selecting an interviewer or interview team?

There is no strict rule on this point, and it will depend on the individual interviewee and interviewer. Preferences may be based on cultural or personal factors. In general, it is better to try to have a female interviewer present when interviewing a woman, especially if the account is likely to involve sexual matters. It is less clear-cut with regard to men - they may also prefer to speak with a woman about sexual matters, but in certain cultures this would be unacceptable. Do not forget to take into account the gender of the interpreter.

3.3.12. Are there any special considerations to take into account when interviewing children?

Your primary goal when interviewing children must be to try not to do harm. It is very different to interviewing adults, and needs to be treated as such. Interviewers should have some experience of working with children or the effects of an interview may be more detrimental than the potential benefits. Ideally, they should have both experience and expertise, and if they have never done it before, it is advisable to run through a mock interview with another member of the interview team in order to get a feel for the process. The following should be borne in mind:

- In addition to, or instead of, being tortured themselves, children may have been forced to witness the torture of others, particularly parents or close family members. You should not underestimate the effects which this may have on them.
- It is important to give children a sense of security and support during the interview. This may be achieved through the presence of a parent, relative or guardian, or a counsellor if the child has been seeing one.
- It is most important to observe a child's behaviour during the interview: their ability to express themselves verbally depends on their age and stage of development, and behaviour may reveal more about what happened to the child than his or her words.
- Children are particularly sensitive to tiredness and should not be pressed.
- If the child may have been the victim of a physical or sexual assault, an intimate examination should not be carried out by a non-expert doctor.
- Try to ensure that the child is provided with a support network after the interview.

4. INFORMATION WHICH SHOULD BE RECORDED

IMPORTANT NOTE :

The guidelines below indicate the optimum information which you could collect. However, this is not a rigid checklist, and must be used flexibly, adapting to the particular context. It is important not to become excessively focused on obtaining a specific number of details, which may either be inappropriate in a particular case or may result in your failing to pick up on other important points which you were not expecting. Even more importantly, you must respect the individual and not see them as simply an information source, or the interview may itself deteriorate into a form of interrogation.

Be guided by your impression of the clarity of the account. Ask yourself throughout if there is any aspect which you do not understand, or which seems unclear, vague or contradictory. Check that it makes sense to you. Watch out for gaps in the chronology, where periods of time are not accounted for. Returning to these gaps and apparent contradictions may reveal elements which you did not think to ask about. Ideally, your notes should enable you to recount the events in sequence, with no big questions left unanswered.

Do not delay in sending your allegation due to the absence of some of the details included below (they may not be relevant or essential), but do make sure that you can at least establish the minimum elements for making an allegation of ill-treatment (see Part I, Chapter 3.3): that a victim underwent, or is at risk of undergoing, ill-treatment at the hands of or with the knowledge and acceptance of a state authority.

4.1. Model information

YOU SHOULD KNOW:

- | | |
|-------------------------|-----------------------------|
| • WHO did WHAT to WHOM? | • WHEN, WHERE, WHY and HOW? |
|-------------------------|-----------------------------|

4.1.1. What kind of details do you need in order to answer these basic questions?

The information should:

1. IDENTIFY THE VICTIM(S)
2. IDENTIFY THE PERPETRATOR(S)
3. DESCRIBE HOW THE VICTIM CAME INTO THE HANDS OF THE PUBLIC OFFICIALS
4. EXPLAIN WHERE THE VICTIM WAS TAKEN / HELD
5. DESCRIBE WHAT THE HOLDING CONDITIONS WERE LIKE
6. DESCRIBE THE FORM OF THE ILL-TREATMENT
7. DESCRIBE ANY OFFICIAL RESPONSE TO THE INCIDENT (INCLUDING STATING THAT THERE WAS NONE)

IDENTIFY THE VICTIM(S)

The more detail can be obtained about the individual, the more definite the identification can be:

- Full name (and father's name - relevant to some cultures).
- Gender (this may not be clear from the name alone)
- Date of birth/age
- Occupation
- Address
- Appearance, including any unusual characteristics
- A photograph - of the victim alive or indeed dead (these might help experts to interpret any obvious signs of ill-treatment seen in the photographs)
- Some indication of the victim's state of health before being arrested or detained - medical records, witness accounts etc.

Remember that urgent actions cannot normally be taken without a name.

IDENTIFY THE PERPETRATOR(S)

Remember that it must be established that the victim was in the custody of, or held with the acquiescence of, the authorities, or that the authorities failed to protect the victim, for a violation to be established. You do not necessarily have to identify the individual perpetrators (though you should if you can), as long as you can establish that they had a connection with the state.

- Who apprehended the victim? - ideally the **number** of people and their **name, rank and unit**. If not known then the following details can help in identification:
- Which security force, military, or paramilitary **unit** did they belong to?
- How were they **dressed?** - **uniform** or **plain clothes?**
- What did they **look** like? - did they have any **unusual characteristics?**
- What **weapons** did they carry? - some weapons may be fairly specific to a force.
- What **vehicles** were used? - marked or unmarked; was the number plate or registration noted?

DESCRIBE HOW THE VICTIM CAME INTO THE HANDS OF THE PUBLIC OFFICIALS

The method of abduction or taking into custody, and subsequent treatment, may itself be characteristic of a particular group operating in your area (which might have been established by previous submissions to the international bodies), and helps to establish that the victim was held by the perpetrators.

- **Where** was the person taken into custody? - home, street, place of worship, outside a military base etc.
- **When** was the person taken into custody? - the approximate date, or the month or season of the year. The time of day or whether it was morning, afternoon or night.
- **How** did it occur? Was any form of restraint used? Were any others present who would have seen it happen? - if no detail is known, when and where was the last time the victim was seen and in whose company? Was there any warning, was the victim summoned to a police station; were they in a demonstration on the street etc.
- Was any **reason** given for the arrest? Even if no official reason was given, a reason may be suggested by the kind of questions asked or the circumstances of the arrest.

EXPLAIN WHERE THE VICTIM WAS TAKEN / HELD

The victims may have been held in a particular place, or may have simply been taken to an area of the town and then left, with ill-treatment occurring during transport.

- What was the **name** and **location** of the police/gendarme station, military camp, institution or area?
- **How long** were they held for?
- Were they **transferred** anywhere? If so, where to, by whom and on what approximate dates? How did they get there? Was any reason given for the transfer? If it was temporary, how long did it last?

DESCRIBE WHAT THE HOLDING CONDITIONS WERE LIKE

The conditions of detention may form a part of the ill-treatment, but this can be decided by the body to which you submit your allegations. For secret places of detention, the combined testimonies of different individuals may establish that the place actually exists, and may help to identify it. It may even enable you to construct a map of the layout of the establishment. You should therefore record as much detail as possible.

Ask the victim to describe in as much detail as possible the place in which they were held, particularly the cell or place where they slept and any other rooms where they were taken, including for any interrogation. Victims may have been blindfolded - if this is the case, you should ask them for descriptions using senses other than sight - what did they hear, smell or touch? Below is the sort of information you need to document about conditions:

- **Location of the room within the institution:** did they have to go upstairs or down; what could they hear and smell around them; did they notice any landmarks on their way there; if there is one, can anything be seen out of the window of the room?
- **The room itself:** What size was it? What were the walls, floor, ceiling, door made of? What shape was it? Was there anything unusual about it?
- **Others held in the room:** Were any other people held there; if so, how many; are any of them possible witnesses; would they have noticed anything about the state of health of the victim; what state of health were the other people in?
- **Isolation:** If the victim was in isolation, for how long and in what manner were they isolated?
- **Content of the room:** What was in the room - bedding, furniture, toilet, sink etc.?
- **Climate of the room:** What was the temperature like; was there any ventilation; was there any dampness?
- **Light:** Was there any light; was it natural light from a window, or electric light; if it was electric light, how much of the time was it on; What did the light look or feel like, e.g. colour, intensity?
- **Hygiene:** Were there any facilities for personal hygiene; where and how did they go to the toilet or bathe? What was the general hygiene of the place like? Was it infested in any way?
- **Clothes:** What clothes did they wear and could they be washed or changed?
- **Food and drinking water:** how often and how much food and water was given; what was the quality like; who provided it; was it provided free of charge?
- **Exercise:** Was there any opportunity to leave the cell? If so, for how long and how often?
- **Regime:** Were there any especially stringent or monotonous aspects to the regime?
- **Medical facilities:** Was a doctor or any other form of healthcare professional present or available; could any of the prisoners be examined or treated in a separate medical facility such as by a family doctor or hospital; were medicines available; who were they provided by?
- **Family visits:** Was there access to family visits; if so, where did these take place; could conversations be overheard; did the family know where the person was?

- **Legal representation:** Was there access to a legal representative; when was access first given, i.e. how long after the victim was first taken into custody; how often was it given; where did visits take place; could the conversation be overheard?
- **Appearance before a judicial officer:** Did the victim appear before a magistrate or court; when did this happen, i.e. how long after the victim was first taken into custody?
- **Bribes:** Did any bribe have to be paid for any of these facilities?

DESCRIBE THE FORM OF THE ILL-TREATMENT

Remember that ill-treatment might be both physical and psychological, and that either or both may amount to torture. The forms of ill-treatment are limited only by the imagination of the perpetrator, and it is neither possible nor desirable to provide a list. The date and place in which the ill-treatment occurred may help to identify the perpetrator, for example by making it possible to check who was on duty at that time.

The victim or witness should be asked about the exact nature of the treatment inflicted:

Where did it occur - **what** happened - **how often** - what **effects** did it have on the victim immediately and later?

You could ask:

- What they can recall about the identity of the **perpetrator(s)**.
- If there were any distinctive things about the **room** in which ill-treatment occurred.
- If there were any **other detainees** present at the time, if they saw what happened to the victim and if anything happened to them.
- If the victim was asked any **questions** during the ill-treatment or if anything else was said to him or her - this may give an indication of the purpose, if any, of the ill-treatment.
- For a description of **exactly what occurred** and **how frequently** - where the ill-treatment was physical, you should ask for a description of any instruments used and the parts of the body to which the treatment was applied. Where the ill-treatment was psychological, ask the victim if he or she can describe exactly how he or she felt, both at the time and afterwards.
- What the **immediate effects** were on the individual of each particular form of ill-treatment.
- If they received any **medical treatment**, immediately or any time later, including on release.
- If there were any **medical personnel present** just before, during or after ill-treatment - if so, did they identify themselves and what was their role?
- If there are or were any **long term effects** (physical or mental) that the victim attributes to the ill-treatment.

WHAT WAS THE OFFICIAL RESPONSE, IF ANY, TO THE INCIDENT?

- Did the **victim's family apply to the authorities** for information about the victim at any stage, including during the early stages of being in custody? Was there any response?
- If the victim appeared before a **magistrate or court** at any time during the period of custody, was he or she informed of any charges; was a legal representative there; did the victim have any visible signs of injury at the time?
- Was the victim able to see a **doctor** either during or upon release from custody? What kind of doctor was it, e.g. an independent practitioner, a prison doctor, a state doctor? How did the victim get there? Did anyone accompany him or her? Once there, did the doctor carry out an examination? Was anyone present during the examination? Did the doctor issue a medical report? What did it say? Did the victim have any obvious signs of injury at the time?
- Did the **victim complain** to anyone about ill-treatment or tell anyone in authority? What was the response?

- Was any **investigation** carried out? What did it involve? Were any witnesses interviewed? Were the alleged perpetrators interviewed? If the victim died while in custody, was an autopsy carried out?
- Has the victim had any **contact with the officials** who took him or her into custody (or other officials from the same branch or force) since the incident?

4.1.2. What can you do to obtain these details without influencing the content of the account?

Describing what happened in such detail in a precise chronological manner does not come easily to most victims. They will need your guidance in knowing which aspects to elaborate upon - but remember that your role should be exactly that, to provide guidance, not to put words in the interviewee's mouth. Always begin with general or open questions (questions to which the answer is unlimited, e.g. 'did anything happen to you?', rather than 'were you tortured?'), and become more specific on the basis of the information which is offered to you.

CASE-STUDY:

Here are two very different ways of telling the same story:

ACCOUNT 1 - BASIC:

José Torres, aged 23, reported that he was arrested on 23 January 1999, taken to Anytown Central Police Station and released without charge on 25 January. He alleged that while in custody he was repeatedly hit on the head and on one occasion was electrically shocked by officers unknown while being interrogated.

ACCOUNT 2 - ELABORATED:

José Torres, aged 23, reported that he was arrested at his home at 5 a.m. on 23 January 1999, and taken to Anytown Central Police Station where he arrived at 7 a.m. He was placed in a cell by himself in the basement which had no windows, no toilet facilities and was infested with rats.

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

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

(Account 2, continued)

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

José was released without charge on 25 January.

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

Account 1 is not inaccurate or wrong - it simply lacks detail. However, this detail is the key to many possible courses of action you might wish to pursue. If you look at Account 1, you can see that it presents the basic elements for a torture allegation (victim; perpetrator with connection to the authorities; ill-treatment) but the description of the ill-treatment is minimal and there is little indication of who the individual perpetrators might be or of how the allegation might be corroborated. This makes it difficult for any significant action to be taken in connection with the allegation.

Account 2, on the other hand, is extremely detailed and informative, and provides many opportunities for corroboration. In addition to presenting the basic elements for a torture allegation, it:

- Gives many details about the individual perpetrators which should make identification possible
- Describes the location and lay-out of the office where the ill-treatment took place in such a way as to make it possible to find it if a visit to the police station were carried out
- May make it possible to find the instruments used in the ill-treatment if a visit to the police station were carried out
- Makes the purpose of the arrest and interrogation clear
- Gives some detail of the conditions in which the victim was detained
- Describes the ill-treatment in a precise way such as to make it possible for a medical expert to express an opinion on its relationship with the victim's injuries
- Describes the victim's injuries, including a basic indication of his emotional state

PART II - DOCUMENTING ALLEGATIONS

The questions which Maria may have asked in order to obtain the more complete account could include the following:

José's Statement:	Maria's Questions:	
I was arrested on 23 January	Where did the arrest take place? At what time did the arrest take place?	
I was taken to Anytown Central Police Station	When did you arrive at the police station? Where were you taken when you arrived there? Was there anyone else in the cell with you?	Were there any windows in the cell? Were there any toilet facilities in the cell? What was the hygiene of the cell like?
While I was in custody, I was repeatedly hit on the head	When did this happen? Where did this happen? How did you get there? Did you go up or down? Who brought you there? What did they look like? Did you notice anything unusual about them? What was the office like? Was it furnished? Did you notice anything special about it? What exactly happened once you got there?	Were you free to move about? You say you were hit - who hit you? Did they use anything to hit you with? Did you notice where they got it from? Did they say anything to you or ask you any questions? Can you remember what they asked you about? How long did this last? Where did they take you afterwards?
Once I was electrically shocked while being interrogated	When did this happen? Where did this happen? Who brought you there? What happened once you got there? Were you free to move about? What happened next? What did the box look like? What did he do with it? Where exactly did he touch you with it?	What did he do next? Did you hear or feel anything? How many times did this happen? Did they say anything or ask you any questions? Did the treatment leave any marks? Would you mind if I took a look at them? Are you suffering from any other effects as a result of what happened?

Account 2 could also be improved in certain ways, although it is already more than adequate for most purposes. It does not identify possible witnesses - for example, we do not know if anyone saw José being taken from his home. The description of the conditions of detention is sketchy and could be elaborated upon. It does not indicate if José was allowed to contact his lawyer or family, if he was given a medical examination at any stage during his period in custody, or if he made a formal complaint about the ill-treatment to anyone in authority. It also gives no information about what might have taken place between José's second interrogation and his release.

More importantly, if you look carefully, you may notice that Maria missed something. José was arrested at 5 a.m., but only arrived at the police station at 7 a.m. Not being a local, it did not occur to her to ask how far away the police station is from José's home. In fact, it is three streets away. So what happened to José between 5 a.m. and 7 a.m.? Maria also missed another clue - the bruising and swelling in José's lower back and kidney area and his complaints of pain when urinating. Even for a layman, these symptoms would be difficult to reconcile with José's account of being hit on the head and receiving electric shocks to the nipple, which he insisted was the only ill-treatment he was subjected to at the police station. It seems likely that prior to being brought to the police station, José was brought to a location where he was severely beaten or perhaps kicked, particularly in the kidney area. Noticing the inconsistency in timing would have revealed a further incident of ill-treatment which José may have forgotten to mention or thought insignificant compared to what happened to him at the police station. Maria may have been too specific in her questioning in the early stages of the interview, asking him what happened at the police station, rather than what happened to him after being taken from his home, or simply asking what happened next.

4.2. Specific contexts

The examples and questions given in the preceding section on model information are very much oriented towards incidents of ill-treatment in the context of police or other short-term official custody because this is the most common type of allegation received. While most of the general guidelines and elements will apply in other contexts, you need to be aware that not all will be relevant or appropriate. When preparing for a visit to another type of institution or for an interview relating to a context other than previously described, you should spend some time thinking about the differences in the lines of questioning you might need to explore.

Examples of institutions of long term detention would include prisons (holding both remand and convicted prisoners), other places where prisoners awaiting trial are kept, sometimes for a very long time, and juvenile detention centres. In such institutions, if you are focusing on treatment inside the institution (rather than events which occurred prior to imprisonment) you are unlikely to be concerned with questions of arrest or abduction. Instead, you will need to ask more searching questions about the conditions of imprisonment, the prison regime, relations with the warders and individual incidents of ill-treatment. In relation to the latter, you could ask the same type of questions as Maria did when enquiring about what happened to José when he was taken from his cell. You should also be open to the possibility of group ill-treatment, or excessive use of force or brutality in response to disciplinary problems such as riots.

It should not be forgotten, also, that institutions like prisons are a major source of allegations relating to events which occurred prior to imprisonment, particularly police ill-treatment. This is especially the case among newly-arrived prisoners, because it may be the first time that they feel secure enough to speak about their experiences. See Part I, Chapters 3.4 and 3.5, for further discussion on this point.

In non-punitive custodial settings, such as children or old people's homes, or psychiatric institutions, again your focus may need to be on the general environment and conditions, relations with the supervisory staff, and any individual incidents of ill-treatment. In such contexts, ill-treatment may often take the shape of physical or sexual abuse, but may also involve various forms of psychological abuse. Remember that it is best for children to be interviewed by someone with at least some experience of working with children. A practice common to many psychiatric institutions which gives rise to controversy is the use of restraints on residents.

In military institutions, problems may arise from the disciplinary regime, which is often very tough. In such cases, it is probable that you will be investigating allegations of punishment possibly amounting to ill-treatment, such as solitary confinement or withdrawal of certain privileges. Remember to enquire not only about the punishment itself, how it is carried out, how long it lasts, its frequency, etc., but also about the process by which punishments or disciplinary measures are awarded. Another possible cause for concern may be official tolerance of bullying within the armed forces, which could in certain cases amount to ill-treatment. It would be particularly important to record details concerning the exact form of the bullying, its frequency and intensity, the number of persons involved, the extent to which it is widespread, any physical or psychological effects the victim may be suffering, and any indication of official tolerance of the practice.

In places of detention for foreigners, the issue may be ill-treatment of the foreigners by the local police or other authorities (which should generally be approached in a similar way to other forms of short-term custody), but it is most likely to concern the process for deportation of persons to countries where they are believed to be at risk of torture. In such cases, you will need to go through each stage of the deportation process in detail, and obtain copies of the relevant decisions. You will also need to interview the person about their reasons for fearing that they will be subjected to torture in order to establish a

strong basis for not deporting them. You will need to ask about any previous incidents of torture undergone by the interviewee or close relatives, any threats received by them, and any other reasons to fear that there is a risk to the person. Remember that you should focus on current not prior risk.

In the case of abductions, disappearances and extra-judicial executions, you will not generally be interviewing the victim himself, but more likely a relative or close acquaintance. You will need to concentrate on the circumstances surrounding the disappearance of the person, the modus operandi of the abductors, and particularly on the task of identifying witnesses who may be able to provide information not only about the circumstances of the arrest, but also about the condition of the victim at the time of being taken into custody. Where the victim's body has been found, this will be very important to help establish that any marks of injury on the body must have occurred during custody.

When collecting allegations in camps for refugees and internally displaced persons, be aware that you may receive allegations both about abuses which occurred prior to arriving in the camp, and about abuses which have occurred inside the camp. It is very important to keep very accurate records of the perpetrators of alleged incidents and to be very thorough in seeking to identify them. This applies equally to allegations made in connection with conflict zones generally.

5. EVIDENCE

Making a strong allegation is not just about presenting somebody's account of what happened to them. It is also about making others believe that the facts related are true. No matter how credible and trustworthy an individual may seem to you in the interview, it is important to collect as much supporting evidence as possible. There are several reasons for this:

- First, unless the victim gives evidence in a court room, others are unlikely to have an opportunity to observe his or her demeanour in the way that you have. This means that you must take steps yourself to convince them that the victim is sincere.
- Second, all of the procedures, both domestic and international, are very wary of false allegations, particularly in sensitive political contexts. The more evidence you can supply, the less doubts they will have about the truth of the allegation.
- Finally, the judicial and quasi judicial procedures cannot generally make a finding of guilt, whether it be of the state or of the individual perpetrator, on the basis of only an accusation. This means that the case is unlikely to be successful unless there is supporting evidence.

Evidence can take the shape of a medical report, a psychological evaluation, a victim statement, witness statements, other forms of third party evidence, such as the testimony of a medical or other expert, or objective evidence of a widespread occurrence of torture in the circumstances referred to. It is anything which can help to support and prove an allegation.

5.1. Medical evidence

Technical procedures for medical personnel carrying out physical or psychological examinations on alleged victims of torture are described in a number of other specialised manuals and documents (see Appendix 2) and will not be addressed in this handbook. However, it is important for anyone wishing to report allegations of torture and other forms of ill-treatment to understand the role of medical evidence, the difficulties it raises and some very basic measures which may be taken to record such evidence in the absence of an opportunity to refer an alleged victim to a medical expert for examination.

Medical evidence is probably the most important type of evidence that you can obtain and can add strong support to witness testimony. It is rare for medical evidence to be *conclusive* (prove with certainty that torture occurred), because:

- Many forms of torture leave very few traces, and even fewer leave long-term physical signs that they ever occurred
- It is often possible for injuries or marks which are alleged to have resulted from torture to be the product of other causes

What medical evidence can do is demonstrate that injuries or behaviour patterns recorded in the alleged victim are *consistent with* (could have been caused by) the torture described. Where there is a combination of physical and psychological evidence *consistent with* an allegation, this will strengthen the overall value of the medical evidence.

Both physical and psychological examinations will need to be carried out by specialised medical personnel, not only because of the technical knowledge required, but also because if the reports are to be of use in court, it will be necessary to establish that they have been drawn up and interpreted by qualified professionals. However, this does not mean that you should not record any physical marks or noticeable behaviour observed during the interview - on the contrary, these can be extremely useful, particularly where it is not possible to carry out a medical examination immediately. Careful questioning of the interviewee and recording details of the way he or she was treated is at least as valuable as recording the physical and psychological effects, and talking to a witness such as a spouse can greatly assist by finding out how the victim appeared after the torture and noting any change in his or her demeanour or behaviour

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

5.1.1. Physical evidence

If a doctor is not immediately available it is well worth recording visual evidence of abuse, but only after the **consent** of the individual is obtained, having made it clear the you are **not** a doctor and that you may not be able to obtain or influence any immediate treatment. In a custodial setting any observations may have to be based on only a brief interview, but in a non-custodial situation the interviewee may be able to partially undress and move about, making possible more detailed observations.

External signs are more likely to be found within a few days of injury but should be looked for even in late cases. Record as much information as you can. Remember that the absence of any visible injury does not mean that no ill-treatment has taken place.

As a guide, the following should be noted:

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

How to record your findings:

- Note the **SITE**, **SIZE**, **SHAPE**, **COLOUR** and **TYPE** (cut, bruise, burn etc.) of any injury.
- Use a ruler if possible, but otherwise make an estimate of size by comparison with a common object (but avoid using objects of variable size, such as an orange).
- If there are numerous injuries, indicate them on a body diagram (See Appendix 4).
- Photographs, even amateur ones, can be useful for experts to examine later. Ideally they should include one picture that makes the general location of the injuries clear and a closer picture of each individual site. These should include an indicator of size, preferably a ruler, but even a common object such as a matchbox will serve. An indication of the date is valuable. If available, a professional photographer can be brought in later.
- Describe appearances as accurately and in as much detail as possible, e.g. "A purple raised circular bruise 4cm in diameter on the outer aspect (outside) of the right arm 10cm above the elbow".
- Get the interviewee to demonstrate abnormality of movement or posture.
- Ask about the course of symptoms since the incident. An answer might be: "A week ago I couldn't lift my arms to 90 degrees but now I can get them right up above my head. I still can't move my wrist fully and my hand is still numb". Such statements can be quoted word-for-word.

These guidelines can be adapted if you are required to examine a dead body. In such cases, you should also keep a record of the conditions in which the body was found (e.g. where it was situated, the kind of surface it was lying on, if the weather was very hot or very cold, if the weather or the location was particularly damp) as this can help a forensic expert to decide if they may have caused any marks on the body.

5.1.2. Psychological evidence

Even severe torture, expertly delivered, may leave no physical mark yet leave profound psychological effects. This is especially true if the victim has suffered deliberate psychological torture such as being held in continuous isolation, suffered religious or sexual humiliation or been threatened with death or with harm to the family. Though a psychological assessment of an individual can be made only by an expert, simple observations by a lay person (non-professional) of the individual's demeanour or behaviour, together with any subjective comments they may make about themselves (e.g. description of a nightmare, suicidal thoughts) should be noted, to be interpreted by an expert at a later date.

- The following signs may be noticeable or recounted by the interviewee. Though they are indicators of stress, they are mainly not specific for torture, though the subject of dreams or flashbacks may indicate their source. Thoughts of the traumatic events persistently return, e.g. by recurrent and intrusive distressing recollections of the events, recurrent distressing dreams of the events, sudden acting or feeling as if the traumatic events were recurring (flashbacks).
- Intense distress when exposed to events that symbolise or resemble aspects of the torture, shown by persistent avoidance of stimuli associated with the trauma, or general emotional numbing.
- Symptoms of increased arousal such as difficulty in falling asleep, irritability or outbursts of anger and difficulty in concentration. The interviewer may notice restlessness, agitation or an exaggerated startle response.

As most psychological symptoms are subjective, it is very helpful to obtain corroborative evidence from family or friends, such as: "He wakes up screaming and sweating at night, with nightmares in which he is being tortured" or "He loses his temper easily. Before his arrest he was easy-going and placid" or "She always avoids going past the place she was arrested".

5.2. Statement of person making allegation

A written statement describing the events and signed by the victim or other person making the allegation should be prepared wherever possible in a non-detention context. It will not be essential in all circumstances, but helps in all proceedings to reinforce the credibility of the allegation. In addition, the absence of such a written statement will affect the avenues available to you, and may prevent the initiation of court proceedings.

The statement should describe in detail the incident(s) of torture and of the events leading up to and subsequent to it or them. There is no particular format for such a statement, but it should be as informative as possible. The kinds of details which should ideally be included are those described in Part II, Chapter 4.

Such a statement does not need to be physically written by the person from whom the statement is being taken - it can also be written, or preferably typed up, by the interviewer, then read over by or, where the person is illiterate, read out to the person, who should then approve it. It must, however, be signed or thumb-printed. If the statement is to be used in judicial proceedings, it should be signed and dated not

only by the person making the statement, but also by the person taking the statement and, where possible, a second witness.

Organisations often record such statements by asking the individual making the allegation to fill out a standard questionnaire setting out the information required.

5.3. Witness evidence

Because torture often occurs in private, it can be difficult to find witnesses to the incident of torture itself. Where there were witnesses, they may be reluctant to speak about what they saw in case there are repercussions for them, or because the experience was simply too traumatic. However, where witnesses exist and are willing to give a statement of what they saw, this can add very much to the credibility of the allegation, as well as provide new details that the victim himself or person making the allegation might not be able to give. It can help to reconstruct the chronology of events and set them in context. The purpose of witness statements is to help to understand exactly what took place, and should therefore be as detailed as possible.

Useful witnesses are not only those who witnessed the actual incident of torture.

- Those who were present at the time that the victim was taken into custody can give very valuable information about the identity of the perpetrator, the way in which the victim was treated while he or she was being taken away, and the condition of the person at the time of being taken into custody. This can be particularly important where the victim has died, but the body shows signs of torture and the state is arguing that he or she was never taken into custody or that the injuries were not inflicted by officials.
- If an individual knew that the victim had been receiving threatening phone calls or messages prior to being taken into custody, this could be reported.
- Co-detainees can confirm that the victim was taken away for interrogation and describe his or her condition both prior and subsequent to being taken away, or that he or she was never returned. They can give evidence of sounds they heard, such as screams or shouting, or of bloodstains or torture implements they might have seen. They can give accounts of their own torture or that of other individuals they might have witnessed which would help to establish that torture occurs in the establishment in question, or that a particular police officer or prison warden has previously engaged in torture. This can help to establish patterns, e.g. The police at station X always take the victim to office Y on the Zth floor or prison guards always come after the day shift leaves and they take the victim to a particular location in the prison where ill-treatment is known to occur.
- A doctor who examined a detainee shortly after an incident may also be able to give crucial evidence.

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

Don't forget that the same principles of *informed consent* (see Part I, Chapter 2.3) apply to witnesses as to victims. This applies particularly where you are taking a written statement. In the case of an informal discussion with a possible witness which you do not intend to cite, it may not be necessary to go into detail, and will depend on the circumstances. Remember never to name an individual without his or her consent, however.

