



Reporting Killings as Human Rights Violations

How to document and respond to potential violations of the
right to life within the international system for the protection of
human rights

By

Kate Thompson and Camille Giffard

Human Rights Centre, University of Essex

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SELECTED ABBREVIATIONS

ACHPR:	African Charter on Human and Peoples' Rights
ACRWC:	African Charter on the Rights and Welfare of the Child
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
HRC:	Human Rights Committee
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
IGO:	Intergovernmental Organisation
ILAC:	International Law of Armed Conflict
LEO:	Law enforcement official
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
SR:	Special Rapporteur
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	A claim (as yet neither proved nor disproved) that an incident 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.
Article	The term used to refer to individual sections of a treaty.
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.
Human rights mechanism	A generic term for the variety of bodies such as committees, commissions, and special rapporteurs which have been established to consider human rights matters.
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 <i>amicus curiae</i> 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 <i>AMICUS CURIAE</i> 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 body	A body such as a committee, set up by a treaty.
Violation (of obligations)	Failure by a state to respect its obligations under international law.

PART I – ESSENTIAL READING

1. Introduction

2. Using This Handbook

2.1. Outline of core chapters

2.2. Terminology

2.3. Essential policy issues

2.4. Practical advice

3. What You Can Achieve By Taking Action

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

3.2. Seek a remedy for an individual victim

3.3. Encourage reform of a state agency: Improvements in the implementation of international standards

1. INTRODUCTION

This handbook aims to assist NGOs and human rights activists with the effective reporting of unlawful killings within the international system for the protection of human rights. It follows a similar format to the **Torture Reporting Handbook** by Camille Giffard (see **Appendix II**) and has the same goal.

Despite the universal acceptance that arbitrary deprivations of life constitute serious human rights violations, the actual number and seriousness of cases is not reflected at the international level. This has occurred for a wide variety of reasons, but can be explained partly by the fact that the law regulating the right to life, and the use of force by the state and state agencies, is extremely complex. Also, as the use of force by governments and their representatives can be lawful, many cases may turn on disputes of fact. NGOs can then be inhibited by the state's power to deny or hamper access to crucial information, as well as by lack of resources and expertise which would enable them to gather the evidence to support their case. The international system for the protection of human rights can also seem impenetrable, particularly for those without access to a functioning communications infrastructure. It was felt, therefore, that there was a need for a handbook of a practical nature, aimed at NGOs all over the world, to fulfil the following aims:

- Introduce you to the types of cases that can be taken within the international system
- Explain how to identify a potential violation of the right to life
- Provide guidelines on how to document unlawful killings
- Enable you to choose the appropriate forum for your cases or your reports
- Provide you with practical advice on other sources of support

This handbook focuses on how to report cases where the state is responsible for unlawful killings, or potential violations of the right to life, within the international system for the protection of human rights. This includes circumstances where the state is responsible for death in the context of law enforcement and military activity, and extends to death in custody and institutionalised “care”. The handbook also addresses some less obvious aspects of the right to life and points out how to use international human rights mechanisms in cases where the state and its representatives may have been responsible for the death, in ways other than as the immediate perpetrator of the killing. In particular, it deals with the failure of the state to adequately regulate the use of lethal force in society and to respond appropriately to death threats and suspicious deaths, both of which can constitute violations of international human rights law. The types of human rights violations covered by the handbook include:

- political killings
- the deliberate and intentional use of lethal force against an individual or group by a state agency
- the illegal, unnecessary and/or disproportionate use of lethal force by state agency
- in armed conflicts, the unnecessary and/or disproportionate use of force, an attack on an unlawful target and the failure to attack a lawful target sufficiently precisely
- death in custody for which the state is responsible
- uninvestigated and unpunished killings
- the failure of the state to prevent loss of life, e.g. by failing to act in situations where there is a clear threat that life may be lost

Although we have chosen the term “unlawful killings”, killings in the above categories are sometimes referred to as arbitrary killings or arbitrary deprivations of life. The United Nations refers to them as “extra-judicial (or extra-legal), summary or arbitrary executions.”

There are two areas which you may have expected the book to deal with which are in fact excluded from its primary scope. These are, firstly, deaths resulting from the imposition of the death penalty and secondly, cases of enforced disappearances of persons (or disappearances). As international law permits capital punishment in very limited circumstances, any analysis of killings which result from the imposition of the death penalty involves an analysis of rights (such as the right to fair trial) which are so extensive that they would require a handbook to themselves. Such analysis has been carried out elsewhere and it is not a task which can be attempted here. Disappearances may involve violations of the right to life but are a separate form of human rights violation, as they constitute a unique constellation of deprivations of rights including, the rights to liberty and security of person, to humane treatment, as well as the right to life. Because of the uniqueness and specificity of disappearances they are mentioned but not focused upon in this handbook.

The contexts in which unlawful killings occur differ enormously and the variations of facts in individual cases of killings is infinite. This handbook is intended to be of universal application, but you must be prepared to adapt the advice and guidance in it to your country situation. The handbook 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 NGOs to produce high-quality information on both individual incidents and patterns of killings, 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. It should be borne in mind, however, that following the guidelines set out in this handbook is not a guarantee of obtaining a particular result from a particular international body, and it may seem as if little has been achieved in a particular case. This handbook reflects the law as at May 2002.

Feedback about the contents of this work is appreciated, so please feel free to contact us with comments and contributions about the Handbook - Human Rights Centre, University of Essex, Wivenhoe Park, Colchester CO4 3SQ, U.K. + 44 1206 872558. Email: hrc@essex.ac.uk.

We sincerely hope that you will find this handbook useful and inspiring in your work.

2. USING THIS HANDBOOK

Do not let the size of this handbook worry you. You do not have to read the whole book in order to benefit from it and you do not have to be an expert to use it. However please read this part carefully as it will assist you to handle cases properly.

If you become aware of information indicating that there may have been an unlawful killing, but you cannot or do not wish to take action yourself, do pass it on to someone else who can.

In order to acquire a good understanding of the overall process of preparing and submitting an allegation of unlawful killing you should read the entire handbook. However, it is designed so that each section may be read independently and not necessarily in sequence. You can dip into the handbook to obtain answers to specific questions, but it is recommended that if you are serious about submitting well-founded and well-prepared allegations then you should read the whole book carefully. It is also strongly recommended that you read all of this part before you go any further to familiarise yourself with basic ethical and security principles.

This handbook 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 already exists on the subject of the right to life and unlawful killings. For this handbook to be of practical utility in the field, we have attempted to ensure that it is a manageable size and that information is easily accessible. This means that it has proved necessary to be selective about its content. Those who feel they wish to pursue the topics raised in the handbook in more detail, or to research more complex legal arguments or jurisprudence, are provided with a selection of contacts and references in **Appendix II**. This also provides information for organisations or individuals who may wish to seek further information or assistance.

Do not forget that, apart from the procedures created specifically to deal with unlawful killings, many of the mechanisms described may also receive complaints and allegations concerning a large range of human rights violations. Much of what is said would be equally applicable to such complaints. Also, as the focus of the handbook is the reporting of unlawful killings, the discussion will emphasise the requirements for making such reports effectively, but where such requirements are not fulfilled it may be worth considering making a complaint on the basis of another right.

2.1. Outline of core chapters

Submitting an allegation is about knowing what information needs to be provided and where to find it. The quality, and consequent credibility, of the allegation will depend almost entirely on the information you have recorded about it. This means knowing which facts to record, which questions to ask witnesses, how to obtain further information and how to record all information in a full, accurate and detailed way. You will rarely get the opportunity to fill in the gaps; so the process starts the moment you hear a report of an unlawful killing. In addition it helps to have familiarity with both the legal and practical contexts of unlawful killings and an understanding of the objectives and likely results of submitting the allegation.