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

5.4. Other types of evidence

There is no prescribed list of other types of supporting evidence. The type of evidence you may wish to use will depend very much on the allegation you are trying to prove and will need to be identified on a case by case basis. You should try to identify, on the one hand, evidence which supports the specific case, and on the other, objective evidence which helps to show how the allegation fits into the overall picture. It pays to be creative and the possibilities are vast. Examples of other types of evidence include:

- Media reports: Such evidence should be used with some caution, and would generally be insufficient to initiate a complaint, but it can be very useful to provide independent evidence that an incident took place or to provide an indication of the general situation.
- Expert reports: These could be specially commissioned medical or forensic reports, ballistics reports, or any other form of expert testimony or research.
- Official reports and statements: The findings of reports produced by special domestic inquiries or visits from international bodies, e.g. a UN Special Rapporteur, or a CPT delegation, can be referred to in order to provide a more official source of information. Resolutions adopted by international bodies expressing concern about the situation in a country can also be used, e.g. resolutions of the UN Commission on Human Rights, the OAS General Assembly or the European Parliament. For deportation cases, the UN High Commissioner for Refugees can provide valuable information. The United States State Department also produces annual reports on the human rights situation throughout the world.
- Any evidence of a practice of torture in the country or region in question: Such material adds credibility to the allegation, as it shows that there are precedents for the kind of behaviour complained of. It is of particular relevance in cases where the objective is to stop deportation of an individual to a country where he or she is at risk of torture - while the individual must be in a position to show that he or she is personally at risk, this will be made easier if it can be shown that torture is a common occurrence in the country in question.

Such information is most easily found in NGO reports. However, the value of such reports will vary according to the reputation of the organisation in question. Reports which tend to sensationalise the situation in a country will carry very little weight, and reports of national NGOs may be treated with some caution because, although they have a close-up view of the situation, they may also be perceived as less objective. If these are the only reports available, they should of course be submitted. Ideally, however, where they exist, reports by large international NGOs which are generally respected for their accuracy and reliability are the best to opt for - they can then be supplemented by the reports of smaller and national NGOs.

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

Copies of domestic decisions: If you want to bring a case before one of the international complaint procedures (see Part III, Chapter 3), you will need to show that the victim was not able to obtain a remedy at the domestic level. In order to do this, you will need to provide copies of any domestic decisions, whether judicial or administrative, taken in the case. This would include any decisions not to prosecute or not to open an investigation, and copies of any petitions made by the victim or victim's family, as well as any court decisions taken.

SUMMARY

PART II - DOCUMENTING ALLEGATIONS

1. Basic principles of documentation

When documenting allegations, you should:

- **Seek to obtain good quality information:** Factors which contribute to the quality of your information include the **source** of the information, the **level of detail**, the absence or presence of **contradictions**, the absence or presence of **elements which support** (*corroborate*) or **disprove** the allegation, the extent to which the information demonstrates a **pattern**, and the **age** of the information.
- **Take steps to maximise the accuracy and reliability of the information:** You can maximise accuracy and reliability by taking **general precautions**, by **seeking corroboration** of specific cases at the time of the interview and afterwards, and by exercising **good judgement**.

2. Interviewing the person alleging torture

Interviewing an individual making an allegation of torture is a difficult and sensitive task, but it can be made easier for all involved by some advance preparation and thought. You should review the main text carefully before attempting to carry out an interview.

Throughout the interview, you will need to balance:

- The need to obtain a **useful account** and the importance of respecting the **needs of the person** being interviewed
- The need to obtain **as many details as possible** and the importance of **not over-directing the account**

Before beginning the interview, you should give some advance thought to the following considerations: informed consent; how to begin the interview; note-taking; who should conduct the interview; the use of interpreters; making the interviewee feel more at ease; dealing with people who are afraid to talk; conducting interviews in places of group custody; addressing the sensitivity of the subject-matter; maximising the reliability of the information; gender composition of the interview team; interviewing children. (See main text for suggestions)

3. Information which should be recorded

The information should tell you:

- **WHO** did **WHAT** to **WHOM?**
- **WHEN, WHERE, WHY** and **HOW?**

It should:

- **Identify the victim(s)**
- **Identify the perpetrator(s)**
- **Describe how the victim came into the hands of the public officials**
- **Explain where the victim was taken or held**
- **Describe what the holding conditions were like**
- **Describe the form of the ill-treatment**
- **Describe any official response to the incident**

In order to obtain these details **without over-influencing the content** of the account, you should **avoid leading questions** - always **begin with general or open questions** (questions to which the answer is unlimited, e.g. 'did anything happen to you?' rather than 'were you tortured?') and **become more specific on the basis of the information which is offered to you**. (See Case-Study)

Be aware that **different interview contexts** may require **different approaches**. (See main text for suggestions)

4. Evidence

You should always aim to provide as much supporting evidence as possible when submitting an allegations - it helps to convince others of the sincerity of both yourself and the victim, to dispel any doubts you or others may have about the truth of the allegation, and is a requirement for certain courses of action, particularly judicial procedures.

Common forms of evidence include:

- **Medical evidence:** Both physical and/or psychological
- **A statement by the person making the allegation:** This could be a formal written statement or take the form of a questionnaire
- **The evidence of witnesses:** These could include witnesses to the actual incident of torture, to the taking into custody of the victim, to the physical condition of the victim prior to or following any period spent in custody, or to any threatening behaviour by the authorities prior to the taking into custody of the victim. Possible witnesses are best identified by working through the facts chronologically with the victim, asking who, if anyone, was present at each stage.

Other types of evidence might include: newspaper reports; expert reports; official reports and statements; any evidence of a practice of torture in the country; specific research; copies of national judicial or administrative decisions.

PART III - RESPONDING TO THE INFORMATION COLLECTED

1. Introduction to Possible Courses of Action

- 1.1. Action at the international level**
- 1.2. Action at the national level**

2. What You Should Know About International Reporting Mechanisms and How To Use Them

- 2.1. What kind of general characteristics should your communication have?**
- 2.2. Submitting information to a body engaged in monitoring: what should your communication include?**
- 2.3. Submitting information in the context of the state reporting procedure**
- 2.4. Submitting information to a body engaged in fact-finding**

3. What You Should Know About International Complaint Procedures and How To Use Them

- 3.1. What can you seek to achieve by using individual complaint procedures?**
- 3.2. What kind of complaints can individual complaint procedures examine?**
- 3.3. How do individual complaint procedures work?**
- 3.4. What should an application under an individual complaint procedure contain?**
- 3.5. Practical tips for using individual complaint procedures**

4. The Mechanisms and Procedures: United Nations

- 4.1. Introduction to the United Nations system**
- 4.2. Reporting mechanisms within the United Nations system**
- 4.3. Complaint procedures within the United Nations system**

(Continued overleaf)

5. The Mechanisms and Procedures: Regional

5.1. The European system

5.2. The Inter-American system

5.3. The African system

5.4. Other regions

6. Comparative Evaluation Tables of the International Procedures

7. Where Might You Seek Further Help?

7.1. Why might you wish to seek further help?

7.2. Some specific sources of help

1. INTRODUCTION TO POSSIBLE COURSES OF ACTION

Once you have finished collecting your raw information, you will need to think about choosing the most appropriate place to send it and how to present it in a way most likely to obtain the result you want. This chapter will identify and evaluate the courses of action which may be open to you, and provide some guidelines on how to make the best use of them.

Your first port of call should generally be to seek a remedy within the domestic system, particularly where the information concerns an individual case. For practical reasons, this handbook concentrates on obtaining remedies within the international system, but this should not be interpreted as meaning that domestic remedies should not be used. On the contrary, there are a number of reasons why they should be used wherever possible:

- It is important to strengthen and reinforce national institutions if long-term progress is to be achieved in the human rights situation in a country.
- Where domestic remedies are effective, they can usually provide more immediate and direct satisfaction to complainants than the international procedures, which can take a long time to reach a conclusion.
- Under international law, it is considered that states should have an opportunity to repair any human rights violation for which they are responsible before the international bodies intervene - consequently, international procedures for individual complaints generally require domestic remedies to have been *exhausted* (see Part III, Chapter 3.3.2.2 for an explanation of this requirement) before accepting to examine the complaint.

It is most appropriate to take action at the international level where:

- Domestic remedies are ineffective or unable to provide a satisfactory remedy in an individual case.
- Your objective is to alert the international community to the human rights situation in a country, either generally, or in relation to specific aspects of it.

1.1. Action at the international level

At the international level, the range of mechanisms from which assistance can be sought in connection with allegations of torture and other forms of ill-treatment is very wide. The focus of the handbook, and of this part, is those international procedures to which information can be sent and whose job it is to comment on whether or not a state has respected its obligations relating to torture under international law. This is because they are responsible for supervising the implementation of the international system for the protection of human rights - it is through them that it is possible to invoke a state's obligations under international law in order to obtain a formal or official response to allegations of torture and obtain some form of remedy for the violation. It is important not to forget, however, that there are also additional sources of help to which it is possible to turn for advice, support or other forms of assistance, particularly if you feel uncomfortable about using a formal procedure. Such sources of help are addressed in Part III, Chapter 7.

1.1.1. Range of international procedures

Many possibilities exist for action at the international level. There are mechanisms which were created by the United Nations and can examine the situation of countries throughout the world. There are others

which were created within a regional organisation and can only act in relation to states within that region. There are mechanisms which were created to consider only matters relating to torture (torture-specific) and others which are empowered to examine more general human rights issues, which include torture. The ways in which the mechanisms carry out their functions can also vary quite widely from one mechanism to the next. The best way to distinguish between the various bodies is to consider their origin (i.e. how they were created), and their functions.

1.1.1.1. Origin of the mechanism

Not every mechanism can be used in connection with every country. The origin of the mechanism is important because it tells you what countries it may receive allegations about. The main distinction is between *treaty bodies* and *non-treaty mechanisms*.

- *Treaty bodies* are those which are created by a legally-binding agreement between a number of states, like a contract. This type of agreement is usually known as a treaty, but can also have other names, such as a *convention*, a *covenant* or a *charter*. *Treaty bodies* are set up to supervise the way in which the agreement is respected by the states which are *parties* to it (i.e. which have agreed to respect it). For example, the UN Convention Against Torture sets out a number of obligations which *States Parties* must respect, and it has also created a supervisory body called the Committee Against Torture which has the task of checking that these obligations are respected. The most important point to remember is that if you wish to send an allegation of torture to a *treaty body*, you must first make sure that the country about which the allegation is being made is actually a *party* to that treaty. Because the *treaty body* was created by an agreement, it cannot examine the situation of states which have not been part of that agreement.
- *Non-treaty mechanisms* are those which are not set up for the specific purpose of supervising a particular treaty. They might be a political body made up of state representatives, like the UN Commission on Human Rights, or they might be mechanisms which are set up by a *resolution* (formal decision, usually adopted by vote) of such political bodies. This means that the mechanism then automatically has the power to examine the situation of all states which are members of the relevant inter-governmental body, without any need for those states to give their written agreement. For example, the UN Commission on Human Rights created the Special Rapporteur on Torture by a resolution. This means that the Special Rapporteur can examine and receive allegations about any state which is a member of the UN. As you can see, *non-treaty* bodies can receive allegations from a wider range of states because they are not limited to those that have signed a special agreement.

The origin of a mechanism can also limit the states under its supervision in a different way. Where a mechanism is created in the context of an inter-governmental organisation, it is normally intended to apply only to states which are members of that organisation. This applies both to *treaty* and *non-treaty mechanisms*. This means that:

- Where an inter-governmental organisation is regional, this will as a general rule limit the work of the mechanism to states from that region. For example, only OAS member states can become party to the American Convention on Human Rights and accept the supervision of the Inter-American Court of Human Rights. The only exception would be if the states which created the mechanism agree to make it possible for states from outside the organisation or region to become parties, as may soon be the case with the European Convention for the Prevention of Torture .
- Where a mechanism is created in the context of a world-wide organisation, like the UN, it is open to any member state of the organisation throughout the world. In the case of the UN, in practice this means virtually every country in the world.

1.1.1.2. Functions of the mechanism

Many of the bodies described in this handbook have more than one function. In particular, you should not think that they only receive individual allegations. Many of the mechanisms are also designed to address the wider situation, ultimately with a view to having preventive effects. It is important to understand the differences between the various functions because each responds to different forms of information and provides different types of remedies. This means that you need to make sure that, on the one hand, your information is in a form to which the mechanism can respond and that, on the other, the mechanism is able to provide you with the kind of remedy you want. The principal functions of the mechanisms can be broadly divided into two types: reporting functions and complaint procedures.

Reporting functions include:

- Consideration of state reports: Certain *treaty bodies* receive and examine reports prepared by States Parties about the situation in their country and the manner in which they have sought to give effect to their treaty obligations. The *treaty body* then provides its comments on the report and makes recommendations for improvement. These comments and recommendations are usually public.
- Monitoring: Certain *treaty* and *non-treaty mechanisms* may engage in monitoring, often from a particular perspective. This could be either the world-wide or regional situation in connection with a particular theme e.g. torture or violence against women, or the general human rights situation in a specific country. It normally involves receiving and analysing information about both individual and general allegations in order to report on the situation.
- Fact-finding: Certain *treaty* and *non-treaty mechanisms* may also carry out a fact-finding role and will visit countries, either on a periodic basis, or on an ad hoc basis in cases which are considered a particular cause for concern.

Complaint procedures involve:

- Receiving and processing individual complaints: This is a function carried out only by *treaty bodies*. Unlike reporting, in which individual allegations may also be received but are used essentially as a way of understanding a more general situation, a complaint procedure is a judicial or litigation-style process. It focuses on the individual allegation itself and aims to establish whether or not a state has violated the rights granted to an individual or individuals under the relevant treaty. It is like bringing a case to court, and is a formal process with a set procedure which must be followed.
- Receiving and processing inter-state complaints: Under this procedure, states may make complaints against other states alleging breaches of their human rights obligations or commitments. Such a function can be carried out by both treaty and non-treaty bodies. This type of complaint procedure will not be addressed in this handbook because it does not generally invite NGO involvement.

PART III - RESPONDING TO THE INFORMATION COLLECTED

TABLE 1: SUMMARY OF INTERNATIONAL MECHANISMS - BY ORIGIN AND FUNCTION

MECHANISM	ORIGIN				FUNCTIONS				
	Treaty	Non-treaty	Regional	World-wide	Reporting			Individual Complaints	
					State Reports	Monitoring	Fact-finding	Optional	Compu-lsory
Committee Against Torture	√			United Nations	√	?*	√	√	
Human Rights Committee	√			United Nations	√			√	
Committee on the Rights of the Child	√			United Nations	√			?*	
Committee on the Elimination of Discrimination Against Women	√			United Nations	√			?*	
Committee on the Elimination of Racial Discrimination	√			United Nations	√			√	
Special Rapporteurs of the UN Commission on Human Rights		√		United Nations		√	√		
1503 Procedure		√		United Nations		√			
European Court of Human Rights	√		Council of Europe						√
European Committee for the Prevention of Torture	√		Council of Europe (see note 1)			√	√		
Inter-American Commission on Human Rights	√		Organisation of American States			√	√		√
Inter-American Court of Human Rights	√		Organisation of American States					√	
African Commission on Human and Peoples' Rights	√		Organisation of African Unity		√	√	√		√

Note 1: It is possible that a protocol to the European Convention for the Prevention of Torture will be adopted in the near future which will make it possible for non-member states of the Council of Europe to become parties to the convention.

Note ?*: These functions will or may become available to these mechanisms in the near future. See mechanism-specific discussions for details.

1.1.2. How to select an international procedure

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

- **AVAILABILITY:** which mechanisms are open to you?
- **SUITABILITY:** which mechanisms are best suited to your objectives?

1.1.2.1. Availability: which mechanisms are open to you?

This will depend on the country about which you have information.

As previously discussed, the UN *non-treaty* mechanisms will be applicable to countries all over the world without any need for specific consent. However, both UN and regional bodies which have been created by *treaty* are, as a rule, applicable only to those states which have agreed to be bound by the treaty. In the case of regional bodies, this will normally be limited to states from the region.

In addition, some of the treaties which set up individual complaint procedures make these procedures optional for States Parties. In such cases, in order for the individual complaint procedure to be available in relation to a particular state, it is not sufficient for that state to become a party to the treaty, but it must also expressly consent to the procedure. This means that a state can be a party to a treaty which sets up an individual complaint procedure, but not allow those complaints against itself.

Furthermore, at the time of becoming a party to a treaty, states often have the opportunity to make a *reservation* to the treaty. Making a reservation means that the state has not accepted the exact terms of the treaty, but has modified one or more of its provisions to suit itself, as a condition of accepting the treaty. You should always check, not only if a state is a party to a treaty, but also if it has made any reservations to it, in case it is relevant to your case.

This means that, in order to determine which mechanisms will accept information about a particular country, you need to ask the following questions:

- Was the mechanism created by a specific treaty?

If it was:

- ⇒ Is the country a party to this treaty? If yes, the mechanism will accept information about it. If no, the mechanism will not normally be able to respond to information about it.
- ⇒ If there is an optional individual complaint procedure, has the country accepted this procedure? If yes, the mechanism can examine individual complaints about it. If no, the mechanism can still receive information about the country in the exercise of its other functions, but cannot activate the individual complaint procedure.
- ⇒ Has the state made any reservations to the treaty which might modify its application in your case?

If it was not: This will normally mean that it was set up by an inter-governmental organisation.

- ⇒ Is the country a member of this inter-governmental organisation? If yes, the mechanism will accept information about it. Remember that United Nations non-treaty mechanisms will in principle accept information about any country in the world.

1.1.2.2. Suitability: which mechanisms are most suited to your objectives?

Once you have identified the mechanisms which are open to you, you will need to decide what you would like to achieve by submitting the information, in order to select the mechanism(s) most likely to fulfil your objectives. You could consider the following as a general guide:

TABLE 2: SUITABILITY OF TYPES OF MECHANISMS TO POSSIBLE OBJECTIVES

POSSIBLE OBJECTIVE	TYPE OF MECHANISM MOST LIKELY TO ACHIEVE THIS
<u>General Objectives:</u>	
Draw attention to a situation/establish a pattern	Any reporting mechanism or complaint procedure
Seek positive changes in a general situation	Any reporting mechanism or complaint procedure
Combat impunity	Any reporting mechanism or complaint procedure
<u>Individual Objectives:</u>	
A finding of violation	Any complaint procedure
Holding a perpetrator to account	Any complaint procedure; reporting mechanisms which address individual allegations
Reparation	Complaint procedures which can award reparations
Preventing deportation of an individual to a country where there is a substantial belief that he or she will be at risk of torture	Complaint procedures which may order or recommend provisional measures; reporting mechanisms which address individual allegations

1.2. Action at the national level

There are as many variations in domestic remedies, their exact nature, form and procedures, as there are countries in the world. This handbook could never hope to address them in any comprehensive way without stretching to many more volumes. For this reason, this section will merely introduce some of the courses of action which you are most likely to come across within the domestic system, in order to raise awareness of their existence. You are, however, strongly advised to consult a domestic lawyer or more experienced national NGO to obtain details about the actual remedies available in a particular country, and the practicalities of using them.

Possible courses of action at the national level could include:

1.2.1. Criminal proceedings

A person alleging that he or she has been the subject of ill-treatment by a public official can generally seek to initiate criminal proceedings by making a complaint to the police, the local public prosecutor or a local court. In many domestic legal systems, a prosecution will only be opened if the public prosecutor decides that it is appropriate, and a victim cannot directly institute proceedings. You will need to consult a domestic lawyer to find out exactly how the procedure works in the relevant system. The objective of criminal proceedings is the punishment of the offender, not the compensation of the victim, and possible remedies include sentencing the perpetrator to a fine, probation or imprisonment.

Military personnel can generally be prosecuted in the same way as any other official, but are also or may be subject only to internal military discipline, including the possibility of court-martial (trial of military personnel before a military court applying military law). Court-martial proceedings can only be initiated internally, but someone alleging torture or other ill-treatment by a member of the military could lodge a complaint with the appropriate senior officer who would, in an ideal world, then be in a position to initiate an investigation. It cannot be ignored that in a country where the military is in power, it is more likely that no investigation will be carried out, or that it will be ineffective. Nonetheless, failure on the part of a senior officer to initiate an investigation into an allegation of torture under military law could constitute a failure to investigate, as well as official tolerance of torture, so it is worth being aware of this means of investigation even if it cannot be initiated directly by a victim. It is also an offence under the international law of armed conflict (see Part I, Chapter 3.6), as it is the responsibility of commanders to investigate breaches of the laws of war by their subordinates.

1.2.2. Civil proceedings

Civil proceedings might be based on provisions in a national code of obligations, some form of legislation or on the common law. These provisions deal with many different issues, but they all involve a breach of some sort of the general duty which everyone has to exercise care in their relations with others. In general, civil proceedings are resorted to where an individual wishes to obtain compensation, usually financial, from the person responsible. The proceedings are judicial in nature and take place in the ordinary courts.

1.2.3. Administrative proceedings

Examples of administrative remedies which might be relevant to a victim of torture could include an application to a compensation commission set up to provide compensation to victims of violent crimes, or a submission to a police complaints authority. Administrative proceedings do not necessarily take place before a regular judge. Instead they will often involve decision-making by expert tribunals or officials with special expertise or responsibility for a particular subject area.

1.2.4. Disciplinary proceedings

For our purposes, the relevant disciplinary proceedings are those internal to the police, the military, other branches of the security forces and the state administration. These are non-judicial proceedings in which a case is considered by a superior or superiors of the public official. As with court-martial proceedings, a complaint can be lodged with a superior by a person alleging torture, but the decision to initiate proceedings may only be taken internally. The types of sanctions which may be imposed in disciplinary proceedings are normally related to the job, and could include withholding pay, temporary suspension from work, reassignment to another post or even dismissal.

1.2.5. Asylum claims

The general nature of the asylum process is to identify people who have a *well-founded fear* of being persecuted if they are sent back to a particular country, usually their country of nationality. Under refugee and general human rights law, states have an obligation not to send such persons back to that country. In many cases, the basis for showing that they are likely to be subject to persecution will be to show that they are at risk of torture. In addition, States Parties to the Convention Against Torture have a separate obligation under human rights law not to expel a person to a country where there is a substantial belief that he or she will be at risk of torture.

In such cases, the objective will not be to establish that the state in which the person finds him or herself is responsible for an incident of torture, but to demonstrate that a risk exists if they are sent back, in order to activate the state's obligation not to expel the person. The specific requirements will vary from one country to the other but, as a general rule, it will be necessary to show that:

- The individual is personally at risk of torture (i.e. not only that torture occurs in that country)
- That the risk is ongoing (i.e. not only that there was once a risk, but that this risk continues to exist)

Where the risk of torture originates from non-governmental actors, it may be more difficult to establish it, but there is movement in favour of placing such risk in the same category as that originating from state actors for the purposes of the asylum process. (See Part I, Chapter 3.6)

If the application for asylum is rejected and a date set for deportation, you should be aware that a number of the international mechanisms are able to grant provisional measures which could include a request to the Government to delay deportation until they have considered the case. The Special Rapporteur on Torture has also intervened on occasion in such cases by sending an urgent appeal. None of these requests are binding, but they do give a respectable state some food for thought and are often complied with, at least temporarily.

1.2.6. Exceptional remedies

In many countries, exceptional remedies exist under which individuals deprived of liberty are entitled to challenge the legality of their detention before a judicial authority which has the power to order their release. Common names for such remedies include *habeas corpus* and *amparo*. They may be initiated by an application to a court, either by the individuals themselves or, where this is not possible, by any other person acting on their behalf. In some systems, it may be necessary for this to be done by a lawyer. Such applications may generally be made at any time and should take priority over other court matters. Under international human rights law, these remedies should be available at all times, including during states of emergency. They are particularly important where an individual is being held in incommunicado detention, which is considered to increase the risk of torture.

Where an individual is believed to be at risk of torture during interrogation, it may also be possible to apply to a court for an injunction (an order to refrain from a particular type of conduct) against the relevant public officials.

1.2.7. Other procedures

In some countries, specialised official bodies may exist, the sole purpose of which is to examine or investigate possible violations of human rights. Some, such as ombudsman institutions and national human rights commissions, are concerned with current abuses, while others, such as truth commissions, have the specific task of investigating past crimes for a fixed period. The specific powers and procedures vary from one body to the next, but can normally be found in the piece of legislation which created it. Some may be able to take decisions in individual cases (certain national human rights commissions), while others may be more concerned with an overall situation (truth commissions). Not all of these bodies are as effective or independent as they might be.

2. WHAT YOU SHOULD KNOW ABOUT INTERNATIONAL REPORTING MECHANISMS AND HOW TO USE THEM

The term '**reporting mechanism**' is used throughout the text to refer to:

Any international mechanism which receives and/or seeks out information in order to report or comment on whether states are respecting their obligations under international human rights law. The information it receives can concern both individual and general allegations, but the ultimate objective is to obtain an accurate picture of the general situation and make recommendations.

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

They can:

- Receive and gather information from states and third parties in order to report on the situation in a state (**Monitoring**)
- Examine and comment on reports produced by the states themselves, and make recommendations for improvement (**Consideration of state reports**)
- Carry out fact-finding visits to states (**Fact-finding**)

They cannot:

- Adopt legally-binding decisions
- Award reparation to individuals

General practical information relating to each of these functions is considered below. There is a lot of variation in the methods and powers of the different mechanisms, however, and any peculiarities will be noted when the relevant mechanisms are discussed in Part III, Chapters 4 and 5.

2.1. What kind of general characteristics should your communication have?

Reporting mechanisms are swamped with information from a multitude of sources, much of which is of dubious quality or lacks the precise detail to be useful. The best way to ensure that your information stands out from the rest is to make sure that it is:

- **Accessible**
- **Balanced**
- **Credible**
- **Detailed**

2.1.1. Accessible

You can make your submission **accessible** by paying attention to the language used and the length of the submission.

Language:

- Most of the international organisations make a distinction between *official languages* and *working languages*. As a rule, although communications may be made in official languages, most of the staff of the organisation will be able to function only in the working languages. At the same time, many of the organisations have very limited resources, which means that translation is not always a priority, particularly if there is no indication of the value of the communication.

If you wish your communication to receive the best consideration possible, you should do your best to submit your communication in a working language (these will be specified in relation to each organisation in Part III, Chapters 4 and 5) if possible - this does not mean that you have to translate every supporting document, but it does mean that your covering letter should be in one of these languages, and that it should clearly indicate the content of each of the attached documents. If you cannot do this, you should at least make sure that a short summary is provided in a working language which indicates the essential elements of the information or complaint. What is essential will depend on the procedure, but as a general rule you should indicate:

1. Who the communication is addressed to
e.g. Special Rapporteur on Torture
e.g. Committee Against Torture
 2. Who you are
e.g. NGO working with street children
e.g. NGO working with asylum seekers
 3. Which country the allegation is about
 4. The purpose or content of your information and if urgent action is required
e.g. 10 allegations of torture of street children, indicating pattern of abuse against street children by police. Treatment includes severe beatings, rape and mock executions.
e.g. Violation of Article 3 of CAT. Mrs. Y to be deported to country X where likely to be tortured. Was severely tortured 8 months ago before leaving country (including electric shocks and severe beatings resulting in a fractured skull - medical certificate enclosed) and brother still in the country recently arrested and questioned about the applicant's whereabouts. Deportation due on (date) - URGENT.
- You should not assume any specialised knowledge on the part of the staff receiving your submission - it is important that they understand what you are discussing, and terms which may seem simple to you may not be widely understood outside of your country. Make sure that you always use simple language and explain specialised terms. In particular, you should avoid the use of abbreviations and acronyms unless you explain them.

Length of submissions:

- There is generally no required length for submissions, but you should bear in mind limited staff resources and time when preparing your communication. This means not making it any longer than it really needs to be, and if it exceeds 8 or 10 pages, you should provide a summary of the essential points so that it is easy for the member of staff to see if it is useful.

2.1.2. Balanced and Credible

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

Introduce yourself:

- The response you obtain to your submission will depend very much on the impression given of your organisation, its reliability and your motives in sending the information. It is far better to address these questions directly rather than leave them up to the imagination of the staff member reading the communication. It is important to create a good reputation for yourself and your organisation so that, over time, you will become a trusted source.

If you have not previously introduced yourself to an organisation, you can start by explaining your mandate - you can do this in the communication itself or, even better, you can include a copy of your statutes or of an annual report that gives a good indication of your activities. If you are affiliated with an international NGO, you should say so - this will provide an easy way of checking out your credentials. Make sure to explain not only your activities, but also your purpose and objectives. If you are a politically-oriented organisation, say so - this will help to place your information in context and also show that you have nothing to hide. Explain your methods of work - how is your information collected? Is it first-hand information or has it been obtained by word of mouth or from press reports? The aim is to include any information which will help the mechanism to form an accurate impression of your organisation and the quality of your information.

Be objective:

- Always make sure that your presentation of the information is balanced. An objective, balanced view of a situation will make your communication far more credible, and show that you are interested in presenting the real situation and not just one perspective. While it is normal for information to appear somewhat one-sided if it is trying to establish a pattern of violation, it is important to present it in an objective context. Explain the background carefully, so that the information cannot be perceived as having been taken out of context (see Part III, Chapter 2.2.1 for an indication of the kind of details you might include). This inspires confidence in the material and means that the next time you send information, it will be recognised as coming from an organisation which has proved reliable in the past.

Avoid sensational claims:

- Using sensational language or dramatic descriptions is likely to be detrimental to your submission. The international mechanisms receive many communications which are full of sensational claims and contain no facts or substance. A balanced, informative communication supported by examples will stand out from the rest of the many unsupported allegations and will be received with far more attention.

2.1.3. Detailed

Making your submission **detailed** is not about being lengthy - it is about being informative. You should provide sufficient information for an international body to be able to reach its own conclusions about whether torture or ill-treatment has occurred, while at the same time remaining concise and as brief as possible.

You need to make sure that the detail you include is relevant detail, that is to say, that it helps to support your allegation. Extensive materials in which an allegation is deeply buried and needs to be extracted makes the international bodies' work more difficult, as do large amounts of general information with little precise detail. Concentrate on including as many details as possible which relate to the allegations themselves, and keep the general material brief, but informative - it needs to be there to set the context, but it should not take over or be the focus of the communication.

2.2. Submitting information to a body engaged in monitoring: what should your communication include?

The content of your communication will vary somewhat according to what you are trying to prove. However, it is possible to give the following guidelines on what to include.

2.2.1. Sending general information to a monitoring body

When sending **general information** to a reporting mechanism, you should aim to *set the context* and *establish patterns*.

Set the context: It is very difficult for any of the mechanisms to get a clear picture of the problems in a country or to make useful recommendations if they do not have a good grasp of the context in which these problems are taking place. An objective summary of the general situation in the country is very valuable. This does not mean making a few sweeping statements accusing the state of widespread violations of human rights. It means explaining briefly the conditions present in the country which might affect the state's respect for its obligations to prevent torture. Relevant factors might include:

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

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

Establish patterns: In contrast to individual allegations, each of which is concerned with the outcome in a specific case, general information should paint an overall picture of the practice of torture in a country, or identify a specific aspect of that practice.

In order to establish a pattern, it is **not** enough to:

- List a few individual cases
- Make unsupported statements about the practice of torture in a country

Instead you **should**:

- Use as many *examples* as possible
- *Analyse* the individual allegations in order to identify *patterns*.

E.g. if you find that a lot of your allegations are about the use of electric shocks throughout a country, or about the rape of women taken into custody in a particular police establishment, you could suggest that the allegations, taken as a whole, support a pattern - the use of electric shocks as a common method of torture, or the rape of women in a specific police station.

Other apparent patterns which might be of relevance could include a high occurrence of torture and other forms of ill-treatment among suspects detained under a particular law permitting extended incommunicado detention, a high incidence of torture of detainees from a particular ethnic or social group, consistent failure to prosecute officials accused of torture, a high rate of unexplained deaths in custody, or widespread reports of the torture of women or children.

The point is to show that certain forms of torture, or behaviour facilitating torture, are not limited to a few isolated incidents, but occur on a regular basis.

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

- First, summarise all of the patterns you have identified
- Next, take each proposition one by one, and explain it in general terms
- After each proposition, provide as many examples as possible to support your statement

TABLE 3: CHECKLIST FOR SUBMITTING GENERAL INFORMATION TO A REPORTING MECHANISM

CHECKLIST: Submitting general information to a reporting mechanism	
Does your submission include:	<ul style="list-style-type: none"> • A brief introduction to the objectives and working methods of your organisation? • A summary of the context in which the allegations are set, particularly the legal framework? • A presentation of any identifiable patterns of violation? • As many detailed examples as possible? (see Part III, Chapter 2.2.2 for guidelines on the information to include on each individual allegation) • Any available supporting documentation? • A list of local organisations or persons which can be contacted to seek information about the relevant country?

2.2.2. Sending an individual allegation to a monitoring body

If you wish to send information about an **individual allegation** to a reporting mechanism, you should aim to include the following as a minimum wherever possible:

- **Name of victim:** This should include both first and last name unless it is the local custom to have only one name. The objective is identification - if the name is very common, other identifying details should be given, such as address or place of residence, age, sex or profession. Such details are always valuable and should be given if known. Most of the mechanisms cannot take action on behalf

of an unidentified individual, which normally means a named individual. The only exception where names might not be required would be where a clearly identifiable group is involved - e.g. a group of 50 students arrested after demonstrating outside the mayor's office of City X on 19 November 1999 - but names should always be included if available.

- Date of incident: This should be as precise as possible, and include both the date of apprehension by the state officials and of any incident(s) of torture if these are different. Dates are important as they help to understand the sequence of events. If you know the time of day (exact time, or whether it took place in the morning or evening) this can also be helpful.
- Place of incident: This should include the name of the town, village or local district, and the name of the state or region where applicable. Make sure that you include the place of any incident of torture or other ill-treatment, which may mean more than one place if there have been several incidents, as well as the place of arrest if this is different.
- Alleged perpetrator(s): This should include the name and rank of the perpetrator if known, but at least the branch of the security forces or military involved, or the police station with which the perpetrator is associated. It is often possible to identify the group involved by the uniform worn. Remember that the perpetrator must have a connection with the state - in an area where apprehensions by plainclothes police or military are known to be common, it may not be necessary to name the perpetrators, as it will be possible to draw a strong inference from the surrounding circumstances. See Part I, Chapter 3.6 for a discussion of what to do if the allegation concerns non-governmental actors.
- Details of treatment: Avoid using the term 'torture' or 'tortured' without describing the treatment involved. Not every incident of unpleasant treatment will be serious enough to constitute torture in legal terms, even though you may feel very strongly about it. The best approach is to describe the treatment in as much detail as possible. In this way, the international body will be able to determine for itself if torture in the legal sense has taken place. Where the torture was physical, the details should include descriptions of the *treatment* involved, any *instruments* used, the *parts of the body* to which the treatment was applied, and any *injuries* suffered. For example, instead of saying 'Mr. X was beaten', which could mean just about anything, it is much more informative to say 'Mr. X was severely beaten in the face and head with a metal bar, resulting in a fractured skull and a perforated eardrum.' Where the torture was psychological, you should describe what it *consisted of*, how the victim *felt* while it was going on and subsequently, and provide details of any way in which the victim's behaviour or mental state has been *affected* by the treatment e.g. if he is suffering from nightmares or paranoia.

While there is a minimum amount of detail which should be present, there is really no maximum to the amount of relevant details which can be included. What does relevant mean? Basically, it means anything which helps the international bodies to understand what happened and makes it possible for them to decide if a state is respecting its obligations. As states have obligations to investigate and remedy incidents of torture, this includes information about what happened after the incident. Details which might be relevant and should be included if known include:

- Age, sex and profession of the victim - it is particularly useful to mention whether the person is male or female, as it can be difficult for someone unfamiliar with the local language to determine this.
- Identity card number
- Address or place of residence
- Race or ethnic group
- Any injuries or long-term effects suffered
- Was the victim granted access to a lawyer and/or doctor during his detention?

- Did the victim make a complaint about the incident of torture?
- If a complaint was made, what have the state authorities done in response? Has there been an investigation or prosecution? If there has been a prosecution, was any penalty imposed?

TABLE 4: CHECKLIST FOR SUBMITTING AN INDIVIDUAL ALLEGATION TO A REPORTING MECHANISM

CHECKLIST: Submitting an individual allegation to a reporting mechanism	
Does your submission include:	<ul style="list-style-type: none"> • A brief introduction to the objectives and working methods of your organisation? • As many details as possible, but at least: <ul style="list-style-type: none"> ⇒ name or other identifying characteristic of victim ⇒ date and place of incident(s) ⇒ alleged perpetrator(s) ⇒ details of treatment <p>(See above for an explanation of what these should include)</p> • Any available supporting documentation? • A clear indication that the case is urgent if you are requesting urgent action? • A clear indication of any details which are confidential?

2.3. Submitting information in the context of the state reporting procedure

2.3.1. How does the state reporting procedure work?

The purpose of the state reporting procedure is to help treaty bodies (this currently applies only to the United Nations treaty committees) to gain a clear picture of the extent to which States Parties are respecting their treaty obligations, by asking states to describe how they are implementing those obligations in practice. States have an obligation to submit reports on a regular basis, although many delay the submission of these reports for many months or years. Once a treaty body has received a state report, it must examine it carefully in order to identify any areas of concern. The report is considered in a formal meeting, which the public may attend. During this meeting, the state whose report is being considered is given an opportunity to introduce its report, and will normally be asked by the committee to answer further questions raised by the report. Finally, the committee will adopt its conclusions and make recommendations to the state on ways to better implement its obligations.

2.3.2. What can you achieve by submitting information in the context of the state reporting procedure?

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

- reach accurate conclusions about a country situation
- ask the right questions when examining the state report
- make useful recommendations appropriate to the situation

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

2.3.3. What should an NGO report in the context of the state reporting procedure contain?

You should follow the general guidelines set out in Part III, Chapter 2.2.1, for submitting general information to a reporting mechanism. In addition, however, as the state reporting procedure involves an assessment by a treaty body of the extent to which obligations under a particular treaty are being respected, you should be guided by the provisions of that particular treaty and previous findings in relation to the state, as well as the purpose of the procedure.

When preparing a submission, therefore, you should bear in mind the following:

- As the reference point used by the committee in its examination will be the treaty itself, it makes sense to construct your report around the *provisions of the treaty*. Pick out those about which you have information, and explain how they are being implemented in the country. This ensures that you are addressing issues which the committee will be most interested in, and it helps you to identify the points which you should concentrate on. As the state will certainly provide information about the formal legal situation, what legislation exists, etc., the big question which you will need to answer will, as a general rule, be how this legislation actually works in practice.
- If the report being submitted is not the first one submitted by that particular state, you should also refer to the committee's previous conclusions on that state in order to help you identify the areas of concern to the committee. You should comment on the extent to which the committee's recommendations have been implemented since consideration of the last report.
- If there is time between publication of the state report and its consideration, it can be helpful to comment on the content of the state report itself, whether you agree or disagree with it (always give reasons), or whether there is any additional information which should be brought to the attention of the committee. This also helps you to focus on the points which will be most useful to the committee. Make sure that your report is objective and does not concentrate only on the negative aspects - if what the Government has stated is true, you should recognise it, and recognise also those measures it may have taken which have had some success in improving the situation. A balanced approach will strengthen your credibility, and also allow the committee to see what measures actually appear to work in practice, which will assist it in making recommendations in other cases.
- Unless you can do so very briefly, you should not attempt to address each and every point made by the Government or contained in the treaty, but concentrate instead on the most important issues. Remember that it is best to be concise whenever possible.
- Try to give as many precise examples and statistics as possible. The idea is for you to provide the raw information so that the committee is in a position to reach its own conclusions. This means that

you should avoid making unsupported statements. For example, you should avoid stating that something is ineffective without giving specific examples of why this is so.

- It helps to set your allegations in context. See Part III, Chapter 2.2.1, for suggestions on how to describe the general background in a country.
- Try to suggest some questions which the committee might like to ask when considering the state report. This can help the committee to identify important areas of concern which the state report may not have elaborated upon.
- Finally, don't forget to make constructive suggestions for improvement. You are often in a better position than the committee to get a sense of what measures might have a positive effect on the general situation, and this insight can be very useful to the committee. In addition, it helps to show that your motives are not merely to challenge the Government, but genuinely to seek to improve the general situation.

2.3.4. Practical tips for submitting information in the context of the state reporting procedure

- Any State Party to the human rights treaties setting up a state reporting procedure has a duty to submit these reports - check if your state is a party.
- To find out when your country is expected to submit a report, you should contact the Secretariat in Geneva or check the website (see Appendix 2) to find out which reports are due to be considered at the next session of the committee. This is normally decided at the end of the previous session.
- In recent years, the number of states submitting reports has begun to decrease. If you are aware of serious problems in a country, it is worth alerting the committees to the facts even where a country has not yet submitted a report. This should not replace the sending of information close to the time of consideration of a report, however - the treaty bodies receive so much information that they can forget about information received a long time previously.
- Once you know that your state report will be considered at the next session, get started as early as possible so that you have plenty of time to prepare your submission.
- The state report should become available to the public six weeks before the Committee meets - you can contact the Secretariat if you would like a copy, or check if it has been posted on the website. You should not wait until the state report becomes available to start preparing your submission, as you need plenty of time to research and prepare a good report.
- The committees receive a lot of information. Preparing submissions jointly with other NGOs is a good way of reducing duplication and being more comprehensive. The committees generally prefer to receive a single well-thought out and comprehensive submission than a dozen statements repeating the same points and leaving out others.
- If you have the opportunity to go to Geneva to deliver your submission in person, you should do so - again, this will help to distinguish it from the rest of the information received, and it means that you can draw attention to the most important parts of your submission. It can also help to create an impression of you and your organisation, hopefully a good one.

2.4. Submitting information to a body engaged in fact-finding

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

2.4.1. Submitting information in advance of a fact-finding visit

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

Your information should help the body to plan and prepare for its visit by:

- Identifying the areas of concern which need to be examined most closely
- Identifying the areas, towns and specific institutions which should be visited (those about which a lot of allegations are received and which appear to have the most serious problems)
- Including as much detail as possible relating to the layout of the institutions which should be visited and the location of rooms or areas within the institution where torture most frequently takes place. Sometimes it may even be possible to construct a plan of the layout or the route to the interrogation rooms on the basis of information received from victims, particularly where the same description is given by more than one victim, e.g. They took me there through a door behind the main reception desk in the police station which led downstairs - we went down two floors, and turned left down a long corridor. The room where I was interrogated was the last door on the right at the end of the corridor.
- Explaining the social and legal context of a country, in particular drawing attention to any specific laws which appear to contribute to the problem, e.g. legislation which permits extended incommunicado detention or which places restrictions on the possibility of prosecuting state officials, or legislation or case-law permitting the use of confessions obtained through torture as evidence in court.
- Identifying any state officials or parliamentary representatives with whom it would be particularly important to meet: either because they have themselves been linked with involvement in ill-treatment (e.g. a state doctor known to have issued false medical certificates concealing the presence of injuries sustained in police custody; a public prosecutor known not to open cases concerning allegations of ill-treatment against public officials), or because of any attempts on their part to address problems of ill-treatment (e.g. members of an independent national human rights commission).
- Providing a list of contacts with which the body might wish to organise meetings during the visit, e.g. national human rights NGO representatives (including those engaged in advocacy, reporting and rehabilitation), professional associations such as medical or lawyers' associations, individual lawyers familiar with the domestic system or active in the representation of victims, victim-support organisations.
- Informing the body if you would be able to arrange for it to meet with alleged victims of torture during the visit.

2.4.2. Submitting information during a fact-finding visit

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

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

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

If you are presenting information in person, you should:

- Make sure to address the important points first in case you run out of time.
- Listen carefully to any questions you are asked and answer them precisely, even if this means that you are not able to say everything you have prepared - the questions you are asked will be the ones which the visiting delegation most needs answers to.
- Prepare a written submission as well, and bring it with you to the meeting to back up your presentation - if you run out of time, this should provide all the necessary information, and it will help the representatives of the fact-finding body to remember you.
- Bring copies of any documentation which explains who you are and what you do, e.g. activity report.
- Avoid using the meeting to make political statements - if you do this, you will run out of time to provide the fact-finding body with the information it really needs.

3. WHAT YOU SHOULD KNOW ABOUT INTERNATIONAL COMPLAINT PROCEDURES AND HOW TO USE THEM

The term '**complaint procedure**' is used throughout the text to refer to:

A formal judicial-style process in which an individual or group of individuals make a complaint to an international judicial body alleging that their individual rights have been violated in a specific case. A complaint under such a procedure may also be referred to as an *application*, a *petition* or a *communication*.

International complaint mechanisms are designed to address individual cases of violation by states of their obligations under human rights law, rather than to examine a general human rights situation. They function in a very similar manner to domestic legal proceedings, and are accompanied by more formal requirements than reporting procedures. As a rule, they are not intended to serve as a first resort, but will only accept complaints where it has not proved possible to obtain a remedy at the domestic level (where domestic remedies have been 'exhausted' - see Part III, Chapter 3.3.2.2). The decisions adopted in the context of international complaint procedures are generally binding on states, but can be difficult to enforce.

The following information applies to all individual complaint procedures as a general rule. Any exceptions are noted when the relevant mechanism is discussed in Part III, Chapters 4 and 5.

3.1. What can you seek to achieve by using individual complaint procedures?

Complaint procedures **can**:

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

Complaint procedures **cannot**:

- Adequately address a generalised problem

3.2. What kind of complaints can individual complaint procedures examine?

Individual complaint procedures can examine complaints which:

1. Concern an alleged **violation** of a provision of the relevant treaty

2. Where the violation has allegedly been committed by a **state** which has **accepted the individual complaint procedure** (and the **competence of the implementing body** to examine individual complaints if consent to this is required separately, e.g. the competence of the Inter-American Court of Human Rights must be accepted expressly even though the individual complaint procedure under the American Convention on Human Rights applies to all parties)
3. Where the violation has allegedly been committed against an **individual or group of individuals** under the state's **jurisdiction** and
4. Where the complaint is **brought by** the victim, his or her family or an authorised representative (which can include an NGO).

- *Violation:*

A state can be found to have violated its human rights obligations not only through its actions (e.g. the deliberate practice of torture), but also through its omissions (e.g. failure to take effective steps to prevent torture from occurring/failure to prosecute perpetrators/failure to investigate allegations). This means that an alleged violation can cover more than just the incident of torture itself, and could also be demonstrated by the circumstances surrounding the incident.

It should be noted that while some of the treaties considered in this handbook are torture-specific, others are more general in nature and cover a wide range of human rights. Complaints brought under a general treaty can allege violations of more than one right. For example, if an individual was detained arbitrarily and died in custody as a result of torture, it would be possible to allege violations of the right to liberty and security of person and the right to life as well as the right not to be tortured.

- *Jurisdiction:*

Under human rights law, states undertake to respect and protect the rights of all individuals under their *jurisdiction*. This basically means all individuals over which the state can exercise control. This includes all those within the state's territory (including foreigners, not just nationals of the state), but can also include those affected by the acts of state officials abroad, for example those affected by the acts of a state's armed forces in another territory.

3.3. How do individual complaint procedures work?

3.3.1. Basic chronology

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

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

At any stage of the proceedings, most of the bodies which receive individual complaints can:

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

Some of these steps need further explanation.

3.3.2. Admissibility

3.3.2.1. What is admissibility?

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

When a judicial body examines the *admissibility* of an application, it is basically asking itself if it is allowed to consider the case. It does not examine whether or not the facts reveal a violation of

international human rights law (this is what happens at the *merits* stage) - instead, it is asking if there are reasons which prevent it from looking at the case at all.

3.3.2.2. *Why might a complaint be declared inadmissible?*

The reasons ('grounds') for which an international body will declare a case inadmissible will be indicated when considering that mechanism, but a number of them are common to most of the individual complaint procedures. Most of them are procedural grounds, which means that they do not relate to the facts of the case, but to the way in which the application has been made. The principal grounds of inadmissibility are:

- The application is **anonymous**
- The applicant is **not the victim** and has **not obtained authorisation** from the victim or the victim's family to make a complaint
- The application is about **events which occurred before the treaty entered into force** for the state concerned. For example, under Article 27 of the Convention Against Torture, that convention comes into force (becomes applicable) 30 days after a state has ratified it. This means that if State X ratifies the convention (and accepts the individual complaint procedure) on 31 March 2000, it will come into force for that state on 30 April 2000. The Committee Against Torture can then only examine complaints which are about events which occurred on or after 30 April 2000.
- The **time-limit** for submission of an application has expired. As a general rule, the time-limit begins to run from the time a final official decision is taken in the case. This could mean the date of the incident where no remedy has been sought (but see below for exhaustion of domestic remedies), but in general it will mean the date of a decision not to prosecute, a court judgment, the lodging of a petition by the victim to which no response has been received, or some other such decision which represents the final step in the process of seeking a remedy within the domestic system.
- The communication is **incompatible** with the provisions of the relevant convention
- The application is considered **manifestly ill-founded** or an **abuse of the right** of submission. This is the only ground of inadmissibility on which the judicial bodies can refer to the facts of a case. It is assessed on a case by case basis, and is applied where it is considered that the facts could not possibly reveal the violation alleged, therefore being clearly an allegation without any basis for which the right of submission should not have been used.
- The facts of the case have **already been examined** under this or another procedure of international settlement
- **Domestic remedies** have not been exhausted

The most common ground for declaring a complaint inadmissible is the **non-exhaustion of domestic remedies**, but it is also the most difficult to be certain about. It therefore needs to be examined in more detail.

⇒ What does 'exhaustion of domestic remedies' mean?

Basically, it means that if a victim of a human rights violation wants to bring an individual case before an international body, he or she must first have tried to obtain a remedy from the national authorities. It must be shown that the state was given an opportunity to remedy the case itself before resorting to an international body. This reflects the fact that states are not considered to have violated their human rights obligations if they provide genuine and effective remedies for the victims of actions of state officials, in recognition that certain individuals may engage in unacceptable behaviour without the approval of their governments.

The international bodies do recognise, however, that in many countries, remedies may be non-existent or illusory. They have therefore developed rules about the characteristics which remedies should have, the way in which the remedies have to be exhausted, and special circumstances where it might not be necessary to exhaust them.

⇒ What kind of remedies must a complainant have exhausted?

A complainant must have exhausted any remedy (whether judicial or administrative in nature) which is:

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

If the existing domestic remedies do not fulfil these criteria, a victim may not have to exhaust them before complaining to an international body. However, the complainant needs to be able to show that the remedies do not fulfil these criteria in practice, not merely in the opinion of the victim or that of his or her legal representative. For example, it might be necessary to be able to show that no person alleging torture who has ever used a particular remedy has ever been granted compensation. If there is any doubt as to whether a remedy is effective, the complainant should at least be able to show that an attempt was made to use it. Furthermore, if the remedy has become unavailable through the complainant's own fault (e.g. where the complainant has failed to respect the deadline for making an appeal, so that the appeal procedure becomes unavailable), this would not normally be accepted as a justification for non-exhaustion of the remedy.

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

1. The complainant states that the remedy did not have to be exhausted because it is ineffective (or unavailable or inadequate) - this does not yet have to be proven
2. The state must then show that the remedy is effective
3. If the state is able to establish this, then the complainant must either demonstrate that he or she did exhaust the remedy, or that it could not have been effective in the specific case even if it may be effective in general.

⇒ How must the remedy have been exhausted?

The subject of the complaint argued before the international body must have been referred to in the complaint before the domestic authorities. The reason for this is to make sure that the state has been given an opportunity to provide redress for the specific complaint which is being brought before the international body.

An example might be where a complainant has brought a domestic case seeking compensation for an act of torture, during which he or she did not question the nature of the police investigation into the complaint at any stage. If the court refuses to award compensation on the ground that the evidence presented was insufficient to establish that an act of torture occurred, and the complainant claims before the Committee Against Torture that there has been a violation of the state's obligation to ensure that there is a prompt and impartial investigation of allegations of torture, it is quite possible that this

complaint will not be accepted because it was never raised before the domestic authorities - although it may be possible to complain about the failure to provide compensation.

⇒ When might it not be necessary to exhaust domestic remedies?

In special circumstances, the international body may find that domestic remedies did not have to be exhausted even where they were available, and potentially effective and adequate. Such special circumstances include:

- Where application of the remedies is unreasonably prolonged, e.g. where court proceedings or the investigation of allegations are excessively long, not due to any fault of the complainant
- Where no independent judiciary exists
- Where there is a general climate of intimidation such that it is not possible to obtain legal representation

Each case will be considered on its facts, and grounds which have been rejected in one case have sometimes been accepted in another, so do not hesitate to be creative in your arguments. One word of warning, however: ignorance of the existence of available remedies is unlikely to be accepted as a justification for non-exhaustion. You should make sure that you are fully-informed of the potential domestic remedies available in any case.

3.3.3. Amicus curiae briefs/Third party interventions

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

An *amicus* brief is a written submission made by an interested third-party to the proceedings i.e. by an individual, an organisation, or even another state which is neither the complainant, the defendant state, or in the case of an advisory opinion, the requesting state or organ, but who it is felt can contribute something of importance to the proceedings. In general, these interventions will either be requested explicitly by the court, or permission to submit a brief will be sought by the interested third party, which the court may either accept or refuse.

The content of the brief itself will vary from case to case, although it will normally address general issues and situations rather than something specific to an individual complainant. A request for permission ('leave') to submit an *amicus* brief, however, should normally contain the following elements:

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

3.3.4. Provisional measures

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

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

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

3.4. What should an application under an individual complaint procedure contain?

You need to think in terms of two components to your communication. The first is your cover letter, which must include a certain number of details. If these are not provided, you will be asked to supplement your application before it can be processed any further. The second is the supporting documentation.

Your cover letter should include:

- Name, nationality, occupation, postal address and signature of the complainant, or the name and signature of any legal representative(s) or of any other person authorised by the alleged victim to act on his or her behalf. If you have a means of verifying the complainant's identity (e.g. national identity card), a copy of this should be included as well.
- Name of the State Party against which the communication is directed
- Provision or provisions of the convention alleged to have been violated
- An account of the act or acts alleged (See Part III, Chapter 2.2.2 for an indication of the details which should be included)
- An indication that the state is responsible either through action or inaction
- Information on the efforts made to exhaust domestic remedies and their outcomes, including the judgment, whether there was an appeal and the date of any final judgment, or information on the impossibility of exhausting them
- Indication of the extent to which the same matter is being examined under another procedure of international investigation
- An indication of any part of the communication (including the complainant's name) which should remain confidential

Always try to include as much **supporting documentation** (see also Part II, Chapter 5) with your communication as possible. This could include:

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

Always send copies of the documents, not the originals, as they will not be returned to you.

Official documents can generally be submitted in their original language, but you should indicate what their relevance is - if possible, provide a short summary in a working language of, for example, the result of the judgment, or of the injuries recorded in the medical certificate.

3.5. Practical tips for using individual complaint procedures

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

4. THE MECHANISMS AND PROCEDURES: UNITED NATIONS

4.1. Introduction to the United Nations system

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

Languages: The UN has six official languages (English, French, Spanish, Russian, Chinese and Arabic), but only three working languages (English, French and Spanish) and, in practice, the most widely understood language within the OHCHR is English. The OHCHR, like many international organisations, has very limited resources. See Part III, Chapter 2.2.1, for suggestions concerning the language of submission of your communication in such circumstances.

It is worth knowing, also, that the UN has complicated rules about the translation of official documents which mean that in general a report will not be made public until it has been translated into all the official languages. This can sometimes create lengthy delays, and is often the reason for the failure of a document to appear in advance of the Commission on Human Rights sessions.

Distribution: If you want your communication to be sent to more than one procedure at the OHCHR, the most reliable approach is to send one copy to each yourself. There are two reasons for this: 1) like any large organisation, it can sometimes happen that information is not passed on from one procedure to another within the OHCHR; and 2) you will usually need to emphasise different points for the different procedures.

If you do not have the resources to send more than one copy, you should mark very clearly who you wish to receive the information, in order to guarantee that it is distributed to all of the procedures you have chosen. This will be particularly relevant where you want the information to be sent to several Special Rapporteurs (see Part III, Chapter 4.2.1.2.1). Some organisations who submit information to the OHCHR on a regular basis have prepared a standard form listing all the available procedures, and mark the ones which they would like to contact in any particular case.

4.2. Reporting mechanisms within the United Nations system

4.2.1. The United Nations Non-Treaty Procedures

The two principal bodies responsible for questions relating to human rights within the UN system are the Commission on Human Rights and the Sub-Commission on the Promotion and Protection of Human Rights. One of the ways in which they carry out their tasks is to create and supervise subsidiary procedures which assist them by carrying out studies, drafting and engaging in monitoring. Such subsidiary procedures usually report to the Commission or Sub-Commission on their activities. The procedures which follow below are of this type, created by the Commission on Human Rights, and dependent on it and the Sub-Commission for the purpose of any enforcement.

The Commission and Sub-Commission are both bodies which are especially suited to lobbying (see Part III, Chapter 7). In both cases, individual members or Member States can have a significant impact on

the matters considered during their sessions, and lobbying can influence the issues which they are willing to support. This is a very effective way of drawing attention to human rights violations in a country. Only NGOs with *consultative status* have direct access to the Commission and Sub-Commission, but some of those are willing to assist other NGOs to attend sessions. See Appendix 2 for details of Geneva-based NGOs who may provide assistance.

TABLE 5: BASIC FACTS: UN COMMISSION ON HUMAN RIGHTS

BASIC FACTS ABOUT: The UN Commission on Human Rights		
Origin:	How was it created?	By two 1946 resolutions of the UN Economic and Social Council
	When did it become operational?	1947
Composition:	How many persons is it composed of?	The diplomatic representatives of 53 States
	Are these persons independent experts or state representatives?	State representatives
Purpose:	General objective	To consider questions relating to human rights, both in relation to Member States and from a general perspective, and to adopt measures with a view to improving the situation of human rights across the world.

TABLE 6: BASIC FACTS: UN SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

BASIC FACTS ABOUT: The UN Sub-Commission on the Promotion and Protection of Human Rights (formerly known as the Sub-Commission on the Prevention of Discrimination and the Protection of Minorities)		
Origin:	How was it created?	By a 1947 UN Commission on Human Rights resolution under the authority of the Economic and Social Council
	When did it become operational?	1947
Composition:	How many persons is it composed of?	26
	Are these persons independent experts or state representatives?	Independent experts elected in respect of specific states
Purpose:	General objective	To undertake studies, make recommendations and draft standards relating to human rights, for the purpose of referring them to the Commission on Human Rights for further consideration and possible adoption.

4.2.1.1. The 1503 Procedure

4.2.1.1.1. HOW DOES THE 1503 PROCEDURE WORK?

Note: The 1503 procedure is currently undergoing review, and it is possible that significant changes may be introduced in the near future.

The 1503 procedure takes its name from the number of the Commission on Human Rights resolution which created it. Its purpose is to examine complaints of **gross violations of human rights** in a country in order to identify **patterns of violation**. It is not the responsibility of a special body, but is

implemented instead by the Sub-Commission on the Promotion and Protection of Human Rights and the Commission on Human Rights. The most notable characteristic of the procedure is that it is confidential and those who submit information are not informed of the outcome.