The handbook addresses the various stages of this process in the following core sections:-

Part I – Essential Reading

This part contains essential background on using the handbook, terminology used in the book and advice on principles and policies which should be considered by you and your organisation in pursuing these cases. You are strongly urged to read ALL of this section.

Part II – Identifying a Potential Violation

This part aims to give you the tools to analyse a report of an unlawful killing and to decide whether it is an act which should be reported to an international human rights mechanism. It contains an introduction to international law to assist you to understand the principles and procedures discussed in the rest of the handbook. It discusses the notion of the state's responsibility for the protection of the right to life, as well as providing some detail about different categories of killing, which may require a specific approach, or to which different legal standards apply.

Part III – How to Document Allegations of Unlawful Killings

The objective of this part is to offer some guidelines on what information to collect about unlawful killings, how to collect it and how to use it. It highlights those pieces of information that are essential to any allegation, provides some pointers on how to carry out an interview with witnesses, and identifies the kind of supporting evidence which can be collected in order to strengthen an allegation or make a criminal prosecution possible.

Part IV – How to Respond to the Information Collected

This part introduces the various mechanisms available for reporting allegations of unlawful killings, 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.

Part V – How to Obtain Further Assistance

This part makes some suggestions on where to turn for help if you feel you cannot act on the allegation, need advice on a particular point, or require expertise that you or your organisation does not have.

Appendices – These contain legal instruments, forms, contact lists and diagrams that you will find useful in your work.

2.2. Terminology

- **Killing**: The term killing has been used to refer to unnatural deaths. The word may be used in the book to refer to deaths or suicides where the state is potentially responsible for failing to prevent it happening.
- **“Law Enforcement Officials” (LEOs)**: We borrow from the UN’s Commentary to the Code of Conduct for Law Enforcement Officials and use the term to refer to “all officers of the law whether appointed or elected, who exercise police powers especially the powers of arrest and detention. In countries where police powers are exercised by military authorities, whether uniformed or not, or by state security forces, the definition of Law Enforcement Officials shall be regarded as including officers of such services.” This would include village police or local police.
- **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 ‘s/he’. 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:** 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 the holding of an individual by LEOs, 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. ‘Prison’ is generally used to refer to a place of detention that is used for holding people in custody before or during trial or while a sentence or conviction is served.

2.3. Essential policy issues

Readers should be aware that it is impossible to fully, and adequately, address the issues raised in this section in a handbook of this nature and size. However they are issues that are absolutely crucial for you and your organisation to consider carefully when you are engaged in reporting killings as human rights violations. It is recommended that some time should be spent thinking about these points and in the case of organisations, adopting policies which are appropriate to the purpose of your organisation, to the context of the country, and to the way you wish to work. For some of you this may involve making decisions about the specific purpose of your organisation - is it about campaigning, lobbying, representing victims, advocacy, education, providing therapeutic support to victims and witnesses or, a combination of purposes?

2.3.1. Security

In reporting and documenting human rights violations you should exercise great care not to create unnecessary risks for anyone, be it yourselves, other members of the organisation, or the people who are assisting you with a case, e.g. victims or witnesses. There are certain dangers inherent in 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.

You should also be aware that when working in a sensitive political climate certain groups will feel threatened by your work and may wish to know more about your work to obtain or destroy evidence. This could be by stealing or destroying the hard evidence that you have gathered and/or intimidating witnesses (or worse).

You should, therefore, ensure that the information which you collect in the course of gathering evidence on a case, is kept securely. You need to protect the evidence itself and the people who have supplied you with it. This is especially important in the case of the identity and personal details of witnesses whose lives may be endangered should information pass into the wrong hands. Some

practical steps, which can be taken, are detailed in **Part III Chapter 3**. However, we cannot overemphasise the significance of establishing policies and procedures within your organisation, which are known to all who work there and are strictly regulated. There should be a secure location for information and evidence and only a very limited number of people should know how to access it.

2.3.2. Professional ethics

Any number of ethical questions can arise in the course of human right investigations, such as deciding who should deal with those witnesses who have been sexually assaulted or with children, or deciding how far to take an investigation of a human rights violations (when should you be gathering evidence yourself? when should you pass it to the police?). In particular, there are issues of confidentiality that can be very challenging when you are trying to take action on a case. A great deal has been written about the conflicts between duties towards the greater community and the relationship between professionals, such as doctors or lawyers, and those who provide them with information or are their clients. In cases involving deaths and 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.

Your organisation will have to make decisions about such matters, and although these may evolve as a country situation develops, you should do your best to have an organisational policy which is known to the staff. 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. (See **Part V** and **Appendix I** for details of organisations who may be able to assist).

2.3.3. Informed consent

This concept is about ensuring that people understand the consequences of making an allegation or giving evidence in relation to a human rights violation. Being fully informed puts them in a position where they can consent to proceed with a matter knowing the potential benefits and negative consequences of the proposed course of action. The difficulty arises in assessing what “fully informed” means in each different situation and with each different person you deal with. 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. Emphasising the potential risks may discourage the interviewee from talking, but it would be unacceptable to prioritise information over the well-being of 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 could 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 inform them of 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 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 an interview. In addition, you should always make it clear to the interviewee what, if any, follow-up protection you can give, but be clear as to the limits of your ability to do so.

Do not forget that consent should be informed AND 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.

2.3.4. Support and rehabilitation of witnesses, relatives and friends 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 witnesses and those close to the victim however, talking about such personal, and often horrific, suffering may provoke very different responses. In certain ways it may be therapeutic, but it can also cause profound psychological or even physical stress. It is imperative to offer as much genuine and effective support as possible to these people, both during and after the interview. However it is also important not to make “false promises” by committing yourself to assisting someone and then failing; such a let down could compound the person’s suffering. Rather it is more important to give realistic and frank advice about the nature of the support you, or your organisation, can give.

In the case of those interviewed outside a detention context, efforts should be made to provide them with support and rehabilitation. This could mean referring them to professional counselling, or it could merely involve letting them know that the door is always open. Organisations are encouraged to pursue this question further with the specialised agencies or networks listed in **Appendix II**. In the case of interviews with persons still in detention, you may be more restricted in what you can do and it is crucial that the detainee understands the limits of your power to prevent them from feeling misled and deceived.

Rehabilitation must be seen as an integral part of working with victims and witnesses of human rights violations. 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.

2.4. Practical advice

Like the previous section, this part aims to give you some guidance on decisions which your organisation should consider making about how you work. This is also a subject about which there is a lot of specialised literature and there are NGOs that deal solely with helping other NGOs to build capacity and advise on the practicalities of organising a work environment. We aim here to give you a flavour of the type of issue that you or your organisation may like to consider.

- Methods of work

The way you work can have a profound impact on the success of the work you do and it is important to consider how your organisation operates and whether this is the best way for the type of work you are engaged in.

When working on a complex case dealing with a mass of evidence and complicated legal concepts, it can help to work with others to be able to see through the complexities. Working as a team on a case can also enable you to see evidence from different perspectives. One person may see inconsistencies, which another cannot perceive; another may have a particular skill, e.g. ability to interview a traumatised witness, which another does not; and so on. Above all, working as a team may assist individuals from feeling overwhelmed by a case. Collective decision-making can have its tensions but can also be helpful, as you feel the benefits of each other's advice, experience and expertise. This may be particularly reassuring when you are dealing with a case where it has become apparent that you may not be able to achieve what you originally set out to do. A team may be able to work together to find an alternative resolution for the case and for the witnesses, victims and complainants who are seeking a constructive and just outcome.

However, your organisation may not have the resources to support enough staff so working as a team may be difficult. In addition, working as a team can bring tensions, especially if there are disagreements about how to conduct a case. You may feel it would help to work with another organisation to obtain support (in which case you should bear in mind issues of confidentiality discussed in **Chapter 2.3.** above) or to obtain some training in managing teamwork. You should, at least, actively consider whether the way you work is the most appropriate for your aims.