TABLE 7: BASIC CHRONOLOGY: 1503 PROCEDURE

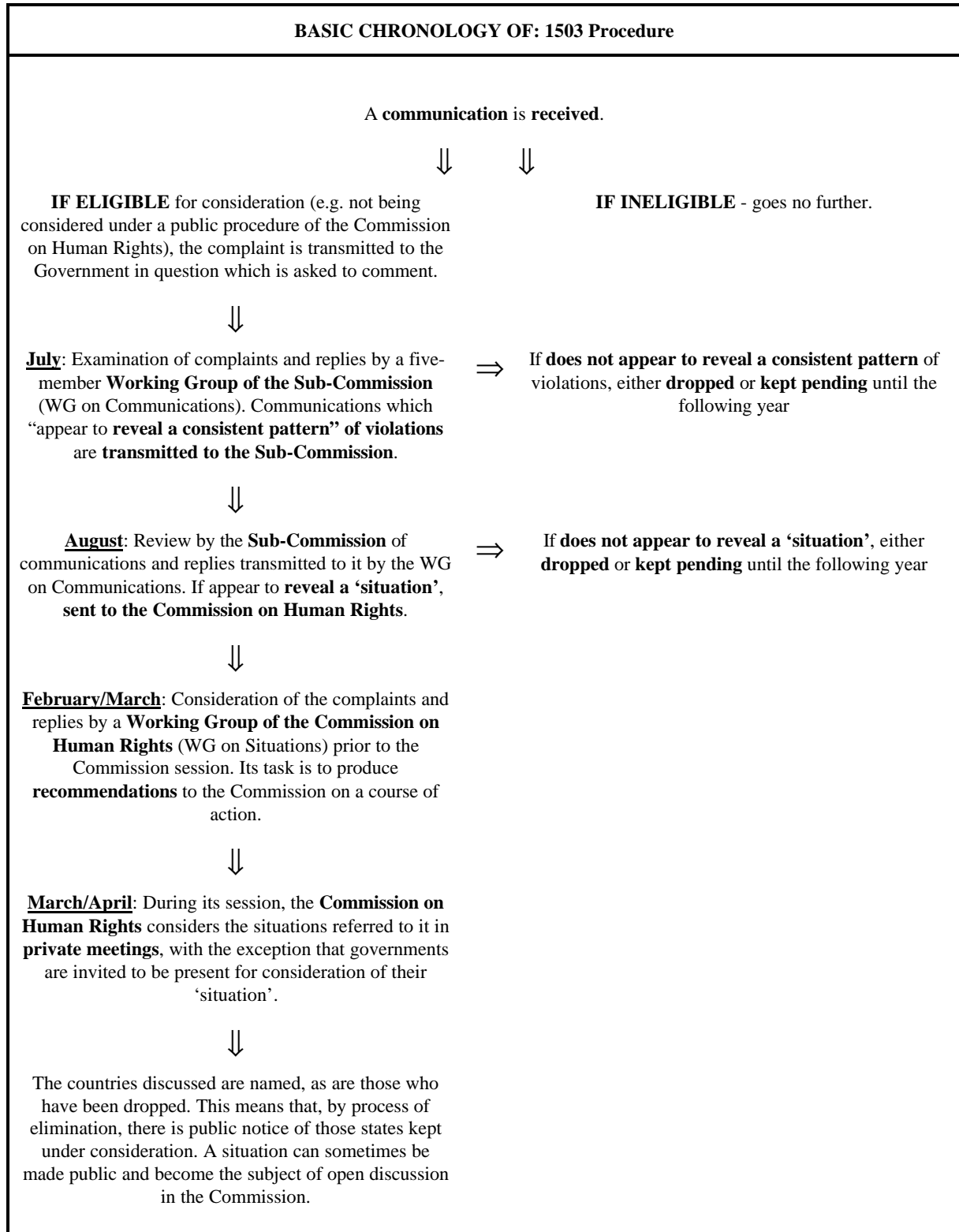


TABLE 8: BASIC FACTS: 1503 PROCEDURE

BASIC FACTS ABOUT: The 1503 Procedure		
Origin:	How was it created?	By a 1970 resolution of the UN Economic and Social Council
	When did it become operational?	1972
Composition:	The 1503 Procedure is implemented by the Sub-Commission on the Promotion and Protection of Human Rights and the UN Commission on Human Rights	
Purpose:	General objective	Confidential examination of complaints of gross violations of human rights in a country in order to identify patterns of violations.
	Functions	<ul style="list-style-type: none"> Monitoring

4.2.1.1.2. WHAT CAN YOU ACHIEVE BY SUBMITTING INFORMATION TO THE 1503 PROCEDURE?

The effectiveness of the 1503 Procedure is clearly handicapped by its confidential nature. However, the practice, which the Commission on Human Rights has developed, of announcing the names of the states under consideration, and indicating the ones which have been dropped from consideration, goes some way towards improving this. It means at least that the fact that a state is under consideration becomes public knowledge.

Even within the constraints of the confidential procedure, a state can be made to account for and respond to allegations. As an incidental result of the procedure, the mere transmission of a complaint to a Government may motivate it to investigate and rectify the situation complained of, or may prompt it to suspend or terminate a practice, in order to avoid drawing attention to itself and discourage referral of the complaint to the Sub-Commission. For those complaints and replies which do make their way past the Sub-Commission, the Commission identifies issues of concern during its consideration of 'situations', and might ask the states in question to make improvements. It might request answers to specific questions. The Commission has the power to initiate a study or to set up an ad-hoc investigatory body with the express consent of the Government concerned but, over the years, it has developed its own ways of dealing with serious cases by appointing an independent expert who carries out field missions and submits a confidential report to the Commission at its next session.

In exceptionally serious cases, the Commission on Human Rights may choose to transfer the situation to a public procedure. This may include the appointment of a Special Rapporteur. (see Part III, Chapter 4.2.1.2)

The 1503 Procedure **can** be used to:

- Raise awareness of a serious situation of gross violations of human rights, at least within the Commission on Human Rights
- Make suggestions for ways to seek improvements to such a situation

It is **not** suitable if you wish to:

- Obtain an immediate remedy for an individual.
- Receive feedback about your allegations. You will only receive an acknowledgement that your complaint has been dealt with under the procedure.

4.2.1.1.3. WHAT SHOULD A COMMUNICATION TO THE 1503 PROCEDURE CONTAIN?

A communication to the 1503 Procedure **must**:

- Be *addressed to the UN*, or any of its bodies or staff members. In other words, it does not specifically need to be addressed to the 1503 procedure, but must at least be requesting action by the UN.

A communication to the 1503 Procedure **must not**:

- Be *anonymous*. The name will be deleted before the communication is transmitted to the State unless the writer has no objection to his or her name being divulged.
- Contain *abusive language*.
- Be *merely politically motivated* or an opportunity to express propaganda, but should be the expression of a genuine grievance.

The 1503 procedure is designed to identify and follow up on “situations which appear to reveal a consistent pattern of gross and reliably attested violations of human rights”.

This means that the following considerations should be taken into account when preparing a communication under 1503:

- The objective of such a communication is to draw attention to a situation, rather than to an individual case, and should help to establish a pattern of violations. This means that it is very helpful for individual cases to be compiled into one document rather than submitted one by one, and although an individual case combined with others can initiate consideration of a ‘situation’, it will rarely be sufficient on its own.
- The evidence should relate to gross violations of human rights (which includes torture).
- The evidence should be consistent over time and as between different sources of information.
- The evidence of violation must be reliable. This means that you should avoid contradictions, provide evidence to support your allegations, and avoid vagueness.

When setting out your account of each allegation, you should follow the guidelines set out in Part III, Chapter 2.2.2, for the content of a standard communication as much as possible, but in addition, you should:

- Explain why you think there has been a violation and why you think the facts reveal a consistent pattern of gross violations
- Provide as much supporting evidence as possible (see Part II, Chapter 5, and Part III, Chapter 3.4 for examples of what this might consist of)
- Explain if any domestic remedies have been sought and what was the result, including copies of court judgments if relevant - if no domestic remedies have been sought, reasons should be given for this.
- Include any suggestions you might have for an appropriate course of action, e.g. the appointment of a Special Rapporteur, or an investigation, or simply action by the UN to end the violations.

4.2.1.1.4. SPECIFIC TIPS

- Who will be informed of the submission/identity of the source?

The name of the author of the communication will be deleted for transmission to the Government unless the author has no objection to his or her name being divulged. The confidentiality of the procedure means that no case under consideration is ever made public.

- Will you receive any feedback about your submission?

As the procedure is confidential, you will not receive any feedback about the content of your submission or of any action taken. You will, however, receive an acknowledgement that the submission has been dealt with under the procedure.

- If you want your communication to be considered at the next session of the Sub-Commission Working Group in July, you should make sure that it reaches the OHCHR by mid-April. Otherwise it will not be considered until the following July.
- The 1503 procedure accepts communications by email, which the Committee Against Torture and the Human Rights Committee do not.
- You should note that:

Complaints <u>will not be accepted</u> if they concern a state:	Complaints <u>will be accepted</u> if they concern a state:
<ul style="list-style-type: none"> • Which is being considered under a public procedure of the Commission on Human Rights. • Which has accepted the right of individual petition under the ICCPR, the CAT, or the CERD, and the complaint relates to an individual violation of a right which is protected under one of those instruments. 	<ul style="list-style-type: none"> • Which has accepted the right of individual petition under the ICCPR, the CAT, or the CERD, but the complaint relates to general information about the state rather than an individual complaint.

4.2.1.2. *The Special Procedures of the UN Commission on Human Rights*

The special procedures of the UN Commission on Human Rights are set up to monitor either specific subject-areas on a world-wide scale, or particular countries in relation to the full range of human rights. They are most commonly known as *special rapporteurs* or *working groups*, but other names include *independent experts* and *special representatives*. They are created by resolution in response to situations which are considered to be of sufficient concern to require an in-depth study. The procedures report publicly to the Commission on Human Rights each year, and some also report to the UN General Assembly.

Each procedure has its own slightly different working methods, but they are appointed in the same way, the basic considerations are the same with respect to preparing a communication, and all of the general principles discussed above in relation to writing to UN mechanisms also apply. The one you are most likely to wish to use in the context of torture allegations is the Special Rapporteur on Torture, who will

therefore be used as the basic example. It is important to remember, however, that he is only one of a number of special procedures to which allegations of torture may be sent.

4.2.1.2.1. THEMATIC RAPORTEURS AND WORKING GROUPS

All thematic procedures should be approached in a similar way to that described below in relation to the Special Rapporteur on Torture. The important point to remember is that the different thematic mechanisms are not mutually exclusive, and may make either joint or separate interventions in connection with the same allegation.

In general, where your allegation concerns treatment which appears to amount to torture or ill-treatment, you should send it to the Special Rapporteur on Torture, but where the facts reveal other possible human rights abuses as well, you should also try to send it to all other relevant special procedures, or to indicate on your letter to which special procedures you would like it distributed. Action by more than one rapporteur or working group will often carry more weight and is likely to influence a state even more than where only one procedure expresses concern.

An example of an allegation which could be distributed to more than one procedure would be the violent arrest and detention of a female journalist by state officials on account of her journalistic activities, including rape and beating with truncheons at the time of arrest. Depending on the degree of detail available and the particular circumstances, this could potentially motivate action by the Special Rapporteurs on Torture, Violence Against Women and Freedom of Expression, as well as the Working Group on Arbitrary Detention.

It is also possible that a case on which the Special Rapporteur on Torture decides he cannot take action is one which another special procedure can in fact pursue. It is important not to focus exclusively on one procedure where others may also be competent. For example, where the treatment experienced by a detainee is not considered severe enough for the Special Rapporteur on Torture to intervene, the facts may still reveal a case of arbitrary detention which the Working Group on Arbitrary Detention can follow up. As the Special Rapporteur on Torture must decide each case on its own facts, it is difficult to predict with certainty if he will be able to take action in a particular case - it is therefore better to maximise the chance that the allegation will be followed up by making sure that it reaches any procedure which may be competent to do so, rather than limiting the communication to one mechanism.

As the thematic procedures are dependent on the Commission on Human Rights for their mandates, it is possible for a particular Special Rapporteur or Working Group to be discontinued or a new one created from one year to the next. The table on the following page sets out the relevant thematic procedures in existence at the time of writing, along with any particular points of note.

TABLE 9: RELEVANT THEMATIC PROCEDURES OF THE UN COMMISSION ON HUMAN RIGHTS

Thematic Procedure:	Comments:
WG on arbitrary detention	You must explain why you think the detention is <u>arbitrary</u> . The WG interprets this as meaning detention which 1) does not have a legal basis; 2) is a response to the exercise of fundamental rights, such as freedom of expression (e.g. the arrest of a journalist for the exercise of his profession); or 3) is rendered arbitrary because due process guarantees are not observed (e.g. if someone is not brought promptly before a judge). It is not enough to consider that the detention is 'unfair'. The WG will not normally examine a case once the individual has been released, unless it concerns a question of principle.
WG on enforced or involuntary disappearances	The WG acts only in clearly identified individual cases. If the person or organisation submitting the information is not a relative but is acting directly or indirectly upon the family's request, he or it is required to maintain contact with the family at all times as any replies received are for the information of the relatives only. You should indicate if you wish your communication to be confidential.
SR on extra-judicial, summary or arbitrary executions	The SR can take action in cases where the following result from the actions of state officials or groups co-operating with or tolerated by the Government: 1) the death penalty, where there has been an unfair trial, a breach of right to appeal, or it involves a minor, a mentally retarded or insane person, a pregnant woman or a recent mother; 2) death threats or imminent risk of extra-judicial execution; 3) deaths in custody owing to torture, neglect, use of force, or life-threatening conditions of detention; 4) deaths resulting from unnecessary or disproportionate use of force; 5) deaths in violation of ILAC; 6) expulsion to a country where there is a risk to life; 7) genocide; 8) a breach of the obligation to investigate, bring perpetrators to justice and provide adequate compensation. You should indicate if the information is confidential.
SR on the promotion and protection of the right to freedom of opinion and expression	The SR's areas of interest include: persons exercising/promoting the exercise of the right, including professionals in the field of information; political opposition parties and trade union activists; the media (print and broadcast), including any threats to their independence; publishers and performers in other media; human rights defenders; obstacles to women's right to be heard; obstacles to access to information. You should indicate if you wish your communication to be confidential.
SR on the independence of judges and lawyers	Information can be received about judges, lawyers and court officials. The SR is essentially concerned with safeguards and the proper functioning of the justice system.
SR on the question of torture	See below.
SR on violence against women	The SR examines cases of violence against women <u>on account of</u> their gender - your communication must indicate why you believe that the woman involved was targeted <u>because of</u> her gender. A special feature of this mandate is that it looks at violence not only by state officials, but also where it is condoned by the state in the community and within the family. With respect to general information, you should note that the SR is particularly interested in examples of good practice which can be used as a basis for recommendations in other states. Communications are confidential.
Other relevant thematic procedures are:	
SR on the sale of children, child prostitution and child pornography; SRSR on children in armed conflict; SRSR on internally displaced persons; SR on the human rights of migrants; SR on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; SR on the question of religious intolerance.	

KEY: SR = Special Rapporteur; SRSR = Special Representative of the UN Secretary-General; WG = Working Group

4.2.1.2.2. SPECIAL RAPPORTEUR ON TORTURE

TABLE 10: BASIC FACTS: UN SPECIAL RAPPORTEUR ON TORTURE

BASIC FACTS ABOUT: The UN Special Rapporteur On Torture		
Origin:	How was it created?	By a resolution of the UN Commission on Human Rights
	When did it become operational?	1985
Composition:	How many persons is it composed of?	1
	Are these persons independent experts or state representatives?	Independent expert
Purpose:	General objective	To monitor and report to the Commission on Human Rights on the practice of torture world-wide
	Functions	<ul style="list-style-type: none"> • Monitoring • Fact-finding

4.2.1.2.2.1. HOW DOES THE SPECIAL RAPPORTEUR ON TORTURE WORK?

The job of the Special Rapporteur is to present to the Commission on Human Rights as accurate a picture as possible of the practice of torture throughout the world. In order to do this, he relies on information received from a variety of sources, including NGOs, individuals and governments themselves. On the basis of this information he:

- engages governments in dialogue about credible allegations which are brought to his attention
- carries out fact-finding visits

Dialogue:

The Special Rapporteur’s dialogue with a Government can begin in one of two ways. If he believes that allegations he has received are credible, he will either transmit an urgent appeal or raise the allegation in a standard communication.

The urgent appeal procedure is designed to respond urgently to information reporting that an individual may be at risk of torture and is used to *prevent* possible incidents of torture. It will therefore be used only where information is very recent. It is a non-accusatory procedure, which means that it merely asks the Government to take steps to make sure that the person is not tortured, without adopting any position on whether or not the fear of torture might be justified.

Standard communications are transmitted to governments on a periodic basis and contain both allegations concerning individual cases (individual allegations) and those concerning general trends, patterns and special factors contributing to the practice of torture in a country (general allegations).

These communications are transmitted to the Government against which the allegations have been made, in order to give that Government an opportunity to comment on them. Depending on the response received from the Government, the Special Rapporteur may inquire further or make recommendations. All communications sent and received throughout the year are referred to in an annual report, along with further recommendations and general comments as appropriate, including recommendations about

measures which should be taken in order to eradicate torture.

Fact-finding:

The Special Rapporteur on Torture also carries out fact-finding visits to obtain first-hand information. He does not have a right to visit any country of his choice, but must first obtain an invitation from the Government to carry out a visit. During the visit, the Special Rapporteur meets with Government officials, NGO representatives and alleged victims, as well as visiting places of detention such as prisons and police stations. His objective is to get a good sense of what the actual situation on the ground is like. Following the visit, he produces a report in which he presents the conclusions he has reached about the scope of the problem, or lack of it, in that country, and makes recommendations about any measures which could be taken to improve the situation.

4.2.1.2.2.2. WHAT CAN YOU ACHIEVE BY SUBMITTING INFORMATION TO THE SPECIAL RAPPORTEUR ON TORTURE?

The power of the Special Rapporteur lies with the Commission on Human Rights, and the public nature of the procedure. His conclusions are not legally binding and he has no powers of enforcement. Nonetheless, not many states are immune to public condemnation, and the publicity of his findings creates pressure for states to co-operate by introducing reforms or otherwise implementing his recommendations.

If you are seeking action in relation to a general situation, he **can** be used to:

- Publicise the practice of torture in a country, including any official tolerance of such a practice
- Make recommendations to governments about improvements which should be made
- Request a fact-finding visit in order to draw public attention to a specific situation

If you are seeking action in relation to an individual case, he **can** be used to:

- Publicise individual incidents of torture
- Make recommendations to governments in relation to individual incidents of torture, including recommending the prosecution of perpetrators
- Seek to prevent the torture of individuals who are considered at risk, e.g. by requesting that an individual not be held incommunicado, or be granted urgent medical treatment
- Seek to prevent the deportation of an individual to a country where there is a substantial belief that he or she will be at risk of torture

He **cannot**:

- Visit countries without the consent of the Government in question
- Adopt legally-binding decisions in individual cases
- Enforce the recommendations he makes to governments
- Award reparation to individuals

4.2.1.2.2.3. WHAT SHOULD A COMMUNICATION TO THE SPECIAL RAPPORTEUR ON TORTURE CONTAIN?

- If you would like the Special Rapporteur to take action concerning a **non-urgent individual incident** of torture, you should follow the guidelines set out in Part III, Chapter 2.2.2 for the content of a standard communication.
- If you would like the Special Rapporteur to use the **urgent appeal** procedure, you should follow the guidelines mentioned above as much as possible, but in addition, bear in mind that:

- ⇒ where torture has not yet occurred, the relevant date, time and location will generally be those of the taking into custody
 - ⇒ you must show that there is a risk that torture may occur. This means that you need to emphasise the factors which show that this risk exists: e.g. the incommunicado or unacknowledged nature of the person's detention; the fact that this same person was tortured when arrested on a previous occasion; knowledge that persons arrested by this particular branch of the police are usually tortured, or that members of a particular group to which this person belongs are often tortured when arrested.
- There are no precise guidelines for submitting information for the Special Rapporteur to use in his **general allegations**. General allegations are those which are not limited to the case of one individual, or a single incident. They are, however, usually based on a collection of individual incidents. They are used to identify patterns of violation on the basis of consistent reports, and to express concern about specific factors facilitating the practice of torture in a country. Examples of the subjects of general allegations include:
 - ⇒ Widespread use of a particular method of torture e.g. electric shocks
 - ⇒ A law permitting the extended use of fetters on prisoners
 - ⇒ A law permitting incommunicado detention for a long period
 - ⇒ Consistent reports that persons prosecuted for torture are never convicted
 - ⇒ Consistent reports that a specific police station or branch of the security forces practices torture
 - ⇒ Consistent reports that members of a particular ethnic group are more likely to be tortured than others
 - ⇒ Consistent reports that prisoners with life-threatening illnesses are refused medical treatment

As you can see, the most important factor will be to establish a pattern. See Part III, Chapter 2.2.1 for suggestions on how to do this. The more cases you can collect to support your general allegations the better, as they show that the practices you have identified are not merely isolated incidents, but are serious and widespread.

4.2.1.2.2.4. SPECIFIC TIPS

- Who will be informed of the submission/identity of the source?

In order for the Special Rapporteur to take action in an individual case, it is necessary to transmit the name of the alleged victim or victims to the Government concerned. The name of the alleged victim will also become known to the public once it is recorded in the annual report of the Special Rapporteur. If you specify that you do not wish the name or names to be made known to the Government, it will not be possible to investigate the case itself, but it may provide a basis for general allegations in combination with other information. The name of the source of the allegation is never revealed, either in the communication to the Government, or in the annual report.

- Will you receive any feedback about your submission?

You will not receive any acknowledgement of receipt of your submission. If your allegations are transmitted to the Government, any reply received from the Government will normally be sent to you in order to give you an opportunity to comment on its content. All cases which are transmitted to governments are summarised in the Special Rapporteur's annual report to the Commission on Human Rights, so this will also tell you if any action was taken on the basis of your allegations.

- Part of the Special Rapporteur on Torture's job is to identify and monitor the ill-treatment of specific groups of persons. In recent years, he has focused particularly on the ill-treatment of children, women and human rights defenders. If you have information concerning any of these categories, or other identifiable groups, it would be important to send it to him.

4.2.1.2.3. COUNTRY RAPORTEURS

In addition to thematic rapporteurs and working groups, the Commission on Human Rights also appoints country-specific rapporteurs (or *independent experts* or *special representatives*) whose task is to report on the full range of human rights, including torture and inhuman treatment, in the specific country for which they are responsible. In general, such rapporteurs will be appointed in relation to countries which have particularly serious human rights situations, including those caused by war or internal conflict. The singling out of a country for such scrutiny is inevitably a politically sensitive matter, however, and there must be sufficient agreement among states at the Commission on Human Rights for a country-specific rapporteur to be created.

Like the thematic rapporteurs, the objective of country-specific rapporteurs is to paint an accurate picture of a situation, but instead of it being a world-wide portrait of a specific phenomenon, it should be a far more comprehensive report on the human rights situation in a single country. Allegations of torture and inhuman treatment are of major relevance to such a rapporteur, who needs to be able to report on the phenomenon in the context of his or her country report. Where a special rapporteur exists for the country about which you wish to submit an allegation of torture, therefore, he or she should be included on the list of procedures to which the allegation should be circulated. So, for example, if the arrest and detention of the female journalist mentioned previously took place in a country for which there is a special rapporteur, e.g. Myanmar or Equatorial Guinea or Iran, he or she should also receive the information.

At the time of writing, country-specific mandates existed in relation to:

TABLE 11: COUNTRY RAPORTEURS OF THE UN COMMISSION ON HUMAN RIGHTS (1999)

Afghanistan (SR)	Equatorial Guinea (SRCHR)	Occupied Arab Territories (SG, SR, & Special Committee)
Burundi (SR)	Former Yugoslavia: Kosovo (SG)	Rwanda (SRCHR)
Cambodia (SRSG)	Haiti (IE)	Somalia (IE)
Cyprus (SG)	Iran, Islamic Republic of (SRCHR)	Sudan (SR)
Democratic Republic of Congo (SR)	Iraq (SR)	
East Timor (SG)	Myanmar (SR)	

KEY: SR = Special Rapporteur; SRSG = Special Representative of the Secretary General; SRCHR = Special Representative of the Commission on Human Rights; IE = Independent Expert

4.2.2. The United Nations Treaty Bodies

The United Nations treaty bodies were created to supervise the implementation by States Parties of their obligations under a number of UN human rights treaties. The principal committees to which allegations of torture may be made are the following:

- Committee Against Torture (CAT): supervises the UN Convention Against Torture
- Human Rights Committee (HRC): supervises the International Covenant on Civil and Political Rights
- Committee on the Rights of the Child (CRC): supervises the UN Convention on the Rights of the Child

- Committee on the Elimination of Discrimination Against Women (CEDAW): supervises the UN Convention on the Elimination of Discrimination Against Women
- Committee on the Elimination of Racial Discrimination (CERD): supervises the UN Convention on the Elimination of Racial Discrimination

The most relevant for the purpose of torture-related material are the CAT, which focuses solely on the subject of torture, and the HRC, which is a well-established body dealing with a range of human rights including torture. However, the other committees are very important where torture allegations concern certain identifiable categories of persons, namely children, women and racial groups.

The working methods of each of these bodies are very similar. All have the power to examine and comment on state reports, and most are also able to receive individual complaints, or else are in the process of developing such a procedure.

4.2.2.1. Committee Against Torture

TABLE 12: BASIC FACTS: COMMITTEE AGAINST TORTURE

BASIC FACTS ABOUT: The Committee Against Torture		
Origin:	How was it created?	By the 1984 UN Convention Against Torture
	When did it become operational?	1988
Composition:	How many persons is it composed of?	10
	Are these persons independent experts or state representatives?	Independent experts
Purpose:	General objective	To ensure that states respect their obligations under this treaty to prevent and punish torture.
	Functions	<ul style="list-style-type: none"> • Examination of state reports (Article 19, UNCAT) • Fact-finding through confidential inquiry procedure (Article 20, UNCAT) • Inter-State complaints (Article 21, UNCAT) • Individual complaints (optional) (Article 22, UNCAT) (See Part III, Chapter 4.3.1)

4.2.2.1.1. HOW DOES THE COMMITTEE AGAINST TORTURE WORK?

The Committee is responsible for monitoring the extent to which states respect their obligations to implement the Convention Against Torture, i.e. to prevent, prohibit and punish torture. The main way in which it does this is through:

- The **examination of reports** submitted by states at regular intervals (See Part III, Chapter 2.3 for a description of how the state reporting procedure works)

In addition, the Committee can:

- Carry out a **confidential inquiry** into allegations of a systematic practice of torture in a State Party (although some States Parties may not allow this - see Part III, Chapter 4.2.2.1.4)
- In relation to states which have accepted the **individual complaint procedure**, it examines

allegations submitted to it by individuals about specific incidents of torture, including cases involving the imminent expulsion of individuals to a country where they are believed to be at risk of torture (this function will be considered in Part III, Chapter 4.3.1).

The **inquiry procedure** is a confidential procedure to investigate allegations of a *systematic practice* of torture in a State Party to the Convention. An inquiry can be initiated when ‘reliable information’ is received which ‘appears to contain well-founded indications that torture is being systematically practised’. The bulk of this information will originate from NGOs, and it is possible to expressly request an inquiry if you think you have enough information to establish a systematic practice, although you should not expect to be told if your request has been acted upon. If a State Party agrees, the inquiry can involve a fact-finding visit to the country. In such cases, the Committee will make contact with local NGOs, on the understanding that they will maintain the highest respect for the confidential nature of the visit.

Ultimately, the Committee will reach a conclusion as to whether or not a systematic practice of torture exists. This conclusion, along with any appropriate recommendations, will be transmitted to the State Party. The proceedings remain confidential, but once they have been concluded, the Committee may, following consultation with the State Party, decide to include a summary account of their results in its annual report.

4.2.2.1.2. WHAT CAN YOU ACHIEVE BY SUBMITTING INFORMATION TO THE COMMITTEE AGAINST TORTURE?

See Part III, Chapter 2.3, for suggestions about what can be achieved in the context of the **state reporting procedure**.

The strength of the **inquiry procedure**, in spite of its confidential nature, is the very negative implications of such an inquiry being initiated against a country. It will only happen in cases where the situation is considered extremely serious, and for a state to be identified as tolerating a systematic practice of torture is a very weighty penalty. Although the proceedings remain confidential throughout the inquiry, the possibility exists nonetheless to make a summary of the findings public, and this includes an affirmative finding that a systematic practice exists. This sanction has so far been used in two cases. Even in cases where findings are not made public by the Committee, or are not made public until long after the inquiry has taken place, the procedure can be useful. The mere fact that the Committee has the possibility of making its findings public may create pressure for a State to take steps to amend legislation or prevent certain practices, in order to discourage the Committee from following this course of action.

4.2.2.1.3. WHAT SHOULD A COMMUNICATION TO THE COMMITTEE AGAINST TORTURE CONTAIN?

See Part III, Chapter 2.3.3, for general guidelines on what a communication in the context of the **state reporting procedure** should contain.

The Convention Against Torture creates very specific obligations, many of which States Parties are required to implement through legislative and other measures. A State Party will generally set out in a very comprehensive manner the formal legal situation in relation to each of these obligations. Your principal objective should be to describe what actually happens in *practice*, giving as many examples as possible. Never simply state that something is ineffective without explaining *why*.

E.g.:

Where the state has taken legislative, administrative, judicial or other measures to prevent acts of torture and other forms of ill-treatment, do they actually prevent such acts in practice? Give examples of where they have worked/not worked.

If torture is a criminal offence under the law, are any officials actually prosecuted or convicted under this law and what kind of penalties do they receive? Give examples of any prosecutions and decisions not to prosecute, as well as any convictions and penalties.

Does the state investigate allegations of torture and ill-treatment, and if it does, what is the result of such investigations? E.g. Do public prosecutors take them seriously? Do they ever result in the perpetrator being prosecuted? What kind of methods are used to investigate?

Do victims of torture ever receive compensation or any other kind of redress? If compensation is granted, give examples of the amounts awarded.

Can an individual be convicted on the basis of a statement made as a result of torture? i.e. if a judge knows that a confession or other incriminating statement has been made under torture, can he still convict the person?

If you wish to request a **confidential inquiry**, your objective is two-fold: to demonstrate the existence of a *systematic practice* of torture in the country, and to explain the *context*, particularly the legal context.

Systematic practice: The Committee has formulated some general criteria which it considers to indicate that a systematic practice is taking place. It considers that torture is practised systematically when:

- It is apparent that the torture cases reported have not occurred fortuitously in a particular place or at a particular time, but are seen to be *habitual, widespread* and *deliberate* in at least a *considerable part of the territory* in question.

In addition, it considers that:

- This need not necessarily result from the direct intention of a Government but may be the consequence of factors which the Government has difficulty in controlling, and its existence may indicate a discrepancy between policy as determined by the central Government and its implementation by the local administration.
- Inadequate legislation which in practice allows room for the use of torture may also add to the systematic nature of the practice.

NGOs should provide information about a large number of incidents of torture, and be well-organised in their presentation of these incidents in order to use them to best demonstrate the systematic nature of the practice. This means that it is not enough to be reporting on a few isolated incidents - there must be a geographical concentration of incidents, or a multiplication of allegations linked to a specific law, for example.

Context: In order for the Committee to gain a sense of whether or not a systematic practice may exist in a country, it helps for them to familiarise themselves with the context, particularly the legal context. This is particularly important in helping the Committee to identify possible causes of a systematic practice, especially inadequate legislation. NGOs should provide information about any anti-terrorist laws which may be applicable in the country, and draw the Committee's attention to any laws which appear to be causing problems, for example any laws permitting the extension of incommunicado detention, or protecting officials from prosecution for torture.

4.2.2.1.4. SPECIFIC TIPS

- States are entitled to make a declaration stating that they do not recognise the Committee's competence to carry out a confidential inquiry under Article 20. This means States Parties are

assumed to consent to the procedure unless they specify otherwise. If you wish to request an inquiry, you will first need to check that the state in question has not made such a declaration.

- NGOs may ask for this procedure to be initiated, but as it is a strictly confidential procedure, they should not expect to receive any feedback. Do not underestimate the importance of the confidential nature of the procedure - if you are approached for information in the context of such an inquiry, including in the case of a fact-finding visit, you must respect the confidentiality of the investigation if you ever want your organisation to be consulted again.
- Discussions are currently under way to prepare a protocol to the Convention Against Torture which would give the Committee Against Torture similar powers to those of the European Committee for the Prevention of Torture, setting up a system of regular visits to places of detention.

4.2.2.2. Human Rights Committee

TABLE 13: BASIC FACTS: HUMAN RIGHTS COMMITTEE

BASIC FACTS ABOUT: The Human Rights Committee		
Origin:	How was it created?	By the 1966 International Covenant on Civil and Political Rights
	When did it become operational?	1976
Composition:	How many persons is it composed of?	18
	Are these persons independent experts or state representatives?	Independent experts
Purpose:	General objective	To supervise the implementation by States of their obligations under this treaty
	Functions	<ul style="list-style-type: none"> • Examination of state reports (Article 40, ICCPR) • Inter-State complaints (Article 41, ICCPR) (has never been used) • Individual complaints (optional) (Optional Protocol to the ICCPR) (see Part III, Chapter 4.3.2)

4.2.2.2.1. HOW DOES THE HUMAN RIGHTS COMMITTEE WORK?

The Committee is responsible for making sure that States Parties respect their obligations to respect and to ensure to all individuals the rights contained in the ICCPR, including the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 7) and the right of all persons deprived of their liberty to be treated with humanity and dignity (Article 10). It does this in two ways:

- It examines and comments on reports submitted to it by States Parties at regular intervals
- It examines allegations submitted to it by individuals about specific incidents of violation (this will be considered in Part III, Chapter 4.3.2).

See Part III, Chapter 2.3, for a description of how the **state reporting procedure** works, suggestions as to what can be achieved in the context of the state reporting procedure, and what a communication should contain.

4.2.2.2.2. SPECIFIC TIPS

- The Human Rights Committee can ask States Parties to submit a special report if the circumstances appear to require it. Potentially, such a request could be made in response to information of serious violations. States which have been asked to produce such reports include those of the Former Yugoslavia in the period following their independence.
- 25 copies of NGO reports should be provided if possible

4.2.2.3. Other Committees

TABLE 14: BASIC FACTS: COMMITTEE ON THE RIGHTS OF THE CHILD

BASIC FACTS ABOUT: The Committee on the Rights of the Child		
Origin:	How was it created?	By the 1989 UN Convention on the Rights of the Child
	When did it become operational?	1991
Composition:	How many persons is it composed of?	10
	Are these persons independent experts or state representatives?	Independent experts
Purpose:	General objective	To supervise the implementation by States Parties of their obligations under the CRC
	Functions	<ul style="list-style-type: none"> • Examination of state reports (Article 44, CRC) <p>Discussions are currently ongoing regarding the possibility of adopting a protocol to the CRC which would allow individual complaints.</p>

TABLE 15: BASIC FACTS : COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

BASIC FACTS ABOUT: The Committee on the Elimination of Discrimination Against Women		
Origin:	How was it created?	By the 1979 UN Convention on the Elimination of Discrimination Against Women
	When did it become operational?	1981
Composition:	How many persons is it composed of?	23
	Are these persons independent experts or state representatives?	Independent experts
Purpose:	General objective	To supervise the implementation by States Parties of their obligations under the CEDAW
	Functions	<ul style="list-style-type: none"> • Examination of state reports (Article 18, CEDAW) <p>In early 1999, agreement was finally reached to establish an individual complaint procedure, but it had not yet become operational at the time of writing.</p>

TABLE 16: BASIC FACTS: COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

BASIC FACTS ABOUT: The Committee on the Elimination of Racial Discrimination		
Origin:	How was it created?	By the 1965 International Convention on the Elimination of All Forms of Racial Discrimination
	When did it become operational?	1969
Composition:	How many persons is it composed of?	18
	Are these persons independent experts or state representatives?	Independent experts
Purpose:	General objective	To supervise the implementation by States Parties of their obligations under the CERD
	Functions	<ul style="list-style-type: none"> • Examination of state reports (Article 9, CERD) • Inter-State complaints (Article 11, CERD) (never used) • Individual complaints (optional) (Article 14, CERD) (see Part III, Chapter 4.3.3)

Of these three committees, all currently function principally through the **state reporting procedure**. The CERD is the only one which presently has an operational individual complaint procedure (see Part III, Chapter 4.3.3), but it is probable that both the CRC and the CEDAW will do so also within a fairly short period of time.

You should refer to Part III, Chapter 2.3, for a description of how the **state reporting procedure** works, suggestions as to what can be achieved through such a procedure and guidelines on how to prepare a submission in the context of this procedure.

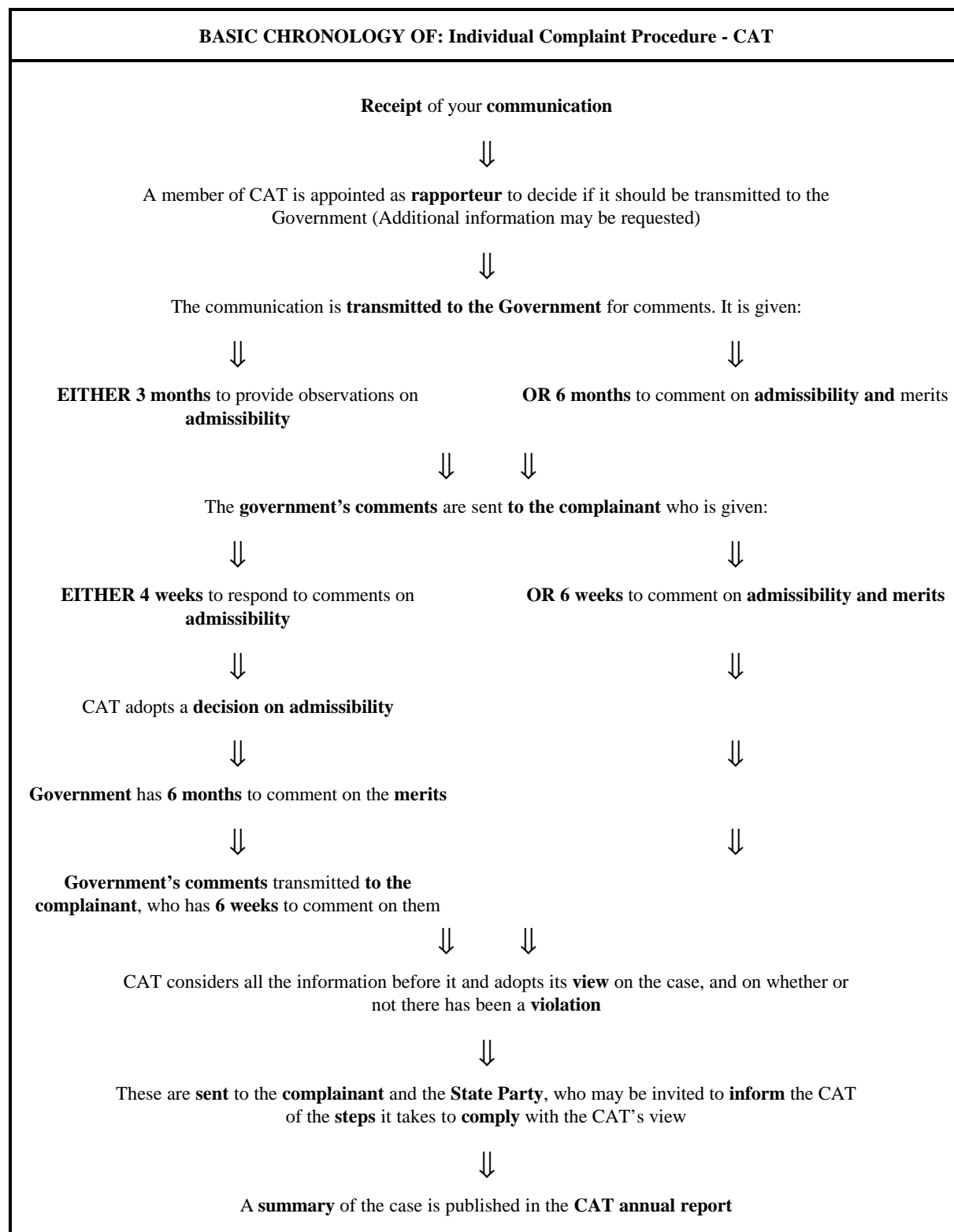
4.2.2.3.1. SPECIFIC TIPS

- The CRC holds a pre-sessional working group in advance of its next session, at which it draws up a list of issues to raise with reporting governments. It draws up this list on the basis of an examination of the state report, NGO submissions and those of relevant UN bodies and specialised agencies, and requests that the Government provide written answers to the questions before the session at which the report is considered. It is important to be aware that NGO submissions concerning a State should therefore be made in advance of the pre-sessional meeting preceding the consideration of that State's report.
- The CEDAW is moving towards requiring States to produce more focused issue-oriented periodic reports rather than general ones addressing all of the convention obligations. This suggests that it would as a rule prefer to receive this type of report from NGOs also.

4.3. Complaint procedures within the United Nations system

4.3.1. The Committee Against Torture

TABLE 17: BASIC CHRONOLOGY OF INDIVIDUAL COMPLAINT PROCEDURE: CAT



See Part III, Chapter 4.2.2.1, for ‘Basic Facts: The Committee Against Torture’.

4.3.1.1. *What kind of complaints can it examine?*

See Part III, Chapter 3.2, regarding the kind of **complaints which can be examined** by individual complaint procedures in general.

The Convention Against Torture creates obligations on States Parties not only not to torture, but also to take preventive and remedial steps against torture. This means that you can bring a complaint against a State Party not only because of the incident of torture itself, but also in connection with any of the State Party’s other obligations under the Convention. The principal obligations include (see Articles 2 - 16 of UNCAT for complete list):

- An obligation not to expel, return or extradite a person to another state where there are substantial grounds for believing that he or she would be in danger of being subjected to torture. (Article 3)
- An obligation to investigate promptly and impartially an allegation of torture, and to protect a complainant and witnesses from any intimidation as a result. (Article 13)
- An obligation to ensure that the legal system grants redress to a victim of torture, as well as a right to fair and adequate compensation for him or herself, or in the event of his or her death as a result of the torture, his or her descendants. (Article 14)
- An obligation to ensure that any statement established to have been made as a result of torture is not invoked as evidence in proceedings, except against a person accused of torture. (Article 15)

4.3.1.2. *What are the admissibility requirements?*

A communication will be declared **inadmissible** if:

- the communication is anonymous
- the communication is an abuse of the right to submit an individual communication
- the communication is incompatible with the provisions of the Convention
- the same matter has been or is being examined under another procedure of international investigation
- domestic remedies have not been exhausted, except where the remedies are unreasonably prolonged or unlikely to bring effective relief to the victim

4.3.1.3. *Specific tips*

- Check that the state is a party to the Convention Against Torture and has accepted individual complaints under Article 22.
- Remember that you can complain of a violation of any provision of the Convention Against Torture, not only about the incident of torture itself. Most of the cases which have come before the Committee, apart from deportation cases, have concerned the provisions on redress. If your complaint is about these provisions, you will need to emphasise the facts relating to the State Party’s failure to provide redress.
- The Committee and its Secretariat take the confidentiality of the proceedings very seriously. This means that they will not release information about a case to anyone except the author of the communication and his or her representative expressly named in a letter of authorisation. It also means that the author of the communication and his or her representative should not disclose any

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information about the proceedings themselves to the public. If in doubt, always check with the Secretariat about what information may be made public, and what should remain confidential.

- If you wish to make a complaint concerning the imminent deportation of an individual (under Article 3 of UNCAT), try not to leave your application until the last minute. There has been a certain degree of abuse of the provisional measures procedure in recent years and the Committee is beginning to close down on such applications. The wisest approach would be to contact the Secretariat as soon as a date has been given for deportation, even if you are still appealing the decision. Explain the situation and warn them that in the event of the appeal being refused you will be applying for provisional measures from the Committee. This means that they can prepare for the possibility of a last minute intervention, rather than being caught unawares. They may also be able to advise you on the strength of your case.

TABLE 18: PRACTICALITIES OF USING INDIVIDUAL COMPLAINT PROCEDURE: CAT

PRACTICALITIES OF USING THE INDIVIDUAL COMPLAINT PROCEDURE: UN Convention Against Torture	
Who can bring a case under this procedure?	Any individual who claims to be a victim of a violation of the Convention, his or her relatives, a designated representative, or others where the victim is unable to make the submission in person and the author of the communication can justify taking action on the victim's behalf.
Is there a time limit for bringing an application?	No, but the alleged violation must have occurred after the State Party's declaration accepting the procedure has come into force.
Can you bring a case under this procedure if you have already brought one under another procedure concerning the same set of facts?	No
Do you need legal representation ?	No
Is financial assistance available?	No
Are amicus briefs accepted?	Not provided for but not excluded
Who will know about the communication?	The author of the communication and his or her representative, the Committee and its Secretariat, and the State Party. The identity of the author is only made public if the Committee finds that a violation has occurred, and may remain confidential at the request of the author even in such cases.
How long does the procedure take?	Normally about one year, though can be longer.
What measures, if any, can the mechanism take to assist it in reaching a decision? e.g. fact-finding hearings; on-site visits; written pleadings; oral hearings; other.	Written pleadings; oral hearings.
Are provisional or urgent measures available?	Yes

4.3.2. Human Rights Committee

See Part III, Chapter 4.2.2.2, for 'Basic Facts: The Human Rights Committee'.

The basic chronology for the individual complaint procedure of the Human Rights Committee is the same as that for the CAT. See Part III, Chapter 4.3.1.

See Part III, Chapter 3.2, for the kind of complaints which can be examined.

4.3.2.1. What are the admissibility requirements?

A communication will be declared **inadmissible** if:

- the communication is anonymous
- the communication is an abuse of the right of submission
- the communication is incompatible with the provisions of the Covenant
- the same matter is *being* examined under another procedure of international investigation
- domestic remedies have not been exhausted, except where the remedies are unreasonably prolonged

TABLE 19: PRACTICALITIES OF USING INDIVIDUAL COMPLAINT PROCEDURE: OPTIONAL PROTOCOL TO THE ICCPR

PRACTICALITIES OF USING THE INDIVIDUAL COMPLAINT PROCEDURE: Optional Protocol to the International Covenant on Civil and Political Rights	
Who can bring a case under this procedure?	Individuals claiming to be victims of a violation of the ICCPR. Communications are accepted from close family, or from an <u>authorised</u> representative (There <u>must be</u> a letter of authorisation from the victim or his or her family). An explanation should be given where victims do not take action themselves.
Is there a time limit for bringing an application?	No, but where there is no justification for a long delay, this may lead the Committee to declare the case inadmissible.
Can you bring a case under this procedure if you have already brought one under another procedure concerning the same set of facts?	Yes, but only if the State Party concerned has not made a reservation in this respect.
Do you need legal representation ?	No
Is financial assistance available?	No
Are amicus briefs accepted?	No
Who will know about the communication?	The State Party will always be informed of the identity of the complainant, in order for it to reply to the allegations, but the Committee will not make the applicant's name public if asked not to do so. The complainant and the State Party concerned are entitled to publish information concerning the procedure, unless there is a request from the complainant or State Party for confidentiality.
What measures, if any, can the mechanism take to assist it in reaching a decision?	The whole procedure is based on written pleadings from the parties - there is no possibility of other measures.
How long does the procedure take?	Normally between two and five years, although this may be reduced to one year in urgent cases.
Are provisional or urgent measures available?	Yes, but it is quite rare for the Committee to exercise this option

4.3.2.2. Specific tips

- Check that the state is a party to the ICCPR and has accepted individual complaints under the Optional Protocol.
- Under this procedure, a communication is declared inadmissible if it is *being examined* under another procedure of international investigation - this means that a case which *has been* considered under another procedure which has since been concluded may still be admissible. It may be possible, therefore, to attempt to seek a remedy through another international procedure first, and subsequently to bring the case before the Human Rights Committee. However, many States Parties have made reservations which prevent the Committee from examining cases which have already been

examined by other bodies. You should therefore check the reservations to see if this applies in your case.

- Instead of appending a summary of its views to its annual report, the Human Rights Committee publishes its views.

4.3.3. Other Committees

See Part III, Chapter 4.2.2.3, for ‘Basic Facts: The Committee on the Rights of the Child’, ‘Basic Facts: The Committee on the Elimination of Discrimination Against Women’, and ‘Basic Facts: The Committee on the Elimination of Racial Discrimination’.

Only the CERD Committee currently examines individual complaints, but this function has recently been approved for the CEDAW Committee and is also under discussion in relation to the CRC.

The basic chronology for the individual complaint procedure of the Committee on the Elimination of Racial Discrimination is the same as that for the CAT. See Part III, Chapter 4.3.1.

See Part III, Chapter 3.2, for the kind of complaints which can be examined.

4.3.3.1. What are the admissibility requirements?

A communication will be declared **inadmissible** if:

- the communication is anonymous
- the communication is an abuse of the right of submission
- the communication is incompatible with the provisions of the Covenant
- domestic remedies, including those before a designated national body, have not been exhausted, except where the remedies are unreasonably prolonged
- it is not submitted within six months after all available domestic remedies have been exhausted, except in the case of proven exceptional circumstances

4.3.3.2. Specific tips

- Check that the state is a party to the CERD and has accepted individual complaints under Article 14.
- Although the CERD is a very widely ratified convention, few States Parties have accepted the individual complaints procedure
- The CERD provides that States Parties having accepted the individual communication procedure may establish or indicate a national body competent to examine such complaints at the national level. Only if no remedy is obtained from that body should they then make an application to the CERD Committee.
- The CERD may declare a communication admissible even if it is *being* considered under another international procedure
- The CERD Committee does not reveal the identity of the complainant without their express consent.

TABLE 20: PRACTICALITIES OF USING INDIVIDUAL COMPLAINT PROCEDURE: CERD

PRACTICALITIES OF USING THE INDIVIDUAL COMPLAINT PROCEDURE: UN Convention on the Elimination of Racial Discrimination	
Who can bring a case under this procedure?	An individual claiming to be a victim of a violation of the rights in the CERD. The communication should generally be submitted by the victim him or herself or by a family member or designated representative, but may exceptionally be accepted from a third party on behalf of the alleged victim where the latter cannot act in person and the third party can justify taking action.
Is there a time limit for bringing an application?	Within six months of the exhaustion of domestic remedies except in verifiable exceptional circumstances
Can you bring a case under this procedure if you have already brought one under another procedure concerning the same set of facts?	Yes
Do you need legal representation ?	No
Is financial assistance available?	No
Are amicus briefs accepted?	Not provided for but not excluded
Who will know about the communication?	The identity of the individual is not revealed without his or her express consent.
How long does the procedure take?	Usually 1-3 years
What measures, if any, can the mechanism take to assist it in reaching a decision? e.g. fact-finding hearings; on-site visits; written pleadings; oral hearings; other.	Written pleadings; oral hearings; request for relevant documentation from UN bodies and specialised agencies.
Are provisional or urgent measures available?	Yes

5. THE MECHANISMS AND PROCEDURES: REGIONAL

5.1. The European System

A number of international organisations exist within the European region: the Organisation for Security and Co-operation in Europe, the Council of Europe and the European Union. At the time of writing, only the Council of Europe had set up formal procedures to deal with allegations of torture and other forms of ill-treatment, although the OSCE is also active in the field of human rights, as will be noted in Part III, Chapter 7.

Within the Council of Europe, two bodies exist which are of relevance to this handbook: the European Committee for the Prevention of Torture and the European Court of Human Rights. The European Committee for the Prevention of Torture will be examined in detail because it exercises a unique function which no other body is currently enabled to do.

Languages: The Council of Europe official and working languages are English and French. Try to provide at least a brief summary of your allegations in one of those languages. See Part III, Chapter 2.1.1, for suggestions concerning the language of submission of your communication.

5.1.1. Reporting Mechanism: The European Committee for the Prevention of Torture

TABLE 21: BASIC FACTS: EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE

BASIC FACTS ABOUT: The European Committee for the Prevention of Torture		
Origin:	How was it created?	By the 1987 European Convention for the Prevention of Torture
	When did it become operational?	1989
Composition:	How many persons is it composed of?	As many members as there are States Parties to the Convention (currently 40)
	Are these persons independent experts or state representatives?	Independent experts
Purpose:	General objective	To improve the protection of persons deprived of their liberty by working to prevent torture and inhuman or degrading treatment or punishment
	Functions	<ul style="list-style-type: none"> • Monitoring • Fact-finding

5.1.1.1. How does the European Committee for the Prevention of Torture work?

The functions of the Committee are strictly preventive, but they are also the most intrusive of any of the mechanisms discussed in this handbook. It carries out visits to places of detention in Member States in order to examine the treatment of persons deprived of their liberty there, and prepares a report of its findings and recommendations which it transmits to the state concerned. This report is confidential, but may be made public with the consent of the state. In exceptional circumstances, where a State Party

fails to co-operate with the Committee or refuses to implement its recommendations, the Committee may decide to issue a public statement on that country. The objective of the overall process is not so much to condemn states, as to identify areas of concern and make suggestions for improving the protection of persons deprived of liberty from torture and inhuman or degrading treatment or punishment.

Characteristics of the Committee's visits:

What is particularly significant about the Committee's visits when compared to those carried out by other mechanisms is that:

- They can take place at any time
- They can be to any place within the jurisdiction of the State Party concerned where persons are deprived of their liberty in some way by state officials or public order. This includes not only locations commonly recognised as places of detention, such as police and *gendarmerie* stations, prisons, pre-trial and administrative detention facilities, but also such institutions as military installations, psychiatric hospitals, places of detention for foreigners, airport transit zones, detoxification centres, and children and old people's homes.
- The Committee is entitled to travel throughout the country and move within institutions without restriction
- The Committee is entitled to carry out interviews in private with persons deprived of liberty
- The Committee is entitled to communicate freely with anyone it believes can supply relevant information

In other words, once a state has accepted obligations under the Convention, the Committee's activities should not depend on the consent of the State Party.

Modalities of the Committee's visits:

The Committee's visits are mainly of two types: periodic visits and ad hoc visits. Periodic visits take place on a regular basis to all States Parties. Ad hoc visits take place in response to serious and consistent allegations of an urgent problem in a particular State Party and can be carried out at any time. In addition, the Committee may carry out follow-up visits in relation to situations which have previously been investigated, where they appear to be required by the circumstances.

In practice, although notice of visits is not specifically required, the Committee has developed a notification procedure in relation to periodic visits which involves 1) announcing at the beginning of the year which countries it intends to visit, 2) notifying the state in question of the proposed dates of the visit about two weeks prior to the visit, and finally 3) providing the state with a list of the locations the delegation wishes to visit a few days before the start of the visit. During the visit, the delegation may also decide to make unannounced visits to locations it has not previously indicated. This practice of notification does not apply to ad hoc visits, which can be carried out at extremely short notice.

States do have the possibility of invoking a limited list of exceptional reasons (national defence; public safety; serious disorder in places where persons are deprived of their liberty; or that an urgent interrogation relating to a serious crime is in progress) in order to postpone a visit - however, this may only be used for postponement, and not to prevent a visit indefinitely.

5.1.1.2. What can you achieve by submitting information to the Committee for the Prevention of Torture?

• **In general:**

The confidential nature of the Committee's work means that, although information sent to the Secretariat is always acknowledged (you will receive a letter to tell you that your communication has been received), it is not able to express any opinion regarding the quality or substance of the material, or indicate if or how it will be used. To the NGO sending such information, the process may appear somewhat like throwing a stone into a very deep well and hearing a little 'plink' that tells you it has reached the bottom, but not being able to see where it has landed. It is very important not to be discouraged by this. From the Committee's standpoint, your information is essential if it is to make the most of its functions, and it is important that you view your potential achievements from a longer-term perspective.

Your information can help the Committee to:

- Focus on the most serious problems in a country relating to the treatment of persons deprived of their liberty and the risks of torture or ill-treatment, and identify what the sources of those problems might be.
- Identify a possible need for an ad hoc visit.
- Plan its visits, identifying the institutions which should be visited and the areas of concern which need to be examined most closely.
- Understand the social and legal context of a country.
- Assess the extent to which its recommendations are being implemented, especially with regard to safeguards, within the ongoing dialogue which takes place between it and governments as part of the co-operation process.
- Monitor ongoing developments in a State Party, both positive and negative.

From your perspective, this means that by submitting information, you are contributing to the identification of serious problems relating to the treatment of persons deprived of their liberty and, even more importantly, to the identification of the causes of those problems, and the development and implementation of measures to prevent them.

• **For the individual:**

Unlike many of the other mechanisms, the Committee for the Prevention of Torture does not deal with individual cases for their own sake. In the European region, this is the domain of the European Court of Human Rights, which deals almost exclusively with individual allegations and will be considered below. The Committee for the Prevention of Torture is far better placed and equipped to contribute to a longer term improvement in the overall protection of persons in official custody, and to prevent, rather than remedy, incidents of torture. However, just because the Committee does not provide distinct remedies for individuals as one of its functions does not mean that individuals cannot benefit both directly and indirectly from its activities.

First of all, it is important to recall that it is through individual allegations that patterns can be identified, and that those individuals gain from the elimination of bad practice. If, for example, a significant number of allegations is received about abuses taking place in a children's home, and the Committee investigates and makes recommendations to eliminate the causes, this will be of immediate benefit to the individuals in the institution.

Furthermore, interventions on behalf of individuals are not envisaged in their own right, but do happen in the context of the Committee's general activities. They are used as a form of case-study in order to investigate a particular practice or general allegation. For example, the Committee has acted in cases of individuals detained under anti-terrorism legislation, in order to test allegations concerning a practice of ill-treatment of such persons. Interventions may also occur where an urgent situation is brought to the attention of a delegation during a country visit, and the Committee has even carried out an ad hoc visit in response to the detention of a public figure alleged to be especially at risk. The important point to remember is that, although the Committee's intervention in such cases is not intended to provide an individual remedy, it can in practice have equivalent effects.

5.1.1.3. What should a communication to the Committee for the Prevention of Torture contain?

You should refer to the general guidelines in Part III, Chapter 2, on how to prepare a submission to a reporting mechanism. In addition, you should bear in mind the following:

Characteristics of the information:

The content of your information will be guided to some extent by the particular purpose you have in mind - for example, if you feel that an ad hoc visit might be desirable, you will want to emphasise the urgency and extreme nature of a situation. Above all else, however, the information must be balanced (see Part III, Chapter 2.1.2, for suggestions on how to achieve this) and capable of verification by the Committee. This means that:

- The allegations being made should be as recent as possible
- The details given should be as precise as possible

Both are essential if the Committee is to be in a position to verify the information, and the recent nature of the allegations is also important for the Committee to be able to identify current problems. Don't forget that corroborative evidence will support and confirm the details of your allegations, particularly medical evidence which is consistent with the allegations.