- Systems of work

You are most likely to be able to work effectively for human rights in a well-organised, well co-ordinated workplace. It is important that people's roles are clear, work is not being duplicated and that everyone understands the way the organisation works, especially in relation to ethical and security principles. Clear and constructive systems of work should be developed which support the work of your organisation. (For some tips about how to develop filing systems see **Part III, Chapter 2**). You may find it helpful to have regular meetings to decide policies, co-ordinate your work and to review the cases you are dealing with, to decide the best way forward.

It is also good practice to ensure that staff are not over-stressed and are taking sufficient breaks from their work.

3. WHAT YOU CAN ACHIEVE BY TAKING ACTION

Reporting allegations of unlawful killings to the international mechanisms can be of benefit to the general situation in a country and to individuals such as the relatives and close friends of the victim or victims.

3.1. 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 the situation is known about.

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.

3.1.1. 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 unlawful deprivations of life. This will often require changes both in the legislative framework and in official attitudes to the value of life. 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 regulations and safeguards on the use of force by law enforcement officials and by providing guidance on how to establish systems for the effective investigation of a suspicious death. Usually, the recommendations of the international bodies are just the beginning of a dialogue with the state in question, the end purpose of which is to ensure that these recommendations are implemented.

3.1.2. Challenge impunity

Bringing allegations of killings into the public eye in order to call *states* to account is one result of reporting them. On a different level, 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 with impunity. 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 excessive or inappropriate violence and to require or recommend that a state take measures to prevent impunity. As long as perpetrators are able to 'get away with it' there is no incentive for them to stop.

If a state fails to prevent impunity for perpetrators, this also raises an issue of state responsibility under international law. States actually have an obligation under international law to make sure that suspected perpetrators are held responsible for their actions. If a state does not prosecute individuals which it suspects of having been involved in an unlawful killing, it may well be failing in its obligations under international law.

3.2. Seek a remedy for an individual victim

There are several more immediate or direct remedies of reporting allegations which benefit the friends and relatives of the victim, the witnesses to the killing and, of course, the memory of the victim him/herself.

3.2.1. A finding of violation

Many of the described international treaty bodies are able to pronounce on the question of whether or not a violation of the right to life 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 on the individual case, 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.

3.2.2. Holding perpetrators to account

Some of the mechanisms can request or order that an effective investigation be carried out into an allegation of an unlawful killing and that the perpetrator or perpetrators be prosecuted for their behaviour. This is important to reassure a victim's friends and family, that a perpetrator is not able to kill without consequences.

3.2.3. Reparation

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. Less traditional forms of reparation, which are becoming more common within the Inter-American system in particular, might include, an order to open a school or hospital in a community which has been the subject of violations; a requirement that the state informs relatives of disappeared or murdered persons of the location of the bodies of the dead; or an order that the state makes a public apology for what has taken place.

It should be noted that cases should not be brought before an international *court* (as opposed to different, less formal, types of international human rights mechanisms) without professional and, if available, experienced legal advice. This should not, however, prevent you from taking urgent action to prevent serious harm (such as that dealt with in the following paragraph).

3.2.4. Preventing the deportation of an individual to a country where he or she would be at risk of unlawful death or ill-treatment

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. 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.

Individuals seeking to prevent their deportation may have legal avenues for action open to them within the domestic system. For this reason it is worth referring the person to someone who can provide expert legal advice.

3.3. Encourage reform of a state agency: Improvements in the implementation of international standards

It is very likely that a human rights violation that has resulted in a death, has come about because of a failure to adopt or to implement internationally agreed principles and standards. There are numerous legal instruments at the international level which relate to the prevention and investigation of unlawful killings. They also provide guidance on the setting of professional standards, which enable agencies such as the police to carry out legitimate functions effectively, lawfully and humanely. States may fail to adopt such standards through lack of awareness of international norms or active resistance to external influences in their internal regulations. The failure to implement could be at many levels including:

- failure to disseminate standards to those responsible for putting them into practice
- failure to finance the required measures
- failure to support adequate training of those who work for state agencies and law enforcement agencies
- failure to monitor the implementation of the standards
- resistance to establishing independent and transparent investigation procedures which leads to secrecy and suspicion when breaches of safeguards take place

Bringing human rights abuses to the attention of the international community can lead states to voluntarily implement improved standards, or being required to implement improved standards. This raises the professional standards of state agencies which, in turn, benefits the whole community. Examples of such measures are the introduction of regulations on the use of firearms by the police, or the passing of legislation establishing machinery for the investigation of deaths.

Improvements in the professional standards and support given to state agencies will have a knock-on effect on their willingness to open their institutions to external inspection and to take action when something goes wrong, making them more accountable and transparent, and consequently, providing reassurance to the general public.

Findings of failures in national human rights systems may also attract technical co-operation and funding from international agencies and other donors, with the aim to improve the structures of state agencies through training and capacity building.

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5. Is There a Violation?

1. INTRODUCTION

The first step in pursuing an alleged violation of the right to life is to assess the facts in question in order to determine if they could potentially constitute a violation. When we speak about a violation in this context, we are talking essentially about a violation by the state of its obligations under international law, and most specifically under international human rights law. Some introductory points need to be made about the nature of human rights law and its place within the international legal order, following which, the right to life and its component parts will be examined in some detail with a view to making it possible to analyse any particular set of facts in order to determine if a violation may have occurred.

2. LEGAL CONTEXT

International law typically regulates the behaviour of states in their dealings with one another. There are certain branches of international law, however, which have direct implications for individuals, in particular, human rights law and the law of armed conflict, often known as international humanitarian law. It is also possible to hold individuals criminally responsible for certain violations of international law. The focus of this handbook is human rights law, but the other fields will be referred to where appropriate, so it is important to understand how they relate to each other.

It is also important to note that certain forms of international law are more compelling than others and that they cannot be relied on in quite the same way. Treaties (formal agreements drafted and adopted by states) are binding on all states that have signed and ratified them. This means that if a state fails to respect the obligations contained in the treaty, it is in violation of international law. A second form, customary law, evolves from the practice of states and is binding on all states without the need for their express agreement. It is often difficult to identify specific rules of customary law, which means that, in order to rely on a norm of customary law before a judicial body, a significant part of the argument is to provide evidence that the norm exists. Where this is established, failure by a state to respect customary law means it is in violation of international law. Certain types of international instruments are not legally binding as such – declarations, principles, standards and codes are drafted by state representatives and experts and are indicative of what are believed to be the accepted norms, but do not create formal obligations for states. Such standards are often very detailed and can provide guidance on the implementation of a right. They can be invoked in court or before an international body to support an argument, and can be very persuasive in this role, but they cannot provide the sole basis for bringing proceedings. For example, an allegation that the right to life of Mr. X has been violated because he was shot arbitrarily by law enforcement officials, can be supported by reference to international principles on the use of firearms by law enforcement officials, but proceedings could not be brought by arguing solely that these principles have not been respected. It is important to understand this distinction in the context of the right to life because the most detailed standards relating to the right are of this kind.

PART II – IDENTIFYING A POTENTIAL VIOLATION

2.1. Human rights law

Human rights law governs the relationship between a state and all those persons who find themselves within the power and authority of that state. This is not limited to nationals of the state, but applies to anyone falling within the state's sphere of influence - for example, a foreign national present in the country, or a person travelling on an aircraft registered in that state, and thus subject to its laws.

Human rights standards set out the rights and freedoms which an individual is entitled to exercise and which the state should respect, such as freedom of expression, freedom of belief, the right to be free from torture, the right to a fair trial and the right to life. Some of these rights may be subject to lawful restriction, for example, where there is a conflict between two rights or where the full exercise of the right could pose a threat to the security of the state. However, certain rights are so fundamental that they may never be restricted on any ground, even in times of emergency or war. The right to life is one of these, and the state may never deprive an individual of the right to life in an arbitrary manner for any reason.

International human rights law sets out the norms and also creates a certain number of mechanisms which are responsible for the supervision of respect for the norms at the international level – it is these mechanisms which will be examined in detail in **Part IV** of this handbook. However, human rights law must also become a part of the national legal system. In some states, international law may be directly invoked in the national courts, so that once a state has accepted international obligations, for example by signing a treaty, it is possible to rely on those standards in court. In other systems, the state must adopt a piece of national legislation that incorporates the international standards in order for them to take effect at the national level. Once a state has accepted such obligations, it must respect and implement them. In particular, it cannot claim that its national laws prevent it from fulfilling its obligations. The obligations are general in nature, however, and the state is free to choose the means by which it implements them, provided the general objective is achieved.

2.2. International Law of Armed Conflict

The International Law of Armed Conflict (ILAC), also referred to as international humanitarian law, is a branch 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 in 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 is often confused with human rights law, a confusion increased by the use of the term 'humanitarian law', but they are two independent legal regimes and function in quite different ways. In particular, it is important to understand that while human rights law creates obligations on the state which, if violated, give rise to the international responsibility of the state for breach of its treaty obligations, ILAC creates obligations for both the individual and the state, and it is possible for an individual to be tried before a criminal or military court on the basis of ILAC.

The ILAC has drawn up two main sets of rules: those regulating the conduct of hostilities (means and methods of warfare) and those regarding the treatment of vulnerable persons affected by war (the protection of victims). The rules relating to means and methods of warfare are particularly relevant in the context of unlawful killings, as they cover such matters as who or what, may be targeted, how they may be targeted, and what weapons may be lawfully used and under what conditions. The rules relating to the protection of victims are also important because they are based on the premise that persons not fighting, should be entitled to protection and cannot be deliberately targeted. The ILAC rules, which are most relevant to the right to life, will be identified in **Chapter 3.1.3**. As will be seen, the fields of application of human rights law and ILAC overlap and, where the incident took place in the context of an armed conflict, a single factual situation may be analysed both in human rights terms

and in terms of ILAC, making it possible to argue multiple violations on the basis of the same set of events.

2.3. Individual criminal responsibility under international law

The focus of this handbook is on establishing the responsibility of states for killings under human rights law. Certain types of killings may also give rise to individual responsibility under international law and, although pursuing such responsibility is beyond the scope of this handbook, it is useful to be aware of the circumstances in which it may be relevant.

Killings giving rise to individual criminal responsibility under international law tend to be those accompanied by some kind of aggravating factor, for example where they are committed on a large scale, against a distinct group of people, or result from torture. They must fall within the definition of a specific crime under international law, in particular crimes against humanity and genocide. A killing which violates the law of armed conflict (see Chapter 3.1.3) may also give rise to individual responsibility.

Crimes against humanity are particularly grave violations of human rights committed on a large scale. They are criminalized in the Statute of the International Criminal Court. Crimes against humanity consist of acts such as murder, enslavement, torture, rape, disappearances, forcible transfers of population, persecution against groups when the acts are committed as part of a widespread or systematic attack directed against a civilian population, and the perpetrator has 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.

Genocide is defined in the 1948 UN Convention on the Prevention and Punishment of the Crime of Genocide as, certain acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, in particular, killing members of the group. The Convention establishes the individual responsibility of any person committing genocide, but responsibility is also engaged by conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide and complicity in genocide.

Where a killing falls into one of these categories, individuals may be prosecuted for these crimes before national or international courts, provided the relevant court recognises the charge as a criminal offence. Certain conventions, in particular the Convention Against Torture and the Genocide Convention, create a specific obligation on states to criminalise and prosecute individual perpetrators of grave human rights violations. The serious nature of such crimes also means that they may give rise to universal jurisdiction, which means that any state can, and sometimes must, investigate and prosecute a suspect even if the offence was carried out by a foreign national and took place in another country. On the basis of current international law, it is likely that the exercise of universal jurisdiction is limited to killings amounting to crimes against humanity or war crimes, or those resulting from torture.

3. THE RIGHT TO LIFE

The right to life is guaranteed in all international and regional human rights instruments. There are some variations in formulation, but it is universally accepted that the individual has a right not to be arbitrarily or unlawfully killed by the state.

The Right to Life: International Standards

Article 3 Universal Declaration of Human Rights

Everyone has the right to life, liberty and security of person.

Article 6(1) International Covenant of Civil and Political Rights

Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

Article 4 African Charter of Human and Peoples' Rights

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No-one shall be arbitrarily deprived of this right.

Article 4 American Convention on Human Rights

Every person has the right to have his life respected. This right shall be protected by law and, in general from the moment of conception. No-one shall be arbitrarily deprived of his life.

Article 2 European Convention on Human Rights

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law.
2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary:
 - a) in defence of any person from unlawful violence;
 - b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
 - c) in action lawfully taken for the purpose of quelling a riot or insurrection.

The right to life is considered so fundamental that it can never lawfully be restricted, even in times of war or emergency. The absolute nature of this right does not, however, mean that it is never lawful for the state to kill. What is prohibited is the *arbitrary or unlawful* deprivation of life. This means that there are a number of accepted exceptions to the presumption that the state must not kill. These are:

- The death penalty provided it complies with certain safeguards
- Certain killings seen as necessary measures of law enforcement
- Certain killings committed in armed conflict

Consequently, if an allegation is made of a violation of the right to life, it must be shown not only that the death occurred, but also that it was arbitrary or unlawful – that it does not fall within one of those lawful exceptions.

The obligation on the state to guarantee the right to life goes well beyond the mere obligation to refrain from killing. It is composed of four major elements:

- the prohibition of arbitrary killing
- the obligation to protect the right to life
- the obligation to conduct an effective investigation, and
- the obligation to provide an effective remedy

The right to life may thus be viewed as a continuing duty of the state to create general conditions and systems protecting the right to life, and as a specific duty, to fulfil those conditions and use the systems

in each individual case. Each of these elements will be addressed in turn. It is essential, when submitting an allegation of violation of the right to life, to remember to consider all aspects of the potential violation.

The central focus of any allegation is establishing the responsibility of the state for the breach of one of the obligations flowing from the right to life, making a link between the state and the circumstances surrounding the death. As will be seen in more detail below, this does not always mean being able to prove that state officials carried out the killings in person, which can be very difficult to do. Since the right to life encompasses positive obligations to prevent killings, to conduct an effective investigation where a suspicious death has occurred, and to provide an effective remedy where a death has occurred at the hands of state officials, it may be enough to provide evidence of, for example, the state's failure to act, or of the inadequate nature of the investigation, in order to establish the responsibility of the state.

A useful distinction is to think in terms of **direct** and **indirect** responsibility. Where it can be shown that state officials are directly implicated in the killing, that there was a deliberate intent as to the outcome (the death), and that the killing did not fall within one of the lawful exceptions, then the state can be held responsible for a violation of the prohibition of arbitrary killing. Where the state has failed to take measures to prevent a death from occurring, or has failed to carry out an effective investigation or to provide an effective remedy, the element of intent is much more difficult to establish. In such cases, it is necessary to rely on the concept of indirect responsibility, that although the state may not have intended for the specific death to occur, it has failed in its associated obligations to create and implement systems designed to ensure that such deaths do not occur. This distinction is not so clear-cut in practice. A failure to intervene to prevent a death, for example, of one detainee at the hands of another, can be as deliberate as pulling a trigger, but it is extremely difficult to provide evidence of intent in such circumstances. For the purposes of this handbook, the right to life is considered in terms of distinct categories, but it is essential to be aware that in practice there are many grey areas, and that it is always worth trying to argue that the state is directly responsible, if evidence exists which can be used to show deliberate intention that the death occur.