In addition, with the exception of information reporting on, for example, the implementation of the Committee's recommendations by a particular State, there is a further important feature which should be present:

- The focus of the information should be on establishing evidence of a pattern or 'situation'.

This is important because the Committee's work is designed to investigate and improve the general situation throughout Member States. If you send it a single individual case, this can be useful as part of a greater body of information received from other sources (and should certainly be sent), but it is not normally sufficient to establish that there is a generalised problem. If you can present a series of cases, you are going much further towards establishing a pattern, and are more likely to stimulate the Committee into further investigation of the situation.

Subject-matter:

Do not limit yourself to the more obvious custodial institutions like prisons or police stations. These are certainly a primary source of concern to the Committee, but there are other institutions in which persons are deprived of their liberty by state officials which are also within the mandate of the Committee. Examples include military establishments, places of detention for foreigners, detoxification centres, children and old people's home, and psychiatric institutions, but this should not be considered an exclusive list. Relevant institutions should have two characteristics: they should house persons who are

not free to leave the establishment at will, and the deprivation of liberty should be the result of action taken by a public authority.

You should bear in mind, also, that the Committee takes an interest in all aspects of the treatment of persons deprived of liberty. This extends not only to incidents of torture in an institution, but to all of the factors contributing to the creation of an inhuman or degrading environment within the institution, including cell size and occupancy, hygiene and sanitation, opportunities for exercise, health care, solitary confinement and restrictions on contacts with the outside world. It can make recommendations not only about the material and social conditions of detention, but also from a longer term perspective, addressing such issues as legislative safeguards or the training of personnel.

5.1.1.4. Specific tips

- Who will be informed of the submission/source of the information?

The Committee for the Prevention of Torture will never name individuals in its reports unless their cases are already well-known and identifiable within the public domain. It will also not name NGOs with which it meets when on visits and from which it receives information, if this is the wish of the NGOs concerned.

- Will you receive any feedback about your submission?

As the procedure is based on the principle of confidentiality, you will not receive any direct feedback about your submission.

- Make sure that the state about which you are sending the information is a party to the European Convention on the Prevention of Torture.
- With respect to information submitted in connection with a periodic visit, it can be very helpful when provided during the visit, but is even more useful if received in advance so that there is time to consider its contents. Check to see which countries the Committee will be visiting during the year (the Committee issues a press release towards the end of the previous year, usually in December, with this information), so that you can prepare and send your information in advance. It is important to note that the periodic visit could take place any time that year, and you will not know when until it happens.
- You should not wait for a periodic visit to be scheduled to send information about a country. Dialogue between the Committee and States Parties continues in between visits, and the Committee needs to stay in touch with developments. Your information may even provide the basis for the identification of a need for an ad hoc visit.
- The Committee usually meets with national NGOs on the first day of its visit to a country - this gives you an opportunity to provide it with recent information and possibly to have an impact on the places it chooses to visit.

5.1.2. Complaint Procedure: The European Convention on Human Rights

TABLE 22: BASIC FACTS: EUROPEAN COURT OF HUMAN RIGHTS

BASIC FACTS ABOUT: The European Court of Human Rights		
Origin:	How was it created?	By the 1950 European Convention on Human Rights Revised by the 11 th Protocol to that convention, 1994
	When did it become operational?	1998 under the revised system
Composition:	How many persons is it composed of?	As many judges as there are States Parties to the convention
	Are these persons independent experts or state representatives?	Independent experts
Purpose:	General objective	To examine complaints of violation of the ECHR
	Functions	<ul style="list-style-type: none"> • Inter-State complaints (compulsory) (Article 33, ECHR) • Individual complaints (compulsory) (Article 34, ECHR) • Fact-finding (in the context of individual complaints only, and is an optional step in the procedure)

5.1.2.1. What are the admissibility requirements?

A communication will be declared **inadmissible** if:

- the communication is anonymous
- the communication has not been submitted within six months of the date of the final decision in the case by the domestic authorities
- the communication is manifestly ill-founded or an abuse of the right of petition
- the communication is incompatible with the provisions of the Convention.
- the application is substantially the same as one which has already been considered by the Court or another procedure of international investigation, and contains no new relevant information
- domestic remedies have not been exhausted, except where the remedies are ineffective or unreasonably prolonged

5.1.2.2. What should your application contain?

Your initial letter should contain:

- a brief summary of your complaints
- an indication of which Convention rights you think have been violated
- an indication of the remedies you have used
- a list of the official decisions in your case, including the date of each decision, who it was made by, and an indication of what it said - you should attach a copy of each of these decisions.

If you are then sent an application form, you should follow the instructions on that form and in the accompanying letter.

TABLE 23: BASIC CHRONOLOGY OF INDIVIDUAL COMPLAINT PROCEDURE: ECHR

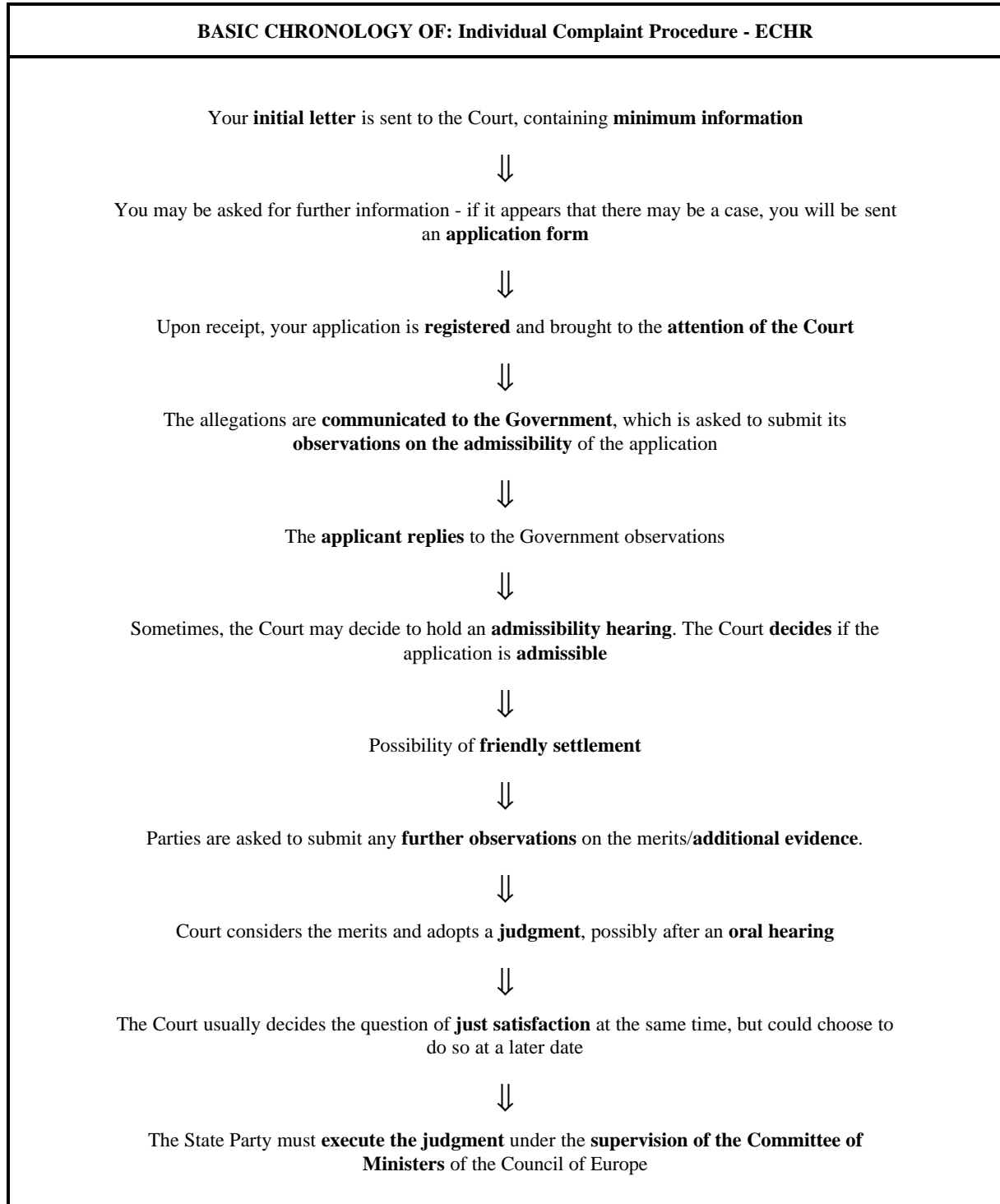


TABLE 24: PRACTICALITIES OF USING INDIVIDUAL COMPLAINT PROCEDURE: ECHR

PRACTICALITIES OF USING THE INDIVIDUAL COMPLAINT PROCEDURE: European Convention on Human Rights	
Who can bring a case under this procedure?	Individuals, NGOs and groups of individuals claiming to be victim of a human rights violation. A case can be brought by a close relative of the victim in cases where the victim cannot do so in person, e.g. where he or she is disappeared or dead.
Is there a time limit for bringing an applications?	Six months from the date of the final decision taken in the case by the state authorities.
Can you bring a case under this procedure if you have already brought one under another procedure concerning the same set of facts?	No
Do you need legal representation ?	It is not necessary at the time of the application, but is required for proceedings after a case has been declared admissible, unless exceptional permission is given by the President of the Court for the applicant to present his or her own case.
Is financial assistance available?	Yes, but only if the application is communicated to the Government, not at the time of the application. You will need to fill out a statement of your means signed by your domestic legal aid board, as legal aid is only granted where there is a financial need.
Are amicus briefs accepted?	Yes, with permission (Rule 61, Rules of the Court)
Who will know about the communication?	In principle, the proceedings are public unless the President of the Chamber decides otherwise. In exceptional case, where an applicant does not wish his or her identity to be made public and submits a statement explaining the reasons for this, anonymity may be authorised by the President.
How long does the procedure take?	Several years
What measures, if any, can the mechanism take to assist it in reaching a decision? e.g. fact-finding hearings; on-site visits; written pleadings; oral hearings; other.	Fact-finding hearings; expert evidence; written pleadings; oral hearings.
Are provisional or urgent measures available?	Yes, but it is a practice which has been developed by the Court and has no basis in the convention. It is applied only in very specific cases, mainly immigration/deportation cases where there is a 'real risk' if a person is returned. (Rule 39, Rules of the Court)

5.1.2.3. Specific tips

- Under the original procedure, which was replaced in 1998, the initial stages of the case took place before the European Commission on Human Rights. If you are researching a particular topic under the Convention case law, remember to search for reports by the Commission as well as for Court judgments.
- If the six month period within which an application must be submitted is about to expire, and there is no time to prepare a full application, you can send a 'stop-the-clock' application with a short summary of your complaint, which should then be followed up with the complete application as soon as possible.
- For the purpose of respect for deadlines given by the Court, it is the date of posting not the date of receipt which the Court considers determinative - however, it is advisable to at least notify the Court on the day of the deadline that the submission has been posted. This can be done by faxing a copy of

the cover letter to the Court, or via email or telephone.

- The Court may, on its own initiative or at the request of one of the parties, obtain any evidence it considers useful to the case, including by holding fact-finding hearings - where such measures are requested by one of the parties, that party will normally be expected to bear the resulting costs, although the Chamber may decide otherwise. If you do not wish to bear such costs, it is advisable to word your letter carefully - suggest to the Court that it might wish to exercise its discretion to take measures to obtain evidence.
- The Court carries out most of its regular work in Chambers of 7 judges. Where a case is considered to raise a serious issue or might involve a change in the views of the Court in relation to a particular subject, it can be referred to a Grand Chamber of 17 judges. Where a case has been considered by a Chamber and a judgment delivered, it is possible, in exceptional cases, to request within three months of the judgment for the case to be referred to the Grand Chamber for reconsideration. (Rule 73, Rules of the Court)
- It is possible to request the interpretation of a judgment within one year of its delivery. (Rule 79, Rules of the Court) It is also possible to request, within six months of the discovery, the revision of a judgment where important new facts are discovered which would have influenced the Court's findings. (Rule 80, Rules of the Court)

5.2. The Inter-American System

The regional organisation in the Americas, by which is meant North, Central and South America, as well as the Caribbean region, is the Organisation of American States (OAS). A number of human rights instruments have been adopted within the OAS, including the American Declaration on the Rights and Duties of Man; the American Convention on Human Rights, the Inter-American Convention to Prevent and Punish Torture, the Inter-American Convention on the Forced Disappearance of Persons, and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women. There are two mechanisms which are responsible for the implementation of all of these instruments: the Inter-American Commission and Court of Human Rights.

Languages: The official languages of the Commission and Court are Spanish, French, English and Portuguese. The Court and Commission select their working language(s) in accordance with the languages spoken by their members. In the context of the individual complaint procedure, the Court may decide to work in the language of one of the parties to a particular case, as long as that language is also an official language.

TABLE 25: BASIC FACTS: INTER-AMERICAN COURT OF HUMAN RIGHTS

BASIC FACTS ABOUT: The Inter-American Court of Human Rights		
Origin:	How was it created?	By the 1969 American Convention on Human Rights
	When did it become operational?	1979
Composition:	How many persons is it composed of?	7
	Are these persons independent experts or state representatives?	Independent experts
Purpose:	General objective	To supervise the implementation of the American Convention on Human Rights
	Functions	<ul style="list-style-type: none"> • Individual complaints (optional) (Articles 61-62, ACHR)

TABLE 26: BASIC FACTS: INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

BASIC FACTS ABOUT: The Inter-American Commission on Human Rights		
Origin:	How and when was it created?	By a resolution of the OAS Foreign Ministers in 1959 for the purpose of furthering respect for the American Declaration on the Rights and Duties of Man Revised by the American Convention on Human Rights in 1969
Composition:	How many persons is it composed of?	7
	Are these persons independent experts or state representatives?	Independent experts
Purpose:	General objective	To promote respect for and defence of human rights
	Functions	<ul style="list-style-type: none"> • Monitoring (Article 41, ACHR) • Fact-finding (Article 41, ACHR) • Inter-State complaints (optional) (Article 45, ACHR) • Individual complaints (compulsory) (Article 44, ACHR)

5.2.1. Reporting Mechanism: The Inter-American Commission on Human Rights

5.2.1.1. How does the Inter-American Commission on Human Rights work?

The Inter-American Commission is responsible for supervising state respect for obligations under a number of OAS human rights instruments. It has reporting functions as well as receiving individual complaints (the latter will be considered below, Part III, Chapter 5.2.2).

In relation to all OAS Member States (whether or not party to the American Convention on Human Rights), the Inter-American Commission is empowered to develop awareness of human rights, make recommendations to governments, prepare studies and reports, urge governments to supply it with information regarding human rights, and serve as an advisory body regarding human rights. Most importantly for the purposes of this handbook, it can:

- Prepare reports on the human rights situation in particular countries, based on a combination of fact-finding visits (where consent is given by the Member State in question), expert evidence, and information received in various forms including individual petitions
- Prepare an annual report, in which it has developed a practice of including entries on specific Member States

In relation to States Parties to the Inter-American Convention to Prevent and Punish Torture, it is also empowered to:

- Receive information from States Parties concerning any measures adopted in application of the convention, and analyse in its annual report the situation in OAS Member States regarding the prevention and elimination of torture (Article 17)

5.2.1.2. What can you achieve by submitting information to the Inter-American Commission on Human Rights?

Although it is able to engage in its own fact-finding, it is the information it receives from a variety of sources, including NGOs, which helps the Inter-American Commission to identify those situations most in need of its attention. Submitting information gives you an opportunity to:

- Draw attention to a situation
- Seek positive changes in a general situation
- Combat impunity

In addition, supplying information in the context of preparations for on-site visits provides a further opportunity to draw the attention of the Inter-American Commission to the most pressing problems in a very specific way.

The power of the Inter-American Commission under the Convention to Prevent and Punish Torture to report on the practice of torture in Members States is one which has great potential for helping to focus attention on the problem of torture in the region. It is, however, one which the Inter-American Commission has not yet exercised. NGOs can encourage and facilitate this by supplying torture-specific information for this purpose.

5.2.1.3. What should a communication to the Inter-American Commission on Human Rights contain?

See Part III, Chapter 2, for suggestions on how to submit individual and general information to a reporting body.

5.2.2. Complaint Procedure: the Inter-American Commission and Court of Human Rights

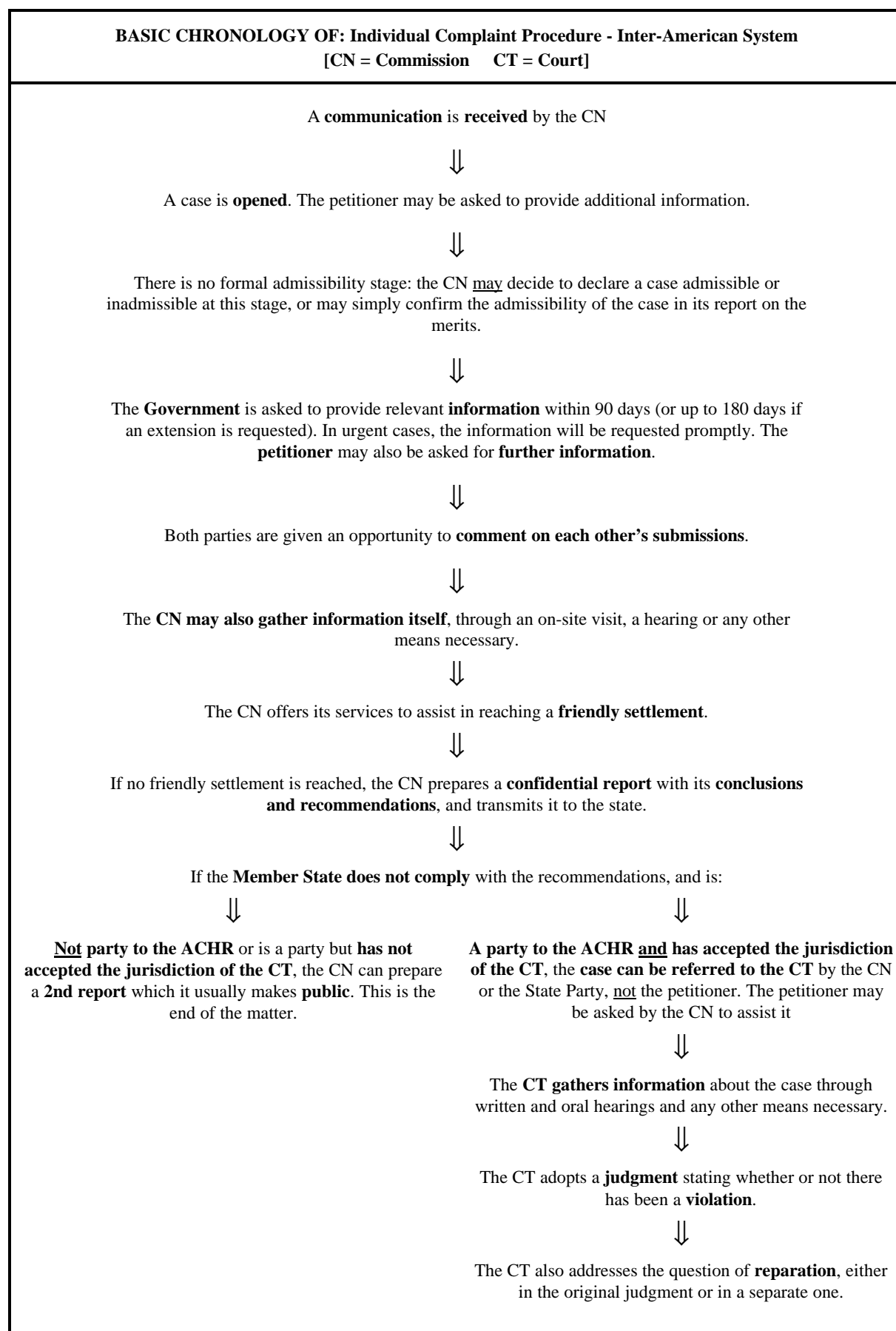
See Part III, Chapter 5.2, above for ‘Basic Facts About: the Inter-American Commission on Human Rights’ and ‘Basic Facts About: the Inter-American Court of Human Rights’

A complaint within the Inter-American system can be based either on the American Convention on Human Rights (where a state is a party to that convention) or on fundamental human rights standards under general international law, with particular reference to the American Declaration on the Rights and Duties of Man (where a state is a member of the OAS but not a party to the American Convention on Human Rights).

In practice, the application procedure works in the same way in both cases as long as the complaint remains before the Commission. However, complaints can only be referred to the Court if they concern:

- a State Party to the American Convention on Human Rights
- who has accepted the jurisdiction of the Court

TABLE 27: BASIC CHRONOLOGY OF INDIVIDUAL COMPLAINT PROCEDURE: INTER-AMERICAN SYSTEM



5.2.2.1. What can you achieve by using this procedure?

The Inter-American Commission on Human Rights can:

- Adopt conclusions in an individual case in the form of a report
- Make public its report where a state does not take adequate measures to comply with the conclusions
- Request that the Government take precautionary measures in cases where irreparable harm to persons is likely
- Confidentially request the Government to provide information as to the whereabouts of allegedly disappeared persons

The Inter-American Court of Human Rights can:

- Adopt a legally binding judgment, including a finding of violation
- Order the prosecution of a perpetrator
- Award reparation
- Order provisional measures of protection in urgent cases where irreparable harm to persons is likely

5.2.2.2. What kind of complaints can be examined?

By the Inter-American Commission on Human Rights:

Where it concerns a State Party to the American Convention on Human Rights, a complaint can be examined if:

- it alleges a violation of the American Convention on Human Rights for which the state may be considered responsible (see Part I, Chapter 3.6 for a discussion of actions by non-governmental actors)

Where it concerns an OAS Member State not a party to the American Convention on Human Rights, a complaint can be examined if:

- it relates to an alleged violation of fundamental human rights standards, under general international law, with particular reference to the American Declaration on the Rights and Duties of Man

By the Inter-American Court of Human Rights:

A complaint can be examined if:

- it alleges a violation of the American Convention on Human Rights for which the state may be considered responsible (see Part I, Chapter 3.6 for a discussion of actions by non-governmental actors)
- it relates to a State Party to the American Convention on Human Rights which has accepted the jurisdiction of the Court
- it has first been examined by the Commission
- it has been referred to the Court by either a State Party or the Commission

5.2.2.3. What are the admissibility requirements?

A communication will be **inadmissible** if:

- Adequate and effective domestic remedies have not been exhausted
- The case has not been submitted within 6 months of notification of the final decision in the case, or within a ‘reasonable time’ in cases where domestic remedies cannot be exhausted
- A case addressing the same facts has already been, or is currently being, examined by the Commission or another international tribunal, except where that case was brought by a third party without the authorisation of the victim or the victim’s family, and the present case is being brought by the victim, a family member or an authorised representative
- The communication is anonymous or lacks certain details about the petitioner
- The communication does not contain facts appearing to reveal a violation of rights
- The communication is manifestly groundless (ill-founded)

5.2.2.4. Specific tips

- Check to see if the state is a party to the ACHR, and if it has accepted the competence of the Court to examine individual complaints. If not, individual complaints concerning Member States of the OAS may still be submitted to the Commission on the basis of the American Declaration.
- Complaints should be based on the ACHR (or the American Declaration), but reference to the Inter-American Convention to Prevent and Punish Torture, the Inter-American Convention on the Forced Disappearance of Persons, and the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women may be relevant to help clarify a point.
- At the stage when the Court considers the question of reparations, the representatives of the victim or the victim’s family are entitled to submit their own arguments on the matter.

TABLE 28: PRACTICALITIES OF USING INDIVIDUAL COMPLAINT PROCEDURE: INTER-AMERICAN SYSTEM

PRACTICALITIES OF USING THE INDIVIDUAL COMPLAINT PROCEDURE: Inter-American System	
Who can bring a case under this procedure?	Any group or person, or any NGO entity legally recognised in one or more Member State, either on own behalf or on behalf of a third person. Not necessary to have contact with victim, but usually with victim, family or authorised representative.
Is there a time limit for bringing an application?	Six months from the final decision in the case where domestic remedies have been exhausted, or within a reasonable time of the facts alleged where exhaustion of domestic remedies is not possible
Can you bring a case under this procedure if you have already brought one under another procedure concerning the same set of facts?	No - unless the case was brought by a third party without the authorisation of the victim or his or her family
Do you need legal representation ?	Not necessarily but it is advisable
Is financial assistance available?	No
Are amicus briefs accepted?	Yes
Who will know about the communication?	The petitioners can hold a press conference after presenting the petition
How long does the procedure take?	May take years
What measures, is any, can the mechanism take to assist it in reaching a decision? e.g. fact-finding hearings; on-site visits; written pleadings, oral hearings, other.	Fact-finding hearings; on-site visits; expert evidence; written pleadings; oral hearings.
Are provisional or urgent measures available?	Yes

5.3. The African System

The African system for the protection of human rights is based on the African Charter on Human and Peoples' Rights, adopted under the auspices of the Organisation of African Unity (OAU). Supervision of respect for the Charter has until now been the exclusive domain of the African Commission on Human and Peoples' Rights. In the context of its work, the African Commission has appointed a number of Special Rapporteurs, namely the Special Rapporteur on Extra-Judicial Executions, the Special Rapporteur on Women and, of particular relevance to this handbook, the Special Rapporteur on Prisons and Conditions of Detention in Africa. In 1998, a Protocol was adopted for the purpose of establishing an African Court to work alongside the Commission, but this Court will only become operational when 15 States have signed the Protocol. On the basis of current indications given by African States, this is likely to take between five and ten years.

Languages: The official languages of the Commission are Arabic, English, French and Portuguese, but in practice the Secretariat works in English and French. If a party wishes to make a presentation in another language, it should arrange for translation.

TABLE 29: BASIC FACTS: AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

BASIC FACTS ABOUT: The African Commission on Human and Peoples' Rights		
Origin:	How was it created?	By the 1981 African Charter on Human and Peoples' Rights
	When did it become operational?	1987
Composition:	How many persons is it composed of?	11
	Are these persons independent experts or state representatives?	Independent experts
Purpose:	General objective	To promote and protect human and peoples' rights in Africa
	Functions	<ul style="list-style-type: none"> • Examination of state reports (Article 62, ACHPR) • Monitoring (Article 45, ACHPR) • Fact-finding (Articles 45 and 58, ACHPR) • Receiving communications, including from states (Article 47, ACHPR) and from individuals (automatic) (Article 55, ACHPR)

5.3.1. Reporting Mechanisms

5.3.1.1. African Commission on Human and Peoples' Rights

5.3.1.1.1. FUNCTIONS

The African Commission can:

- examine periodic state reports (Article 62, ACHPR)
- undertake research and studies, including through fact-finding visits (Article 45(1)(a), ACHPR)

- conduct an in-depth study, and engage in active investigation, where it receives communications indicating the existence of a series of serious and massive violations of human rights (Article 58, ACHPR)

See Part III, Chapter 2.3, for an indication of how state reporting procedures work.

5.3.1.1.2. SPECIFIC TIPS

- Any serious NGO, whether African or non-African, can apply for observer status with the African Commission. It is not necessary to have observer status in order to send communications, but having the status gives the organisation certain entitlements: To be informed of, attend and participate in public meetings, to receive documents and publications of the African Commission and to request that an item be placed on the Commission's agenda. Any request for the introduction of an agenda item should be made at least 10 weeks before the opening of the session.

Any application for observer status should be submitted in writing and should include: the organisation's constitution, and information on its structure, leadership, membership and activities. It would be useful also to include copies of any publications or activity reports. A rapporteur is assigned to the application and makes a recommendation to the African Commission on whether or not to grant the status.

5.3.1.2. *Special Rapporteur on Prisons and Conditions of Detention in Africa*

TABLE 30: BASIC FACTS: SPECIAL RAPPORTEUR ON PRISONS AND CONDITIONS OF DETENTION IN AFRICA

BASIC FACTS ABOUT: The Special Rapporteur on Prisons and Conditions of Detention in Africa		
Origin:	How was it created?	By a 1996 resolution of the African Commission on Human and Peoples' Rights
	When did it become operational?	1996
Composition:	How many persons is it composed of?	1
	Are these persons independent experts or state representatives?	Independent expert
Purpose:	General objective	To examine the situation of persons deprived of their liberty within the territories of States Parties to the ACHPR.
	Functions	<ul style="list-style-type: none"> • Monitoring • Fact-finding

The Special Rapporteur on Prisons is able to exercise its functions in relation to all States Parties to the ACHPR.

The SRP can:

- Engage in **monitoring** with a view to identifying problem areas and making recommendations for their improvement
- Make **recommendations** in **individual cases**
- Recommend **urgent action** in **individual cases**
- **Seek and receive information** on cases and situations falling within the mandate

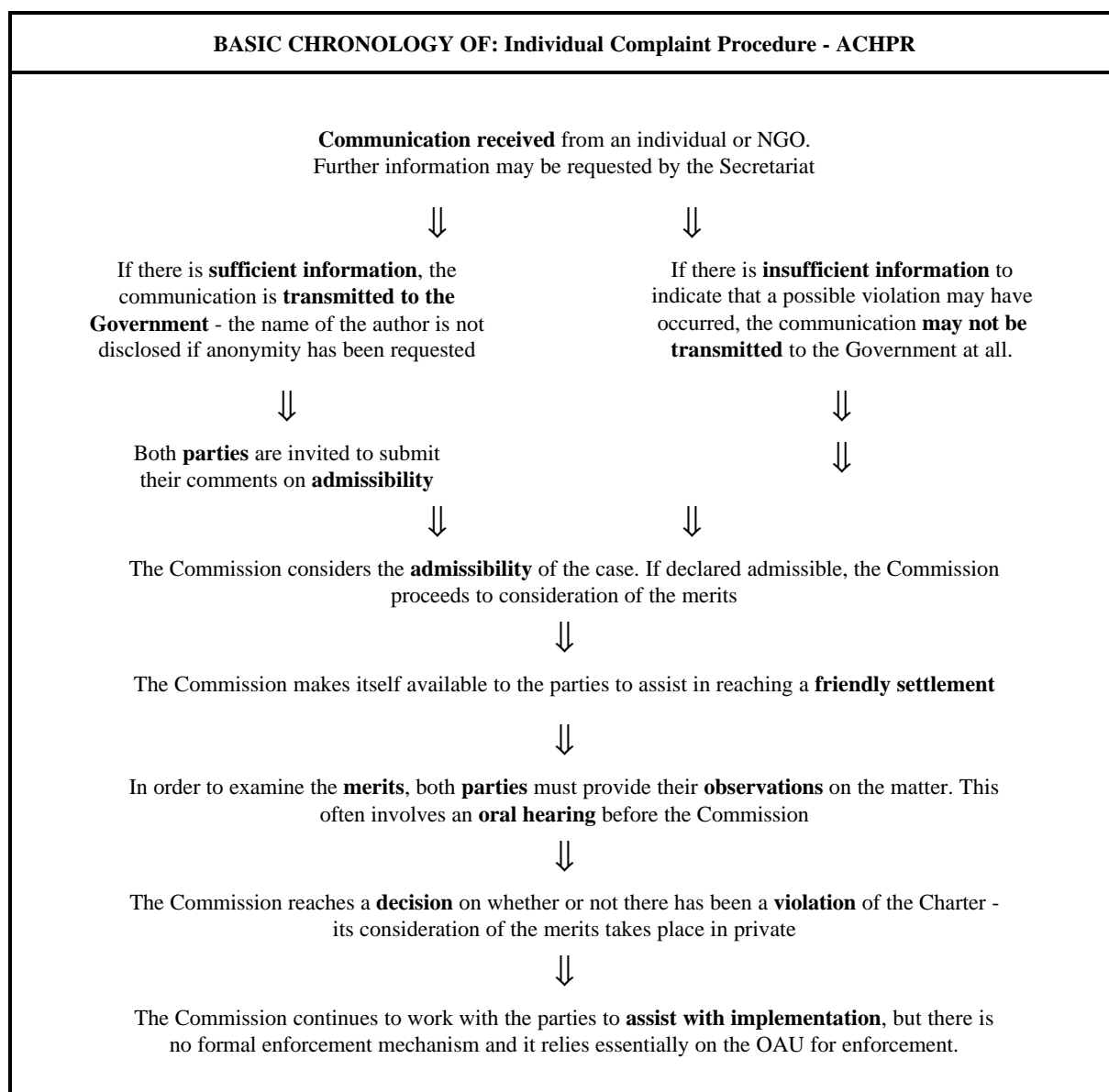
- Carry out **fact-finding visits** with the consent of States Parties. Reports of such visits are presented orally to the ACNHR in a public session, and although the Charter itself suggests that reports should only be made public by a decision of the OAU Assembly of Heads of State and Government, in practice the Commission makes it public without reference to the OAU.

Main areas of concern to the SRP include:

- Prison conditions
- Health issues in detention contexts
- Arbitrary or extra-legal detention or imprisonment
- Treatment of persons deprived of their liberty
- Conditions of detention for especially vulnerable groups such as: refugees, persons suffering from physical or mental disabilities, or children

5.3.2. Complaint Procedure: The African Commission on Human and Peoples’ Rights

TABLE 31: BASIC CHRONOLOGY OF INDIVIDUAL COMPLAINT PROCEDURE: ACHPR



5.3.2.1. What are the admissibility requirements?

A communication will be declared **inadmissible** if:

- it does not indicate the names of the authors (although they can request that their anonymity be protected by the Commission)
- domestic remedies have not been exhausted, except where the remedies are unreasonably prolonged (but see ‘Specific Tips’ below)
- the communication has not been submitted within a reasonable time after the exhaustion of local remedies
- the communication is incompatible with the provisions of the Charter of the OAU or with the African Charter.
- the communication is written in insulting language directed at the State concerned
- the allegations are based exclusively on mass media reports
- the application deals with matters already settled by the States involved in accordance with the principles of the UN and OAU Charters or the African Charter

TABLE 32: PRACTICALITIES OF USING INDIVIDUAL COMPLAINT PROCEDURE: ACHPR

PRACTICALITIES OF USING THE INDIVIDUAL COMPLAINT PROCEDURE: African Charter on Human and Peoples’ Rights	
Who can bring a case under this procedure?	Any person or NGO who can provide sufficiently precise details of an incident to enable its investigation - it does not necessarily have to be either the victim or his or her family, in recognition of the practical difficulties involved in the African context
Is there a time limit for bringing an application?	The application should be made within a reasonable time, but the Commission interprets this very generously
Can you bring a case under this procedure if you have already brought one under another procedure concerning the same set of facts?	No
Do you need legal representation ?	No, but it is permitted
Is financial assistance available?	No
Are amicus briefs accepted?	Any information which can assist the Commission may be received, but the confidentiality of the procedure must be respected by all.
Who will know about the communication?	The identity of the author may be kept confidential if requested
How long does the procedure take?	There were long delays in initial cases, but the procedure now takes about 18 months to 2 years.
What measures, if any, can the mechanism take to assist it in reaching a decision? e.g. fact-finding hearings; on-site visits; written pleadings; oral hearings; other.	Written pleadings; oral hearings; on-site visits in cases involving groups of complainants.
Are provisional or urgent measures available?	Yes

5.3.2.2. Specific tips

- The Commission will proceed to an examination of a communication even if the State Party does not respond to the allegations.

- In addition to the basic details, you should indicate if the communication refers to serious or massive violations of human and peoples' rights.
- In cases of serious and massive violations, and where complaints involve large numbers of people or long-standing violations, the Commission has in practice not required the exhaustion of domestic remedies, on the ground that this would be impractical and/or undesirable.
- Alternatively, where allegations involve serious and massive violations, it is possible to base a communication on Article 58 in order to avoid the requirement to exhaust domestic remedies.
- The Commission requires the authors of the communication to provide their names and addresses, but where the circumstances make it impractical (e.g. where large number of victims) it may not be necessary to name all the victims involved. The information should be sufficiently precise to make it possible to carry out an inquiry however.
- Much of the procedure for individual complaints has been developed through the Commission's rules of procedure and practice - do not be surprised if you do not find much information about the procedure in the Charter itself.

5.4. Other Regions

There are currently no other regions which have established formal procedures to consider allegations of human rights violations, although many are beginning to devote increasing interest to human rights in general. The years to come may well see a growth in the number of international bodies able to consider allegations, and it is probable that any new regional bodies will be based on the well-established, tried and tested procedures described in connection with Europe, the Americas and Africa.

In the meantime, it is important not to be discouraged by the absence of international remedies close to home - the UN bodies are subject to no geographical limitations and can examine situations all over the world. Check which treaties your state is a party to, and remember that the non-treaty procedures can examine the human rights situation in any state which is a member of the UN.

6. COMPARATIVE EVALUATION TABLES OF THE INTERNATIONAL PROCEDURES

TABLE 33: COMPARATIVE EVALUATION I - CAT, HRC AND CERD (GENERAL)

	CAT			HRC		CERD	
	SR	IP	IC	SR	IC	SR	IC
To what extent is the mechanism suited to:							
⇒ Drawing attention to a situation?							
• Is the procedure public?	Y	N	N	Y	N	Y	N
• Are its findings public?	Y	may be	Y	Y	Y	Y	Y
• Can the mechanism carry out fact-finding visits?	N	yes	N	N	N	N	N
• Are the findings of such a visit known to the public?	-	may be	-	-	-	-	-
⇒ Seeking changes in a general situation?							
• Can the mechanism make recommendations of a general or systemic nature?	Y	Y	Y	Y	N	Y	N
• Is a state <u>legally obliged</u> to comply with those recommendations ?	N	N	N	N	-	N	-
• Do states <u>usually</u> comply with them?	varies	Y	insufficient case-law	varies	-	varies	-
• Does the mechanism have a follow-up procedure?	next report	no, but could do so on a case by case basis	no, but not excluded	being developed	-	next report	-
• Is there any special sanction the mechanism can impose on states which do not co-operate?	N	may publish summary of results	N	N	-	N	-
⇒ Seeking an individual remedy?							
From a reporting mechanism:							
Publicity of an individual case in the context of a general situation							
Preventing deportation							
• Can the mechanism make recommendations in individual cases ?	N	yes, though does not do so often		N		N	
• Is a state <u>legally obliged</u> to comply with those recommendations ?	-	N		-		-	
• Do states <u>usually</u> comply with them?	-	Y		-		-	
• Does the mechanism have a follow-up procedure for individual cases?	-	N		N		N	
• Are urgent measures available?	-	Y		N		N	
• Is a state <u>legally obliged</u> to comply with those measures ?	-	N					
• Do states <u>usually</u> comply with them?	-	Y					

Key: CAT = Committee Against Torture; HRC = Human Rights Committee; CERD = Committee on the Elimination of Racial Discrimination; SR = State reporting procedure; IP = Inquiry procedure; IC = Individual complaint procedure; Y = Yes; N = No

PART III - RESPONDING TO THE INFORMATION COLLECTED

TABLE 34: COMPARATIVE EVALUATION II - CRC, CEDAW, SR-CHR AND 1503 (GENERAL)

	CRC	CEDAW	SR-CHR		1503
	SR	SR	COM	FF	COM
To what extent is the mechanism suited to:					
⇒ Drawing attention to a situation?					
• Is the procedure public?	Y	Y	N	N	N
• Are its findings public?	Y	Y	Y	Y	no, but the fact that a state is under consideration is public
• Can the mechanism carry out fact-finding visits?	N	N	N	Y	yes, but does not usually exercise this option
• Are the findings of such a visit known to the public?	-	-	-	Y	N
⇒ Seeking changes in a general situation?					
• Can the mechanism make recommendations of a general or systemic nature?	Y	Y	Y	Y	yes, but on a confidential basis
• Is a state legally obliged to comply with those recommendations ?	N	N	N	N	N
• Do states usually comply with them?	varies	varies	varies	often	varies
• Does the mechanism have a follow-up procedure?	next report	next report	can continue dialogue	follow-up dialogue	can keep state under consideration until the following year
• Is there any special sanction the mechanism can impose on states which do not co-operate?	N	N	N	can make statement when presenting report to UNCHR	may transfer to a public procedure. This may include appointing a Special Rapporteur
⇒ Seeking an individual remedy?					
From a reporting mechanism:					
Publicity of an individual case in the context of a general situation					
Prevent deportation					
• Can the mechanism make recommendations in individual cases ?	N	N	Y	Y	
• Is a state legally obliged to comply with those recommendations ?	-	-	N	N	
• Do states usually comply with them?	-	-	varies	regularly	
• Does the mechanism have a follow-up procedure for individual cases?	N	N	opportunity for source to comment on state reply	can continue dialogue	
• Are urgent measures available?	N	N	Y	Y	
• Is a state legally obliged to comply with those measures ?	-	-	N	N	
• Do states usually comply with them?	-	-	regularly	regularly	

Key: CRC = Committee on the Rights of the Child; CEDAW = Committee on the Elimination of Discrimination Against Women; 1503 = 1503 Procedure; SR-CHR = Special Rapporteurs/Working Groups/Independent Experts/Special Representatives of the UN Commission on Human Rights; SR = State reporting procedure; FF = Fact-finding; COM = Communication procedure; Y = Yes; N = No

TABLE 35: COMPARATIVE EVALUATION III - CPT, IACN AND IACT (GENERAL)

	CPT	IACN		IACT
	FF	FF	IC	IC
To what extent is the mechanism suited to:				
⇒ Drawing attention to a situation?				
• Is the procedure public?	N	N	N	N
• Are its findings public?	see fact-finding	see fact-finding	not automatically	Y
• Can the mechanism carry out fact-finding visits?	Y	Y	Y	Y
• Are the findings of such a visit known to the public?	only if state agrees to publication; in practice most states have	usually	not automatically	referred to in judgment
⇒ Seeking changes in a general situation?				
• Can the mechanism make recommendations of a general or systemic nature?	Y	Y	Y	Y
• Is a state <u>legally obliged</u> to comply with those recommendations ?	N	N	N	Y
• Do states <u>usually</u> comply with them?	Y	varies	varies	Y
• Does the mechanism have a follow-up procedure?	follow-up visits and ongoing dialogue	follow-up visits	may ask to be informed of steps taken	may ask to be informed of steps taken
• Is there any special sanction the mechanism can impose on states which do not co-operate?	public statement	N	public report/ refer to court	N
⇒ Seeking an individual remedy?				
From a reporting mechanism:				
Publicity of an individual case in the context of a general situation				
Prevent deportation				
• Can the mechanism make recommendations in individual cases ?	Y	Y		
• Is a state <u>legally obliged</u> to comply with those recommendations ?	N	N		
• Do states <u>usually</u> comply with them?	Y	varies		
• Does the mechanism have a follow-up procedure for individual cases?	can happen	may enquire about case		
• Are urgent measures available?	can happen	Y		
• Is a state <u>legally obliged</u> to comply with those measures ?	N	N		
• Do states <u>usually</u> comply with them?	Y	varies		

Key: CPT = European Committee for the Prevention of Torture; IACN = Inter-American Commission on Human Rights; IACT = Inter-American Court of Human Rights; FF = Fact-finding; IC = Individual complaint procedure; Y = Yes; N = No

PART III - RESPONDING TO THE INFORMATION COLLECTED

TABLE 36: COMPARATIVE EVALUATION IV - ACNHR AND SRP (GENERAL)

	ACNHR			SRP	
	SR	FF/ IDS	IC	FF	COM
To what extent is the mechanism suited to:					
⇒ Drawing attention to a situation?					
• Is the procedure public?	Y	N	N	N	N
• Are its findings public?	Y	usually	attached to annual report of ACHPR	Y	Y
• Can the mechanism carry out fact-finding visits?	-	Y	in relation to groups of complaints	Y	Y
• Are the findings of such a visit known to the public?	-	usually, but there can be long delays	can be	yes but can be delay in publication	yes but can be delay in publication
⇒ Seeking changes in a general situation?					
• Can the mechanism make recommendations of a general or systemic nature?	Y	Y	yes if relates to a 'situation'	Y	yes if relates to a 'situation'
• Is a state <u>legally obliged</u> to comply with those recommendations ?	N	N	N	N	N
• Do states <u>usually</u> comply with them?	sometimes	sometimes	sometimes	sometimes	sometimes
• Does the mechanism have a follow-up procedure?	next state report	may keep the item on the agenda	possibly through the OAU	follow-up missions	not excluded
• Is there any special sanction the mechanism can impose on states which do not co-operate?	N	N	N	N	N
⇒ Seeking an individual remedy?					
From a reporting mechanism:					
Publicity of an individual case in the context of a general situation					
Prevent deportation					
• Can the mechanism make recommendations in individual cases ?	N	Y		Y	Y
• Is a state <u>legally obliged</u> to comply with those recommendations ?	-	N		N	N
• Do states <u>usually</u> comply with them?	-	sometimes		sometimes	sometimes
• Does the mechanism have a follow-up procedure for individual cases?	-	N		N	not excluded
• Are urgent measures available?	-	Y		Y	Y
• Is a state <u>legally obliged</u> to comply with those measures ?	-	N		N	N
• Do states <u>usually</u> comply with them?	-	sometimes		sometimes	sometimes

Key: ACNHR = African Commission on Human and Peoples' Rights; SRP = Special Rapporteur on Prisons and Conditions of Detention in Africa; SR = State reporting procedure; FF = Fact-finding; IDS = In-depth study; IC = Individual complaint procedure; COM = Communication procedure; Y = Yes; N = No

TABLE 37: COMPARATIVE EVALUATION IV - CAT, HRC AND CERD (INDIVIDUAL COMPLAINT PROCEDURE)

	CAT	HRC	CERD
To what extent is the mechanism suited to			
⇒ Seeking an individual remedy?			
From a complaint procedure:			
Legal finding of violation	Y	Y	Y
Prevent deportation	Y	Y	potentially
• What form of reparation , if any, can be awarded?	indication of action necessary to restore compliance	indication of action necessary to restore compliance	indication of action necessary to restore compliance
• Are states <u>legally obliged</u> to comply with the final decision ?	N	N	N
• Do states <u>usually</u> comply with it?	usually	varies	varies
• Is there any way of enforcing the decision?	no, but may ask to be informed of any steps taken	N	N
• Are provisional or urgent measures available?	Y	Y	Y
• Is a state <u>legally obliged</u> to comply with those measures?	N	N	N
• Do states <u>usually</u> comply with them?	usually	Y	Y

Key: CAT = Committee Against Torture; HRC: Human Rights Committee; CERD = Committee on the Elimination of Racial Discrimination.

TABLE 38: COMPARATIVE EVALUATION V - ECTHR, IACN, IACT AND ACNHR (INDIVIDUAL COMPLAINT PROCEDURE)

	ECTHR	IACN	IACT	ACNHR
To what extent is the mechanism suited to				
⇒ Seeking an individual remedy?				
From a complaint procedure:				
Legal finding of violation	Y	Y	Y	Y
Prevent deportation	Y	Y	Y	Y
• What form of reparation , if any, can be awarded?	can include financial compensation	-	can include compensation and other less traditional remedies	-
• Are states <u>legally obliged</u> to comply with the final decision ?	Y	N	Y	N
• Do states <u>usually</u> comply with it?	Y	varies	Y	sometimes
• Is there any way of enforcing the decision?	may be taken up by the Committee of Ministers	no, although the potential for referral to the Court or publication of the IACN's findings may motivate compliance	may be pursued in the domestic courts	N
• Are provisional or urgent measures available?	Y	Y	Y	Y
• Is a state <u>legally obliged</u> to comply with those measures?	N	N	Y	N
• Do states <u>usually</u> comply with them?	Y	varies	Y	sometimes

Key: ECTHR = European Court of Human Rights; IACN = Inter-American Commission on Human Rights; IACT = Inter-American Court of Human Rights; ACNHR = African Commission on Human and Peoples' Rights

7. WHERE MIGHT YOU SEEK FURTHER HELP?

7.1. Why might you wish to seek further help?

Formal procedures before international mechanisms set up for the sole purpose of assessing whether or not states are respecting their obligations under international law are not by any means the only form of help to which you may turn in response to allegations of torture. There are a number of reasons why you may wish to seek assistance from a different source, either in addition to, or instead of, resorting to a formal procedure.

- In certain circumstances, you may be reluctant to turn to the international mechanisms at all. Perhaps you have concerns for your own safety, or you find the process intimidating. In cases where you are in possession of information which can help an individual to obtain a remedy, or even save his or her life, or which may otherwise be of significance to the international bodies, you should at least consider a course of action which does not necessarily involve you personally, but ensures that the information is not wasted. A possible solution would be to pass on the information to another organisation or group which may be in a better position to follow it up. There are also organisations to which you can turn in order to obtain support and guidance, and which may advise you about the best course of action.
- It is important to remember that, whether or not any formal procedure is being used to seek a remedy, it may well be that the best assistance you can provide to a victim of torture is support and rehabilitation. Again, there are organisations which specialise in this area which you may wish to contact.
- An extremely effective and generally speedier complement to using the formal procedures is lobbying, particularly of the UN Commission on Human Rights and Sub-Commission on the Promotion and Protection of Human Rights, but also of a variety of political bodies.

TABLE 39: POSSIBLE SOURCES OF HELP

TYPE OF HELP	POSSIBLE SOURCE (See Appendix 2 for further details)
Organisations which may take action themselves on the basis of your information	<ul style="list-style-type: none"> • International Committee of the Red Cross • UN High Commissioner for Refugees • More experienced international or national NGOs • Field missions, such as those of the OSCE, the UN High Commissioner for Human Rights, or large international NGOs • Victim-specific organisations, such as ILO conferences or the IPU
Organisations which may be able to provide advice and support	<ul style="list-style-type: none"> • More experienced international or national NGOs • Professional organisations and networks
Organisations which may be able to help with victim support and rehabilitation	<ul style="list-style-type: none"> • UN Voluntary Fund for the Victims of Torture • International and national rehabilitation NGOs
Organisations or bodies where active lobbying may be effective	<ul style="list-style-type: none"> • UN Commission on Human Rights • UN Sub-Commission on the Promotion and Protection of Human Rights

7.2. Some specific sources of help

7.2.1. International Committee of the Red Cross

The International Committee of the Red Cross (ICRC) is a neutral and independent organisation which acts primarily in the context of armed conflict, but also in situations of violence and political unrest. Its headquarters are based in Geneva, Switzerland, but it has field delegations in many countries where its activities are required, usually through an agreement with the governing authorities. One of its functions in these contexts is to act as a neutral intermediary between detainees and their detaining authorities. Its representatives carry out **visits to places of detention** where persons are held in connection with the conflict or unrest, and **examine the conditions of detention and treatment and interview detainees about their experiences in detention**. They require access to all places of detention where detainees falling within their field of activity are kept, as well as the opportunity to interview the detainees themselves in private and without witnesses. In return, they maintain absolute confidentiality about what they observe during such visits. Because of its special mandate and methods of work, the ICRC is often able to gain access to places of detention which others cannot visit.

The ICRC has its own network and personnel, and functions independently of other organisations. Nonetheless, it is willing to receive information about patterns of violation or enquiries about specific detainees or missing persons which it may be in a position to follow up. It prefers to receive such information directly from relatives, but will accept it from NGOs on the understanding that the confidentiality protecting its work means that the NGO should not expect to receive feedback on any action taken. In the case of missing or disappeared persons, it may send a response to the family. In general, it will seek to make direct contact with the family before it decides to take action. Its guiding principle is that any action it takes is on behalf and in the name of the detainees themselves, not of other organisations.

If information is passed on to the ICRC, it should be as detailed as possible about the arrest and detention. As a general rule, the ICRC will tend to act more readily in cases indicating a pattern than in individual cases.

7.2.2. UN High Commissioner for Refugees

The UN High Commissioner for Refugees (UNHCR) acts to protect and provide assistance to persons who have fled their country because of a well-founded fear of persecution and cannot or do not want to return (refugees), as well as other groups in similar situations, such as persons displaced within their own countries (IDPs) and victims of civil war.

One of the ways in which it carries out these functions is through a network of personnel throughout the world, based in diverse locations where persons falling within their mandate may be found, including capital cities, remote refugee or IDP camps, and along border areas. Their purpose is essentially to protect and minimise the risk of attacks on refugee and IDP groups and camps, and to identify and address the causes of displacement in specific situations. In this context, it is extremely relevant to inform them of: 1) any ill-treatment of refugees and IDPs in their place of origin or during transit, and 2) any ill-treatment of refugees and IDPs within their camps.

7.2.3. Field missions and visits

Both intergovernmental organisations, such as the OSCE and the UN, and international non-governmental organisations may establish field missions or carry out field visits. These may be either standing (ongoing) or ad hoc (in response to a specific event or situation). Most are designed to monitor and collect information about the situation, and rely heavily on the supply of information from various sources.

7.2.4. International and national or local NGOs, and other support organisations

The range of international and national NGOs is enormous. An initial point of contact could be a large national NGO with experience. This is often the best way to find out basic information about domestic remedies or on the treaties to which the state is party. International NGOs can provide invaluable assistance, either by taking responsibility for transmitting allegations or by advising you on how to go about it. A particularly useful form of international NGO is the ‘umbrella organisation’. These are NGOs which act as a central point of contact for a network of smaller national NGOs. In general, in order to apply to become part of a network, national NGOs will be asked to explain their objectives, working methods etc., and should be able to show that both they and their information are reliable. See Appendix 2 for examples of such organisations.

Assistance and support can also be obtained from professional organisations and support networks. See Appendix 2 for examples of such organisations.

7.2.5. UN Voluntary Fund for the Victims of Torture

The UN Voluntary Fund for the Victims of Torture was set up for the purpose of distributing funding to NGOs providing medical, psychological, legal, social, financial, humanitarian and other assistance to victims of torture and their families. Any NGO wishing to set up such a project can apply to the fund for a grant. An application form must be completed providing detailed information about the proposed project, and the organisation will be expected to report back on the use to which the grant was put. Applications are due in by 31 December each year and the funds are distributed approximately six months later. See Appendix 2 for details.

7.2.6. Lobbying

There is no substitute for public opinion when it comes to seeking change. There is no doubt that persistent lobbying can help to shine a spotlight on human rights abuses. Among the most important lobbying is that which takes place in Geneva during sessions of the UN Commission on Human Rights and the Sub-Commission on the Protection and Promotion of Human Rights. Lobbying of state representatives and members can make the difference between an agenda item being dropped or a resolution condemning a state being adopted. If you would like to be involved, you are advised to contact a Geneva-based NGO which will be able to help you and provide information on applying for permission to attend the sessions and how to make a written or oral submission. See Appendix 2 for contacts.

Other fora where active lobbying on human rights issues takes place include the political organs of international organisations, e.g. the European Parliament, and governmental representatives (not necessarily your own), particularly those of influential states.

SUMMARY

PART III - RESPONDING TO THE INFORMATION COLLECTED

1. Introduction to possible courses of action**Action can be taken**

- At the international level
- At the national level

If effective remedies are available at the national level, you should try to use them first before turning to the international mechanisms. Possible remedies at the national level might include: criminal proceedings; civil proceedings; administrative proceedings; disciplinary proceedings or a claim for asylum.

When selecting a course of action at the international level, you should consider:

- The **availability** of the mechanism: is it open to you?
- The **suitability** of the mechanism: is it suited to your objectives?

2. What you should know about international reporting mechanisms and how to use them

An **international reporting mechanism** is one which receives and/or seeks out information in order to report or comment on whether States are respecting their obligations under international human rights law. The information it receives can concern both individual and general allegations, but the ultimate objective is to obtain an accurate picture of the general situation and make recommendations.

The most common ways in which international reporting mechanisms carry out their functions are through:

- **Monitoring**
- **The examination of state reports**
- **Fact-finding visits**

The **content and form of your submission will vary according to the functions of the mechanisms** (See main text for suggestions), but **all communications** should be:

- **Accessible**
- **Balanced and Credible**
- **Detailed**

3. What you should know about international complaint procedures and how to use them

An **international complaint procedure** involves a **formal judicial-style process in which an individual or group of individuals make a complaint to an international judicial body alleging that their individual rights have been violated in a specific case**. A complaint under such a procedure may also be referred to as an *application*, a *petition* or a *communication*.

When considering an individual complaint, the relevant body asks **two main questions**:

- **Is the body allowed to examine the complaint?** This is the question of *admissibility*. If the body finds that the case is *inadmissible* (that it is not allowed to examine the complaint), the case is over and the facts are not examined. (See main text for reasons why a complaint might be declared *inadmissible*)
- **Do the facts indicate that a violation of the state's obligations has occurred?** This is called consideration of the *merits* of the case, and only happens if the case is found to be *admissible*.

A **communication** under an international complaint procedure should **always include**:

- A **cover letter** setting out a minimum number of details (See main text for suggestions)
- As much **supporting documentation** as possible (See main text for suggestions)

4. The mechanisms and procedures: United Nations

Relevant reporting mechanisms and procedures within the United Nations system are:

- The 1503 Procedure
- The Special Procedures of the UN Commission on Human Rights: Thematic and Country Rapporteurs
- The Committee Against Torture
- The Human Rights Committee
- The Committee on the Rights of the Child
- The Committee on the Elimination of Discrimination Against Women
- The Committee on the Elimination of Racial Discrimination

Relevant complaint procedures within the United Nations system are based on :

- The Convention Against Torture (implemented by the Committee Against Torture)
- The Optional Protocol of the ICCPR (implemented by the Human Rights Committee)
- The Convention on the Elimination of Racial Discrimination (implemented by the Committee on the Elimination of Racial Discrimination)

5. The mechanisms and procedures: regional

EUROPE:

The relevant reporting mechanism within the European system is:

- The European Committee for the Prevention of Torture

The relevant complaint procedure within the European system is based on:

- The European Convention on Human Rights (implemented by the European Court of Human Rights)

AMERICAS:

The relevant reporting mechanism within the Inter-American system is:

- The Inter-American Commission on Human Rights

The relevant complaint procedure within the Inter-American system is based on:

- The American Convention on Human Rights or the American Declaration on the Rights and Duties of Man (implemented by the Inter-American Commission and Court of Human Rights)

AFRICA:

The relevant reporting mechanisms within the African system are:

- The African Commission on Human and Peoples' Rights
- The Special Rapporteur on Prisons and Conditions of Detention in Africa

The relevant complaint procedure within the African system is based on:

- The African Charter on Human and Peoples' Rights (implemented by the African Commission on Human and Peoples' Rights)

6. Where might you seek further help?

You may be reluctant to turn to the international mechanisms yourself, or need support and guidance, either for yourself or for a victim. Where you do take action yourself, you may wish to strengthen or expedite the process through lobbying.

In such cases, **organisations or bodies** to which you may wish to turn might include: those which may **take action themselves on the basis of your information** or which may be able to **provide you with advice and support**; those which may be able to **help with victim support or rehabilitation**; and those where **active lobbying** may be effective.