3.1. Prohibition of arbitrary killing

The starting point of the prohibition of arbitrary killing under **human rights law** is that state officials should not kill. As previously mentioned, however, there are certain strictly controlled exceptions which mean that not all deaths at the hands of state officials are unlawful. This means that there are two major elements which need to be addressed when alleging that the state has violated the prohibition of arbitrary killing: the first is to establish that state officials were directly responsible for the death, the second, is to be able to show that the killing does not fall within one of the lawful exceptions.

If you wish to allege that the state has violated the prohibition of arbitrary killing, you need to be able to show that state officials were directly responsible for the death, that there was a deliberate act or omission on their part which was intended to result in the death. The direct involvement of the state official can occur at a number of levels: it can relate to the carrying out of the killing itself, e.g. shooting the victim, inflicting the torture that causes the death, or planting the car bomb that blows up the victim, or it can relate to the giving of an order to kill, even where the killer is not necessarily a state official – for example, if a detainee is bribed by a prison officer to kill another prisoner, the prison officer can be considered responsible for the death. Acts not actually resulting in death, such as threats to kill or unsuccessful attempts on life, may also amount to violations of the prohibition of arbitrary killing where state officials are directly responsible for them. They would also amount to a failure by the state to protect the right to life.

For reasons explained in **Part I, Chapter 1**, the death penalty will not be considered in this handbook. This means that for the purposes of reporting killings as human rights violations, it is necessary to examine the circumstances under which a killing can be lawful in the context of law enforcement, and those under which it is lawful in a situation of armed conflict.

3.1.1. Law enforcement

3.1.1.1. Basic principles

Law enforcement officials are those officials who exercise police powers, especially the powers of arrest and detention. Where the military or other security forces are called upon to carry out police functions, they are included within the definition. Policing situations can include the prevention of a crime, the apprehension of a suspect, preventing an escape by a suspect, or the containment of a crowd, among many others. Because there is so much potential for abuse under such circumstances, the use of force by officials in carrying out their functions is very limited and strictly regulated. In particular, the lawfulness of the use of lethal force in the fulfilment of these functions revolves around compliance with the principles of *legitimate purpose*, *strict necessity* and *proportionality* of the force used, and will need to be assessed on the facts of each individual case. The general rule on the use of force can be found in the Code of Conduct for Law Enforcement Officials (see **Part II, Chapter 2**, for a note on the legal status of this type of instrument). It states that force may be used by law enforcement officials ‘only when strictly necessary and to the extent required for the performance of their duty.’ In other words, the use of force by law enforcement officials should be an exceptional measure, to be used only for the prevention of crime or in carrying out lawful arrests, and only to the extent reasonably necessary under the circumstances. More specific guidelines, in particular on the use of firearms, are contained in the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (see **Part II, Chapter 2**, for a note on the legal status of this type of instrument), which set out a list of *safeguards* which must be respected regarding the manner in which the firearms are used, and the procedures which must be followed every time a firearm is used.

Legitimate purpose:

Force may only be used by law enforcement officials in the performance of their duty, which means for the prevention of crime or in carrying out a lawful arrest. The use of firearms, which is considered a particularly extreme measure, is restricted to an even narrower range of circumstances. Firearms may not be used against persons except for one of the following reasons:

- In self-defence or the defence of others against an imminent threat of death or serious injury
- To prevent the perpetration of a particularly serious crime involving a grave threat to life
- To arrest a person presenting such a danger and resisting the law enforcement official’s authority or to prevent his/her escape

Strict necessity:

Even where a legitimate purpose is being pursued, the use of force is only lawful where it is strictly necessary under the circumstances. In other words, if lesser means would have been sufficient to fulfil the same objective, the resort to force is unlawful even for a legitimate purpose. Non-violent means should be applied as far as possible before resorting to the use of force and firearms, the latter being used only if other means are ineffective or could not possibly achieve the desired objective. The test of necessity for the intentional lethal use of firearms is even stricter: it may only be used where it is strictly unavoidable for the protection of life.

Proportionality:

Even where the use of force is for a legitimate purpose and is considered strictly necessary under the circumstances, it must still be used only to the minimum extent necessary to achieve the objective. The amount of force used must be proportionate to the objective pursued and the seriousness of the offence involved. For example, whereas it might be proportionate to use a firearm to prevent the escape of an individual who has committed a murder, it would almost certainly be disproportionate to take the same measure to prevent the escape of an unarmed youth caught in the act of spraying graffiti on a wall.

Safeguards:

In addition to specifying the need for restraint and proportionality in the use of force, the Basic Principles provide that where the use of force and firearms is unavoidable, law enforcement officials are still expected to minimise damage and injury, and respect and preserve human life. They should also ensure that assistance and medical aid are provided to any injured persons as soon as possible, in order to minimise the likelihood of complications or loss of life resulting from the injury.

Where a decision is made that firearms are to be used against persons, in pursuit of one of the legitimate purposes previously noted, and where less extreme means are inadequate, the emphasis continues to be placed on making sure that there is no alternative to the use of firearms. Law enforcement officials must identify themselves as such and give a clear warning of their intention to use a firearm. Sufficient time must be given following the warning for it to be acted upon, unless this would place the law enforcement officials, or other persons, at risk of death or serious harm, or if it would be clearly inappropriate or ineffective in the particular circumstances. Failure to respect these safeguards suggests that an opportunity was missed to ensure that the use of force was indeed unavoidable.

The lawfulness of any resort to the use of force or firearms in law enforcement needs to be approached in stages. If this is done systematically, it may be possible to discover failures or avoidable errors in the decision-making process or in the carrying out of the killing. It is essential to know as many precise facts and details as possible about the incident, as the state will usually seek to show that the killing was lawful, that it was carried out by a law enforcement official for a legitimate purpose, that it was necessary, that it represented a proportionate response and that all the proper safeguards were respected. It is only through a close examination of the facts that it can be argued that this was not the case.

RELEVANT PRINCIPLES:

Code of Conduct for Law Enforcement Officials, Articles 1-3
Basic Principles on the Use of Force and Firearms by
Law Enforcement Officials, Principles 4-5, 9-10

Approach to analysing the lawfulness of killings in a law enforcement context:

Legitimate purpose: Does the stated purpose for which the force was used fall within one of the permitted law enforcement objectives?

i.e. Was the force in question applied for the prevention of crime or in the carrying out of a lawful arrest?

If firearms were used, was it:

- In self-defence or the defence of others against an imminent threat of death or serious injury
- To prevent the perpetration of a particularly serious crime involving a grave threat to life, or
- To arrest a person presenting such a danger and resisting arrest or to prevent his/her escape?

If the answer to any of these questions is no, the use of force was unlawful.

If yes, further questions need to be asked.

Strict necessity: Could the same purpose have been achieved without resorting to the use of force?

If yes, the use of force was unlawful.

If no, further questions need to be asked.

Proportionality of response: Could the same purpose have been achieved by using a lesser degree of force?

If yes, the use of force was unlawful.

If no, the use of force was lawful.

A killing by a law enforcement official is *lawful* where:

- the force used was applied for a *legitimate purpose*
- its use was *strictly necessary*, AND
- the degree of force used was *proportionate* under the circumstances.

These questions can only be answered through a thorough examination of the facts. The state will argue that the conditions were complied with. Use the facts to show that this was not the case.

3.1.1.2. Potential violations

Abuses by law enforcement officials could occur in their dealings with individuals, or they could occur in the context of policing gatherings of people.

In the case of individuals, the rules that apply will be those set out in the basic principles – the need for a legitimate purpose, strict necessity of the use of force, and proportionality of the degree of force used, as well as the obligation to follow proper safeguard procedures. Resort to the use of force could arise in the prevention of a crime, during an arrest, during a transfer, in order to foil an escape attempt, or during custody. The prevention of a crime could involve a pre-planned policing operation, for example, a complex operation to catch suspected drug smugglers or members of an organised crime syndicate, or it might involve intervening to stop a crime which is in the process of being committed, for example, an assault or a pick-pocketing incident. An arrest might result from police intervention to prevent a crime in a scenario like those already mentioned, or it might involve an order to arrest an individual who is suspected of involvement in a crime, and take place at the person's home, workplace or in the street. A person might be transferred from the place of arrest to a police lock-up, from a police station to a prison, from one prison or other place of custody to another, from a place of custody to a hospital or, in order to appear before a court or judge. An escape attempt, real or alleged, might take place during any of these scenarios. The potential for abuse, finally, exists during any period when an individual is in the custody of law enforcement officials, in whichever place of detention that might be. The risk, which exists in institutions and places of custody, is considered separately, and is somewhat different in nature to that which exists during active policing. The common factor in all the scenarios touched upon, and other similar instances, is that law enforcement officials are in a heightened state of alert and the individuals at risk are those who pose an obstacle to the fulfilment of

law enforcement objectives. In such circumstances, law enforcement officials may well resort to the use of force, which can result in death. They may also interpret an innocent action by the victim as an attempt to cause a risk to life or to escape, or claim that their response was to such an attempt, even where it was not. Once again, it is crucial to examine the facts, to see if there was indeed an escape attempt or a risk to life created by the victim.

In the context of policing unlawful gatherings of people, the basic principles apply but there are also some rules specific to such situations. A distinction is made between violent and non-violent assemblies. Where an assembly is non-violent, the use of force must be avoided and, if this is not practicable, must be restricted to the minimum degree necessary. In the case of assemblies involving violence, the limitation is on the use of firearms rather than the use of force – there is an implication that force may be used, but it is made clear that firearms, which are potentially lethal, may be used only where it is not possible to use less dangerous means, and only to the minimum extent necessary. Where firearms are used, the principles of legitimate purpose, strict necessity and proportionality must be respected. The understanding that lesser forceful measures may be used under such circumstances has implications for the state in terms of making available, to its law enforcement officials, the means for a graduated response, as will be noted below when addressing the state's obligation to protect.

RELEVANT PRINCIPLES:

*Basic Principles on the Use of Force and Firearms by
Law Enforcement Officials, Principles 12-14*

3.1.2. Institutions

3.1.2.1. Institutions within the criminal justice system

The rules for policing persons in custody or detention are based on similar principles to those applying to law enforcement generally, but adapted to the particular context.

Force may only be used where it is strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened. It is only to be used in self-defence or in cases of attempted escape, or active or passive resistance to an order based on law or regulations. Firearms, in particular, may only be used in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody likely to commit a particularly serious crime involving grave threat to life. Again, we find the concepts of *legitimate purpose* and *strict necessity*. Where force is used, it must be no more than is strictly necessary, in other words *proportionate* under the circumstances, and any incident must be reported immediately to the director of the institution. These rules are applicable both to relations with individual prisoners and in the context of group violence within the institution.

In addition to rules on the use of force, persons deprived of their liberty are entitled to the protections contained in the Standard Minimum Rules on the Treatment of Prisoners (see **Part II, Chapter 2**, for a note on the legal status of this type of instrument). Many of these are more relevant to the state's obligation to protect the right to life, but some of the rules, where abused and resulting in death, have the potential to give rise to direct responsibility. These relate primarily to the infliction of punishment and the application of instruments of restraint.

Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments are absolutely prohibited as punishments for disciplinary offences. Any punishment which may be damaging to a prisoner's mental or physical state, including punishment by close confinement or reduced diet, may never be imposed without an examination and written certification by a medical officer that the prisoner is fit to undergo the punishment. The medical officer must also

make daily checks on any prisoner undergoing such punishment with a view to advising the director of the institution if the prisoner's physical or mental health requires termination or alteration to the punishment. Thus, for example, if a punishment is deliberately inflicted on a prisoner in spite of a warning by the medical officer that it poses a risk to the prisoner's health, and the prisoner dies as a result, it may be possible to argue that the officials are directly responsible.

The use of certain instruments of restraint is authorised under limited circumstances. It is never allowed as a punishment. Chains and irons are never to be used. Other instruments, such as handcuffs and straight-jackets, may be used only as a precaution against escape during a transfer (though they must be removed while the prisoner appears before a judicial or administrative authority), on medical grounds on medical advice, or by order of the director of the institution where other methods of control prove unsuccessful in order to prevent injury by the prisoner to himself or others or to prevent damage to property. In the latter instance, a medical officer must immediately be consulted and the higher authorities informed. Where applied, restraints must be removed as soon as they are no longer strictly necessary. Policy on the use of instruments must be determined by the central prison administration, another obligation with implications for the state's duty to protect the right to life. Some instruments of restraint may pose a greater risk to certain prisoners. For an example, the use of a straight-jacket on an agitated prisoner who is known to suffer from major asthma attacks under stress could potentially cause death.

A further point to note is that there tends to be a presumption that where a person is taken into official custody in good health, and is injured or dies while in custody, the state has a duty to account for the death or injury. This presumption is well established within the European human rights system (discussed in **Part IV**) and can be argued elsewhere. Any death in custody must therefore, be investigated. Where the death cannot be explained, or the explanations are unsubstantiated, for example, where it is alleged that the prisoner was killed while attempting to escape or to attack a prison official, but there is no evidence to support this, it is possible to argue that the state is directly responsible for the killing.

RELEVANT PRINCIPLES:

*Basic Principles on the Use of Force and Firearms by
Law Enforcement Officials, Principles 15 – 17
Standard Minimum Rules for the Treatment of Prisoners 31-34, 54*

3.1.2.2. Institutions outside the criminal justice system

Although most of the deaths likely to be reported as human rights violations will occur in the context of law enforcement and the criminal justice system, there is a potential risk to life in any institution where persons are under the authority of state officials. These can include psychiatric hospitals, reception centres for asylum seekers and refugees, children's homes, or institutions for the elderly or the handicapped. Suspicious deaths which occur in such contexts may also amount to human rights violations where it can be established that a state official deliberately caused the death, for example, through serious physical abuse.

Where a deliberate killing by a state official occurs outside the law enforcement context, there is no question of the killing falling under one of the lawful exceptions (lawful killings in the context of law enforcement, or lawful acts of war). The governing law would be the national law on murder and manslaughter. In many systems, this will provide for a defence to such offences on grounds of self-defence or the defence of the life of others. Where a killing by a state official occurred in such circumstances, it is more likely to raise issues of indirect, rather than direct, responsibility, as is the case where death occurs as a result of neglect or of an omission. Where the killing was not in response to an immediate threat to life, and it can be demonstrated that the state official deliberately caused the death, there is scope to argue that the state should be held directly responsible. This is an area of state

responsibility which is not well established, however, and it may well be more fruitful to examine such deaths in the context of the state's failure to protect the right to life, for example, on the basis that the state failed to introduce adequate screening procedures for employees or that the legislation protecting the right to life is not effectively implemented by the courts (e.g. where a plea of self-defence by a state official is automatically accepted without challenge by the judge).

3.1.3. Military operations

Operations involving military personnel can take place in peace time, in which case the governing international law relating to the protection of the right to life is human rights law, as usual. Where military operations take place in the context of an armed conflict, however, the applicable law becomes more complex. In such situations, human rights law continues to apply with some modifications, but the law of armed conflict (ILAC) also comes into operation in parallel with human rights law. This means that there are two sets of rules to consider in relation to the lawfulness of killings in times of armed conflict.