APPENDICES

- I. Appendix I - List of Relevant Instruments**
- II. Appendix II - Contact Details and Obtaining Further Information**
- III. Appendix III - Standard Application Forms**
- IV. Appendix IV - Body Diagrams**

1. APPENDIX I - LIST OF RELEVANT INSTRUMENTS

All of the instruments listed below are potentially of relevance to anyone wishing to submit allegations of ill-treatment to international bodies, or indeed within the national system. They have been arranged thematically in order to make it easier to pick out all instruments relevant to a specific topic. Within the thematic divisions, they have then been subdivided according to their origin, i.e. the international organisation which created them. For reasons of space, it has not been possible to reproduce all of the instruments here, but references have been given in Appendix II to possible sources for obtaining copies of the instruments.

1. GENERAL HUMAN RIGHTS INSTRUMENTS:

United Nations:

- Universal Declaration of Human Rights
- International Covenant on Civil and Political Rights
- Optional Protocol to the International Covenant on Civil and Political Rights

Council of Europe:

- European Convention on Human Rights

Organisation of American States:

- American Declaration on the Rights and Duties of Man
- American Convention on Human Rights

Organisation of African Unity:

- African Charter on Human and Peoples' Rights

2. TORTURE-SPECIFIC HUMAN RIGHTS INSTRUMENTS:

United Nations:

- Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Council of Europe:

- European Convention on the Prevention of Torture

Organisation of American States:

- Inter-American Convention to Prevent and Punish Torture

3. GENERAL STANDARDS FOR THE TREATMENT OF PERSONS IN OFFICIAL CUSTODY:

United Nations:

- Standard Minimum Rules for the Treatment of Prisoners
- Basic Principles for the Treatment of Prisoners
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")

Council of Europe:

- European Prison Rules

4. PROFESSIONAL STANDARDS:**United Nations:**

- Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Model Autopsy Rules
- Code of Conduct for Law Enforcement Officials
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- Basic Principles on the Role of Lawyers
- Guidelines on the Role of Prosecutors
- Basic Principles on the Independence of the Judiciary

Council of Europe:

- Declaration on the Police

5. INSTRUMENTS RELATING TO WOMEN:**United Nations:**

- Declaration on the Elimination of All Forms of Discrimination against Women
- Convention on the Elimination of All Forms of Discrimination against Women
- Declaration on the Elimination of Violence against Women

Organisation of American States:

- Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women

6. INSTRUMENTS RELATING TO CHILDREN:**United Nations:**

- Declaration on the Rights of the Child
- Convention on the Rights of the Child
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules")

Organisation of African Unity:

- African Charter on the Rights and Welfare of the Child

7. INSTRUMENTS RELATING TO PERSONS DETAINED ON MENTAL HEALTH GROUNDS:**United Nations:**

- Principles for the Protection of Persons with Mental Illnesses and the Improvement of Mental Health Care

8. INSTRUMENTS RELATING TO RACIAL DISCRIMINATION, APARTHEID AND GENOCIDE:**United Nations:**

- United Nations Declaration on the Elimination of All Forms of Racial Discrimination
- International Convention on the Elimination of All Forms of Racial Discrimination
- Convention on the Prevention and Punishment of the Crime of Genocide
- International Convention on the Suppression and Punishment of the Crime of Apartheid

9. INSTRUMENTS RELATING TO DISAPPEARANCES AND EXTRA-JUDICIAL EXECUTIONS:**United Nations:**

- Declaration on the Protection of All Persons from Enforced Disappearances
- Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions

Organisation of American States:

- Inter-American Convention on the Forced Disappearance of Persons

10. HUMANITARIAN LAW INSTRUMENTS:

- Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field
- Geneva Convention II for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea
- Geneva Convention III relative to the Treatment of Prisoners of War
- Geneva Convention IV relative to the Protection of Civilian Persons in Time of War
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)

11. OTHER RELEVANT INSTRUMENTS:**United Nations:**

- Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (“Declaration on Human Rights Defenders”)
- Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty
- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
- Statute of the International Criminal Court

2. APPENDIX II - CONTACT DETAILS AND OBTAINING FURTHER INFORMATION

CONTACT DETAILS:

INTERNATIONAL MECHANISMS:

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

Kairaba Avenue, P.O. Box 673
Banjul, The Gambia
Telephone: +220-392962
Fax: +220-390764
Email: achpr@achpr.gm

COMMITTEE AGAINST TORTURE:

OHCHR-UNOG
CH 1211 Geneva 10, Switzerland
Telephone: +41-22-917 9000
Fax: +41-22-917 9011
E-mail: webadmin.hchr@unog.ch
<http://www.unhchr.ch/>

COMMITTEE FOR THE ELIMINATION OF RACIAL DISCRIMINATION:

OHCHR-UNOG
CH 1211 Geneva 10, Switzerland
Telephone: +41-22-917 9000
Fax: +41-22-917 9011
E-mail: webadmin.hchr@unog.ch
<http://www.unhchr.ch/>

COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN:

OHCHR-UNOG
CH 1211 Geneva 10, Switzerland
Telephone: +41-22-917 9000
Fax: +41-22-917 9011
E-mail: webadmin.hchr@unog.ch
<http://www.unhchr.ch/>

COMMITTEE ON THE RIGHTS OF THE CHILD:

OHCHR-UNOG
CH 1211 Geneva 10, Switzerland
Telephone: +41-22-917 9000
Fax: +41-22-917 9011
E-mail: webadmin.hchr@unog.ch
<http://www.unhchr.ch/>

EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE:

Council of Europe
F-67075 Strasbourg Cedex
France
E-mail: HumanRights.Info@coe.int
Telephone: +33-3-88 41 20 24
Fax: +33-3-88 41 27 04
<http://www.cpt.coe.int/>

EUROPEAN COURT OF HUMAN RIGHTS:

European Court of Human Rights
Council of Europe
F - 67075 Strasbourg-Cedex
France
Telephone: +33-3-88 41 20 18
Fax: +33-3-88 41 27 30
<http://www.echr.coe.int/>

HUMAN RIGHTS COMMITTEE:

OHCHR-UNOG
CH 1211 Geneva 10, Switzerland
Telephone: +41-22-917 9000
Fax: +41-22-917 9011
E-mail: webadmin.hchr@unog.ch
<http://www.unhchr.ch/>

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS:

Inter-American Commission on Human Rights
1889 F St., NW, Washington, D.C., USA 20006.
Telephone: +1-202-458 6002
Fax: +1-202-458 3992.
E-mail: cidhoea@oas.org
<http://www.cidh.oas.org/>

INTER-AMERICAN COURT OF HUMAN RIGHTS:

Inter-American Court of Human Rights
Apdo 6906-1000
San José, Costa Rica
Telephone: + 506-234 0581 or +506-225 3333
Fax: +506-234 0584
E-mail: corteidh@sol.racsa.co.cr
<http://www1.umn.edu/humanrts/iachr/iachr.html>

OFFICE OF THE UN HIGH COMMISSIONER FOR HUMAN RIGHTS

OHCHR-UNOG
CH 1211 Geneva 10, Switzerland
Telephone: +41-22-917 9000
Fax: +41-22-917 0099
E-mail: webadmin.hchr@unog.ch
<http://www.unhchr.ch/> (includes details of all OHCHR field presences and the texts of many international human rights instruments)

SPECIAL RAPPORTEUR ON PRISONS AND CONDITIONS OF DETENTION IN AFRICA

Kairaba Avenue, P.O. Box 673
Banjul, The Gambia
Telephone: +220-392962
Fax: +220-390764
E-mail: achpr@achpr.gm

UN SPECIAL RAPPORTEUR ON TORTURE:

OHCHR-UNOG
CH 1211 Geneva 10, Switzerland
Telephone: +41-22-917 9000
Fax: +41-22-917 9006
E-mail: webadmin.hchr@unog.ch
<http://www.unhchr.ch/>

1503 PROCEDURE

OHCHR-UNOG
CH 1211 Geneva 10, Switzerland
Telephone: +41-22-917 9000
Fax: +41-22-917 9011
E-mail: webadmin.hchr@unog.ch
<http://www.unhchr.ch/>

FURTHER SOURCES OF HELP:

⇒ **Inter-Governmental Specialised Agencies:**

INTERNATIONAL LABOUR ORGANISATION:

International Labour Standards and Human Rights Department (NORMES)
4 route de Morillons
CH-1211 Geneva 22
Switzerland
Telephone: +41-22-799 7126
Fax: +41-22-799 6926
Email: infleg@ilo.org
<http://www.ilo.org/>

OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS:

Organization for Security and Co-operation in Europe
Office for Democratic Institutions and Human Rights
Aleje Ujazdowskie 19
00-557 Warsaw
Poland
Telephone: +48-22-520 06 00
Fax: +48-22-520 06 05
E-mail: office@odhr.osce.waw.pl
<http://www.osce.org/odhr/> (includes current details of field operations)

UNITED NATIONS DEVELOPMENT PROGRAMME (UNDP)

1 UN Plaza
New York NY 10017
United States
<http://www.undp.org> (this site provides access to many UNDP field offices throughout the world)

UN HIGH COMMISSIONER FOR REFUGEES:

C.P. 2500,
1211 Geneva 2,
Switzerland
<http://www.unhcr.ch/> (Includes link to email contacts and details of all UNHCR field operations)

UNICEF:

UNICEF House
3 United Nations Plaza
New York, New York 10017
U.S.A.
Telephone: +1-212-326 7000
Fax: +1-212-887 7465
<http://www.unicef.org/>

⇒ **International Humanitarian Organisation:**

INTERNATIONAL COMMITTEE OF THE RED CROSS

19 Avenue de la Paix
CH 1202 Geneva
Switzerland
Telephone: +41-22-734 60 01
Fax: +41-22-733 20 57 (Public Information Centre)
E-mail: webmaster.gva@icrc.org
<http://www.icrc.org/>

⇒ **International NGOs:**

'Umbrella Organisations':

ASSOCIATION POUR LA PRÉVENTION DE LA TORTURE (APT)

Route de Ferney 10
Case postale 2267
CH-1211 Geneva 2
Switzerland
Telephone: +41-22-734 2088
Fax: +41-22-734 5649
Email: apt@apt.ch
<http://www.apt.ch/> (includes copies of many of their reports and studies)

WORLD ORGANISATION AGAINST TORTURE/ORGANISATION MONDIALE CONTRE LA TORTURE (OMCT)

International Secretariat
PO Box 35 - 37 Rue de Varembeé
CH1211 Geneva CIC 20
Switzerland
Telephone: + 41-22-733 3140
Fax: + 41-22-733 1051
Email: omct@omct.org
<http://www.omct.org/>

FEDERATION INTERNATIONALE DES LIGUES DES DROITS DE L'HOMME (FIDH)

17 Passage de la Main d'Or
75011 Paris, FRANCE
Telephone : +33-1-43 55 25 18
Fax : +33-1-43 55 18 80
E-mail : fidh@csi.com
<http://www.fidh.imagnet.fr/>

Other International NGOs:

AMNESTY INTERNATIONAL (AI)

International Secretariat
1 Easton St
London
WC1X 8DJ
UK
Telephone: +44-171-413 5500
Fax: +44-171-956 1157
E-mail: amnestyis@amnesty.org
<http://www.amnesty.org/> (the starting point for access to all AI reports and press releases, as well contact details for national branches)

L'ACTION DES CHRÉTIENS POUR L'ABOLITION DE LA TORTURE ET DES EXÉCUTIONS CAPITALES (ACAT)

7 rue Georges Lardennois
75019 Paris
Telephone: +33 -1-40 40 42 43
Fax : +33 -1-40 40 42 44
E-mail: acat-fr@worldnet.fr
<http://home.worldnet.fr/acatfr/>

FIACAT:

Fédération Internationale de l'ACAT
27 rue de Maubeuge
75009 PARIS
France
Telephone : +33-1-42 80 01 60
Fax : +33-1-42 80 20 89
E-mail : Fi.Acat@wanadoo.fr

HUMAN RIGHTS INTERNET (HRI)

8 York Street, Suite 302
Ottawa, Ontario
K1N 5S6 Canada
Telephone: +1-613-789 7407
Fax: +1-613-789 7414
E-mail: hri@hri.ca
<http://www.hri.ca/>

HUMAN RIGHTS WATCH (HRW)

350 Fifth Avenue, 34th Floor
New York, NY
10118-3299 USA
Telephone: +1-212-290 4700
Fax: +1-212-736 1300
E-mail: hrwnyc@hrw.org
<http://www.hrw.org/>

INTERNATIONAL HELSINKI FEDERATION FOR HUMAN RIGHTS:

Rummelhardtg. 2/18
A-1090 Vienna
AUSTRIA
Telephone: +43-1-408 88 22
Fax: +43-1-408 88 22-50
E-mail: office@ihf-hr.org
<http://www.ihf-hr.org/>

INTER-AMERICAN INSTITUTE OF HUMAN RIGHTS

A.P. 10.081-1000
San José, Costa Rica
Tel.: +506-234 0404
Fax: +506-234 0955
E-mail: instituto@iidh.ed.cr
<http://www.iidh.ed.cr/>

INTERNATIONAL SERVICE FOR HUMAN RIGHTS:

(provides information and assistance to NGOs wishing to use the UN system)

1 Rue de Varembe
P.O. Box 16
Ch-1211 Geneva CIC
Switzerland
Telephone: +41-22-733 5123
Fax: +41-22-733 0826

PENAL REFORM INTERNATIONAL

Unit 114, The Chandlery
50 Westminster Bridge Rd
London SE1 7QY
United Kingdom
Telephone: +44-171-721 7678
Fax: +44-171-721 8785
E-mail: [Headofsecretariat @pri.org.uk](mailto:Headofsecretariat@pri.org.uk)
<http://www.penalreform.org/> (includes details of regional offices)

PHYSICIANS FOR HUMAN RIGHTS (PHR)

100 Boylston St.
Suite 702
Boston, MA 02116
United States
Telephone: +1-617-695 0041
Fax: +1-617-695 0307
Email: phrusa@igc.apc.org
<http://www.phrusa.org/>

⇒ **Victim support:**

INTERNATIONAL REHABILITATION COUNCIL FOR TORTURE VICTIMS (IRCT)

P.O. Box 2107
DK-1014 Copenhagen K
Denmark
Telephone: +45-33-76 06 00
Fax: +45-33-76 05 00
E-mail: irct@irct.org
<http://www.irct.org> (includes the contact details of centres for victims of torture in many countries)

UNITED NATIONS VOLUNTARY FUND FOR VICTIMS OF TORTURE

(Helps to fund projects for the rehabilitation of victims of torture)

OHCHR-UNOG (Trust Funds Unit)
CH-1211 Geneva 10
Telephone: +41-22-917 9000
Fax: +41-22-917 9011
E-mail: dpremont.hchr@unog.ch
<http://www.unhchr.ch/>

⇒ **Professional Organisations:**

INTER-PARLIAMENTARY UNION (IPU)

C.P. 438
1211 GENEVA 19
Switzerland
Telephone: +41-22-919 41 50
Fax: +41-22-733 31 41, +41-22-919 41 60
E-mail: postbox@mail.ipu.org
<http://www.ipu.org/>

LAWYERS COMMITTEE FOR HUMAN RIGHTS (LCHR)

333 Seventh Avenue, 13th Floor
New York, NY 10001
United States
Telephone: +1-212-845 5200
Fax: +1-212-845 5299
E-Mail: lchrbin@lchr.org
<http://www.lchr.org/>

WORLD MEDICAL ASSOCIATION (WMA)

PO Box 63
 01212 Ferney-Voltaire Cedex
 France
 Telephone: +33-4-50 40 75 75
 Fax: +33-4-50 40 59 37
 E-mail: info@wma.net
 http://www.wma.net/

OBTAINING FURTHER INFORMATION:

- Where can you find **copies of the instruments** referred to in this handbook?

The easiest way to find most of these instruments is if you have access to the Internet. Instruments can usually be found via the home page of the organisation which created it (see Contact Details above for website addresses). The starting point for many international treaty texts would be the website of the OHCHR, at <http://www.unhcr.ch/html/intlist.htm>. Another useful human rights website is that of the University of Minnesota, at <http://www1.umn.edu/humanrts/> and the **Human Rights Internet** website cited above, both of which provide access to the texts of many international instruments.

If you do not have access to the Internet, you could obtain copies of the texts by making a written request to the organisations themselves. It may be more simple, however, to contact a larger NGO which may already have these texts. Alternatively, many of these texts may be found in a public or university library, and it is also possible to obtain collected volumes of human rights texts.

In all cases, do not forget to check if the state in question has **ratified** the treaty, and if it has made any **reservations** to it.

- Where can you find copies of the **reports of the international mechanisms** described in this handbook?

Again, most of the mechanisms make their reports available on the Internet. The mechanisms based at the OHCHR have a particularly well-developed website, with a database containing most if not all public documents published by them. The ACNHR does not as yet have its own website, but many of its reports have been posted on the University of Minnesota website referred to above. Alternatively, you could write to the organisation, contact another NGO or try to find them in a library.

- Where can you find out more about **documenting torture**?

The **Istanbul Protocol** and **Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment** contain extremely detailed provisions on the legal investigation of torture, and in particular the medical examination of torture victims. Medical professionals wishing to know more about this would be advised to consult the Protocol. Publication of the Protocol will be carried out with the assistance of the OHCHR in 2000. For the time being, the document is available from **Physicians for Human Rights**, and is posted on their website (see above for reference).

The **Minnesota Protocol** and **Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions** contain similarly detailed provisions concerning autopsies and the examination of dead bodies, including those who have died as a result of torture. It is available through the OHCHR: (1991) UN Pub. Sales No. E.91.IV.1 (doc. ST/CSDHA/12).

- For more detailed information on **international law and practice relating to torture**, see Rodley, Nigel S., "The Treatment of Prisoners Under International Law", 2nd edition, Oxford Press (1999)
- For further information on **how to use international human rights mechanisms**, see Hannum, Hurst, "Guide to International Human Rights Practice", 3rd edition, Transnational Publishers, Ardsley, New York (1999)

3. APPENDIX III - STANDARD APPLICATION FORMS**Model questionnaire for submitting an allegation of torture to the Special Rapporteur on Torture**

Information on the torture of a person should be transmitted to the Special Rapporteur in written form and sent c/o Office of the High Commissioner for Human Rights, United Nations Office at Geneva, CH-1211 Geneva 10, Switzerland. The Special Rapporteur can only deal with clearly identified individual cases containing the following minimum elements of information:

- a. Full name of the victim
- b. Date on which the incident(s) of ill-treatment occurred (at least as to the month and year)
- c. Place where the person was seized (city, province, etc.) and location at which the ill-treatment was carried out (if known)
- d. Indication of the forces or other public officials who carried out the ill-treatment
- e. Description of the form of ill-treatment used and any injury suffered as a result
- f. Identity of the person or organisation submitting the report (name and address - this will be kept confidential)

Additional sheets should be attached if necessary. Copies of supporting documentation, such as medical or police records, should be supplied whenever relevant. Only copies and not originals of such documents should be sent.

I. Identity of the person(s) subjected to ill-treatment

- A. Family Name:
- B. First and other names:
- C. Sex (Male or Female):
- D. Birth date or age:
- E. Nationality:
- F. Occupation:
- G. Identity card number (if applicable):
- F. Activities (trade union, political, religious, humanitarian/ solidarity, press, etc.):

- G. Residential and/or work address

II. Circumstances surrounding ill-treatment

- A. Date and place of arrest and subsequent torture

- B. Identity of force(s) carrying out the initial detention and/or torture (police, intelligence services, armed forces, paramilitary, prison officials, other)

- C. Were any person, such as a lawyer, relatives or friends, permitted to see the victim during detention? If so, how long after the arrest?

- D. Describe the methods of ill-treatment used

- E. What injuries were sustained as a result of the ill-treatment?

- F. What was believed to be the purpose of the ill-treatment?

G. Was the victim examined by a doctor at any point during or after the incident? If so, when? Was the examination performed by a prison or Government doctor?

H. Was appropriate treatment received for injuries sustained as a result of the ill-treatment?

I. Was the medical examination performed in a manner which would enable the doctor to detect evidence of injuries sustained as a result of the ill-treatment? Were any medical reports or certificates issued? If so, what did the reports reveal?

J. If the victim died in custody, was an autopsy or forensic examination performed and what were the results?

III. Remedial action

Were any domestic remedies pursued by the victim or his/her family or representatives (complaints to the forces responsible, the judiciary, political organs, etc.)? If so, what was the result?

IV. Information concerning the author of the present report:

- A. Family Name
- B. First Name
- C. Relationship with victim
- D. Organisation represented, if any
- E. Present full address

Model communication under the Optional Protocol to the ICCPR

Communication to: The Human Rights Committee, c/o OHCHR-UNOG, 1211 Geneva 10, Switzerland,
submitted for consideration under the Optional Protocol to the International Covenant on Civil and Political Rights.

I. Information concerning the author of the communication

Name First name(s).....
 Nationality..... Profession
 Date and place of birth
 Present address

Address for exchange of confidential correspondence (if other than present address)

Submitting the communication as:

- (a) Victim of the violation or violations set forth below
- (b) Appointed representative/legal counsel of the alleged victim(s)
- (c) Other.....

If box (c) is marked, the author should explain:

(i) In what capacity he is acting on behalf of the victim(s) (e.g. family relationship or other personal links with the alleged victim(s)):

(ii) Why the victim(s) is (are) unable to submit the communication himself (themselves):

An unrelated third party having no link to the victim(s) cannot submit a communication on his (their) behalf.

**II. Information concerning the alleged victim(s)
 (if other than author)**

Name First name(s).....
 Nationality..... Profession
 Date and place of birth
 Present address or whereabouts

III. State concerned/articles violated/domestic remedies

Name of the State party (country) to the International Covenant and the Optional Protocol against which the communication is directed:

Articles of the International Covenant on Civil and Political Rights allegedly violated:

Steps taken by or on behalf of the alleged victim(s) to exhaust domestic remedies-recourse to the courts or other public authorities, when and with what results (if possible, enclose copies of all relevant judicial or administrative decisions):

If domestic remedies have not been exhausted, explain why:

IV. Other international procedures

Has the same matter been submitted for examination under another procedure of international investigation or settlement (e.g. the Inter-American Commission on Human Rights, the European Commission on Human Rights)? If so, when and with what results?

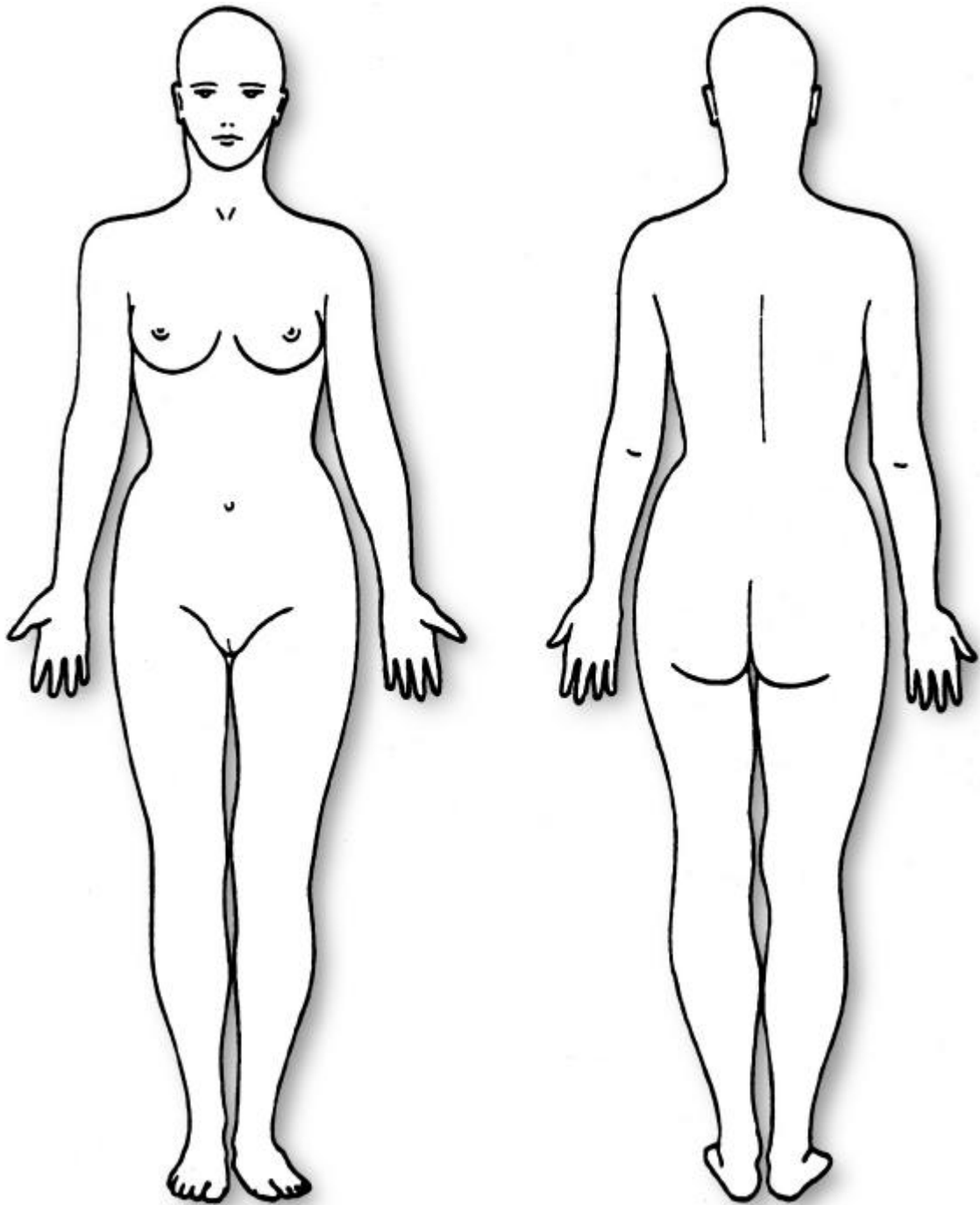
V. Facts of the claim

Detailed description of the facts of the alleged violation or violations (including relevant dates). Add as many pages as needed for this description.

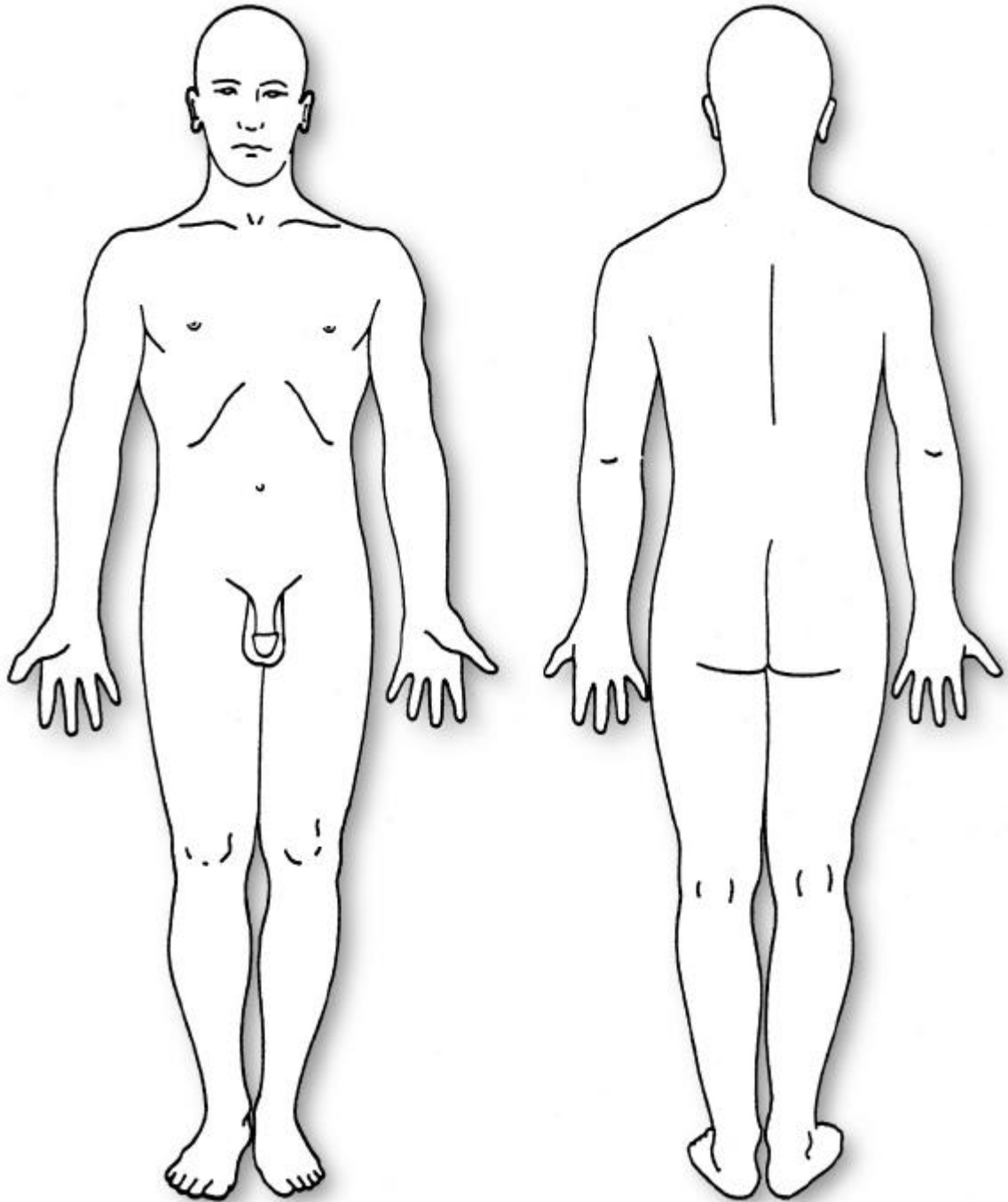
Author's signature: Date:.....

4. APPENDIX IV - BODY DIAGRAMS

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MALE - FRONT AND BACK



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