3.1.3.1. *Applicable human rights rules*

In times of armed conflict or other form of public emergency, it is lawful for states to take measures restricting the scope of certain human rights. The right to life, however, is one of a small core of rights which cannot be limited for any reason, even in time of war. However, since the prohibition is of killings which are arbitrary or unlawful, the concept of lawfulness has to expand to include killings which are permitted under the law of armed conflict. As will be seen below, the major consequence flowing from this is that members of the armed forces are legally entitled to kill members of the opposing armed forces or fighting group. For the purpose of understanding how this impacts upon the lawfulness of a killing in times of armed conflict, this means that where the killing has been carried out by a member of the armed forces, or any other state official who is carrying out military functions at the time of the killing, it is the rules of ILAC which must be applied to the analysis. Where the killing is carried out by a state official who is not a member of the armed forces (i.e. a civilian or a law enforcement official) and was not carrying out military functions at the time of the killing, it is the human rights analysis, which must be considered.

3.1.3.2. *Applicable ILAC rules*

The law of armed conflict is an extremely detailed body of law, further complicated by the fact that its provisions vary according to whether the armed conflict is international or non-international in character. For the purposes of this handbook, the rules which must be extracted from it are those necessary to assess the lawfulness of a killing, in other words those which provide the answers to the following questions:

- Who can lawfully kill?
- Who can lawfully be killed?
- How should the killing be carried out in order for it to be lawful?

The principal distinction between human rights law and ILAC, from the point of view of the lawfulness of killings, is that under human rights law lethal force should be a measure of last resort, to be used only after all other means have been attempted or would be pointless, or where the danger to life is so great that there is no time for any lesser reaction. The basic rule is that there should be a graduated response, an attempt to detain, the issuing of warnings, the use of non-lethal force, and finally, the use of lethal force where there is no other choice. Under ILAC, there is no obligation to adopt a graduated response or to seek to detain because it is lawful for members of the armed forces to kill, provided they respect the rules on who they target and how they carry out their attacks.

What is an armed conflict?

The law of armed conflict applies whenever an armed conflict is taking place. The determination of what level of violence needs to exist in order for a situation to be categorised as an armed conflict is in itself a controversial matter beyond the scope of this handbook, and many states prefer to deny that a conflict is taking place. Sometimes, especially in the context of international armed conflict, those wishing to increase protection for the victims of armed conflicts will seek to argue that ILAC applies even at low levels, as its provisions are much more detailed than human rights law. For the purposes of analysing the lawfulness of a killing, however, it is not necessarily disadvantageous to be guided by the position taken by the government in question. If it denies the existence of an armed conflict, the logical consequence is that lawful exceptions to the prohibition of unlawful killing do not need to include killings that would be lawful under the law of armed conflict, since it is not applicable. This makes the protection of the right to life stronger. If the government accepts that an armed conflict applies, on the other hand, the ILAC analysis can be followed.

Killings in international conflict

International conflict is that which takes place between two or more states. Although this may seem like a fairly straightforward concept, it can often be complicated by many factors, for example, where an outside state provides support to an opposition group in a conflict against its own government. The relevance of the distinction between international and non-international conflict is that the rules are not the same for each, with the rules in international conflict being, by far, the most detailed. Consequently, if a situation is not clear-cut, it is desirable to seek to argue that a conflict is international in character, provided that evidence exists to support such a claim. The principal conventions, which apply in international armed conflict, are the four Geneva Conventions of 1949 and their First Additional Protocol of 1977 on the Protection of Victims of International Armed Conflicts.

Who can lawfully kill?

Only combatants are lawfully entitled to kill, their objective being to weaken the military force of the enemy. Combatants are all members of a state's armed forces. Civilians, medical personnel and other protected persons, are entitled to use force only in self-defence. This may result in death, but their sole objective should be defence of their own or someone else's life.

Who can lawfully be killed?

The only legitimate targets are those who are participating in the fighting. Primarily this means members of the armed forces, but it can also include other persons who have forfeited protected status by joining in the fighting. Protected persons are all those who are not (or are no longer) involved in the fighting – civilians, wounded, sick and shipwrecked members of the armed forces, prisoners of war. Such persons can never be intentionally targeted. If protected persons take up arms, they lose their special status and can then be attacked because they are contributing to the military effort. This loss of protection lasts only for as long as they are fighting. There is a presumption of protected status, so that where there is doubt as to whether or not someone is a civilian, they must be treated as a civilian unless there is evidence to the contrary.

If civilians, or other protected persons, are killed as a result of an attack on a legitimate target (see below), this is not necessarily unlawful, provided the rules on the conduct of operations were respected. What is unlawful is either the deliberate targeting of protected persons or their incidental death, where the rules on targeting were breached.

How should the killing be carried out in order for it to be lawful?

The need to distinguish between those who can be targeted (combatants) and those who cannot (protected persons) means that attacks must take into account the likelihood that protected persons will be affected. The intended target must be a military objective (an object which is making an effective contribution to the military action, such as a tank, a former school building being used to shelter troops, an ammunition dump, objects which would be militarily useful to attack) and any likely loss of civilian life must not be excessive in relation to the military advantage expected from the attack – it must be proportionate. This means that when selecting a target and how to attack it, a balancing exercise must be made between the military advantage expected and the likelihood of incidental loss to civilian life. An attack would be unlawful where, for example, it was foreseeable that the loss of civilian life would be excessive, yet it was carried out anyway, if a weapon was used which could not be directed accurately at the military objective and resulted in civilian deaths, or if a weapon was not directed at any specific military objective and resulted in civilian deaths. At the planning and decision-making level, this also means that there is a duty to do everything feasible to verify that a target is indeed a military objective, to take care in the choice of weapons and to take steps to minimise the incidental effects on civilians. In case of doubt about the use to which an object that is normally civilian (e.g. a school building) is being put, it should be presumed to be civilian.

Killings in non-international conflict

A non-international conflict is that which takes place within the territory of a single state, and involves either governmental forces and one or more opposition forces, or only non-governmental forces divided into opposing factions. The relevant provisions of ILAC are those of Common Article 3 to the 1949 Geneva Conventions, as well as their Second Additional Protocol on the Protection of Victims of Non-International Conflicts. Unlike human rights law, which binds only states, ILAC is binding on, and can be invoked against, non-state forces in a non-international armed conflict.

Who can lawfully kill?

States are reluctant to grant rebel groups and opposition movements any legitimacy. This concern is reflected in the rules governing non-international armed conflict, which do not address the concept of who is a combatant. Consequently, the answer to the question ‘who can lawfully kill?’ is not found in the law on non-international armed conflict. The issue in this context, in terms of the lawfulness of a killing, is not entitlement to kill but who was killed and the way in which the killing was carried out.

Who can lawfully be killed?

The protections in non-international armed conflict are much less detailed than in international armed conflict, but the basic rule is the same. Persons not taking an active part in the fighting, be that civilians, wounded, sick and shipwrecked members of the armed forces, medical personnel or those in detention, cannot be deliberately targeted or murdered. A particular complication arises in areas where there is guerrilla activity, as fighters are then often difficult to distinguish from civilians. In such cases, it is essential to gather as many facts as possible in order to establish what categories of persons or objects the armed forces, responsible for the killing, believed they were targeting and what measures they took to verify their belief.

How should the killing be carried out in order for it to be lawful?

There are no detailed rules on targeting in the law applicable to non-international conflict but, as in international armed conflict, civilians must not be made the object of attack, and there is an obligation to distinguish between fighters and civilians in attack. Consequently, attacks should only be directed

against military personnel and objects, and precautions must be taken to ensure that the choice and use of weapons makes this possible.

Approach to analysing the lawfulness of killings in the context of military operations:

Is there an armed conflict?

⇒If not: human rights law applies as usual

⇒If yes: both human rights law and the law of armed conflict apply

Was the killing carried out by a member of the armed forces or some other state official carrying out military functions?

⇒If not: a human rights law analysis should be used

⇒If yes: an ILAC analysis should be used

Is the armed conflict international or non-international?

⇒If international: the rules on international armed conflict should be applied

⇒If non-international: the rules on non-international armed conflict should be applied

3.1.4. Deaths resulting from torture

Torture is a particularly serious human rights violation in its own right and all the more so if it results in death. Torture is defined in Article 1 of the UN Convention Against Torture as

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

The three essential elements constituting torture are thus:

- 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 can be inflicted in the exercise of law enforcement activities, for example, at the time of arrest, during transfer from one place to another, in a police lock-up or during an interrogation, or it can occur in an institutional context, whether punitive or non-punitive in nature, for example, in a prison or in an institution for the mentally-ill. It may not be expressly intended to result in death, but if the torture is so severe that it does so, or medical treatment is withheld from a person who has been gravely injured as a result of torture and that person subsequently dies, the action is sufficiently deliberate and the death sufficiently foreseeable to give rise to direct responsibility.

Torture can be the sole cause of the death or it could be combined with other factors relating to the conditions of detention such as, deprivation of, or inadequate medical treatment, deprivation of food and water or exposure to extremes of temperature. One of the major difficulties with the documentation of torture is often the lack of physical evidence that the torture has occurred. Where the torture is so severe that it results in death, the evidence is more difficult to conceal, as the marks on the body do not have an opportunity to fade.

Where torture results in death, both the right to life and the right to be free from torture have been violated. This makes available a greater range of international mechanisms than those available where there is just a violation of the right to life, for example the Committee Against Torture or the UN Special Rapporteur on Torture. Torture is a crime subject to universal jurisdiction, which means that perpetrators can be tried by any state, or must be given up for trial at the request of another state. It can also be a war crime if it takes place in a situation of armed conflict, or a crime against humanity if it occurs as part of a widespread or systematic attack.

A companion volume to this handbook, **The Torture Reporting Handbook**, focuses specifically on the documentation and reporting of allegations of torture, and reference details can be found in **Appendix II**.

3.2. Obligation to protect the right to life

The right to life is considered so fundamental that the state has an express obligation not only to refrain from directly engaging in arbitrary or unlawful killings, but also to take positive measures to protect the right. This means, in the first instance, that the state must adopt legislation to criminalise murder and other forms of killing, but the obligation extends much further, requiring the creation and implementation of systems designed to reduce the risk to life, both from the activities of state officials and, under certain circumstances, from private persons.

3.2.1. General obligation to protect

The general obligation of the state is to create an environment in which the right to life is protected, both from abuses by officials and from killings by private persons. This means that legislation must be adopted criminalising murder and other forms of killing, but it also means ensuring that this prohibition is respected. This applies at many levels. There must be awareness among state officials and the general population that the prohibition of arbitrary killing exists. This means incorporating such awareness-raising into training programmes, in particular for law enforcement officials and all those carrying out such functions. It is insufficient for the prohibition merely to exist as a formality. Steps must be taken to ensure that, where the prohibition is not respected, there is no impunity. There must be supervisory systems in place which ensure that abuses by officials are noted and followed up. There must be a penalty for committing the offence which takes into account the seriousness of the act. Where an allegation is made of an unlawful killing, there must be an effective investigation (which will be considered in more detail below). The judiciary must not treat officials differently from other persons, and if an official is found guilty of an unlawful killing, the penalty must be applied appropriately. In other words, the prohibition must be effectively enforced.

There are also less well-developed aspects of the protection of the right to life, mostly relating to the extent to which the state must take positive steps to regulate the activities of private actors, for example, those of corporations or employers, or the steps to actively reduce mortality and increase life expectancy. These aspects are beyond the scope of this handbook, which is concerned specifically with killings.

One final aspect, which is best considered as part of the general obligation to protect the right to life, is the question of deportation or extradition of persons to a country where there are substantial grounds for believing that they may be at risk of being arbitrarily killed. The UN Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions would prohibit this, and the international human rights mechanisms have taken the view that this would be in violation of the state's obligation to protect the right to life and the prohibition of torture and other ill-treatment, although it is not specifically mentioned in the provisions on the right to life. Possibilities for taking action to prevent such deportations are addressed in **Part IV**.

3.2.2. State officials and the obligation to protect

3.2.2.1. Law enforcement

As previously noted, law enforcement operations pose the greatest risk of arbitrary deprivation of life at the hands of state officials. How can the state act to minimise the risks in this context? Its duty to protect life is most relevant in the context of actions preceding a killing (such as the planning of a security operation, decisions relating to the equipment provided to law enforcement officials and the training of police officers in the use of firearms), but actions which take place after a death (e.g. medical examination of the cause of death, investigation of the suspected killer, fair and independent trial of the suspect) also contribute to effective protection, as they operate as deterrent measures which contribute to the prevention of impunity. Obligations relating to the effective investigation of suspicious deaths and the provision of a remedy for violation are addressed separately (see **Sections 3.3.** and **3.4.**). The state's obligation to protect, in the context of law enforcement, is both general and specific in nature. It involves the adoption of general measures to minimise abusive use of force in law enforcement, as well as an ongoing obligation to take precautions in relation to each individual operation.

General measures

General measures to minimise abusive use of force in law enforcement involve the development of an appropriate regulatory framework on the use of force, the proper selection and training of personnel, the provision of appropriate equipment, and the establishment of internal systems of monitoring and enforcement.

Rules and regulations on the use of firearms by law enforcement officials should be detailed and should set out, very clearly, the circumstances under which it is lawful to carry and use firearms. They should specify which types of firearms and ammunition are permitted, prohibiting those which present an excessive risk, regulate their control, storage and issuance and ensure that officials must account for any use of equipment issued to them. The rules must also specify the manner in which firearms are to be used, through the giving of warnings where appropriate, and other ways in which to reduce the likelihood of unnecessary harm. The importance of having such detailed rules is to reduce the need for officers to use their own discretion in deciding whether or not to resort to potentially lethal force. They will, of course, need to assess the facts and circumstances themselves, but a good set of regulations should make it possible for a law enforcement official, once he or she has categorised a situation, to know immediately if it is one in which it is lawful and appropriate to use force, especially firearms.

Proper selection procedures should be in place to ensure that the personnel employed as law enforcement officials are fit to perform their functions, something which should also be kept under periodic review. They should be provided with extensive training to enable them to deal with difficult situations with very limited resort to the use of force and firearms, for example, through training in crowd management and alternatives to the use of force and firearms. They should, in particular, be trained and tested in the use of force and firearms and authorised to use the latter only if provided with special training in their use.

Law enforcement officials should be equipped with the means to adopt an appropriate graduated response to a situation. In particular, they should not be issued only with firearms, which would give them no alternative in a situation where a lesser use of force would be sufficient. Appropriate equipment could include defensive equipment such as shields, helmets, and bullet-proof vests, which would reduce the need to use weapons for protection, as well as a range of different weapons and ammunition.

Internal monitoring and reporting starts with the establishment of a clear chain of command over all officials responsible for arrest, detention and imprisonment, as well as all those officials authorised to

use force and firearms, in order to maximise accountability. All deaths and injuries caused by the use of force and firearms must be reported immediately to a superior officer and investigated. Superior officers should be held responsible where they knew or should have known that those under their supervision resorted to the unlawful use of force and firearms and did not take appropriate measures to stop or report them.

Many of these requirements are very detailed and it is not every failure to implement one which can support an argument that the state has failed to protect the right to life. However, what is important is to be able to show that the state did not take sufficient steps to protect the right to life. Where it is possible to point to a number of failures across the system it can be argued that the state was not serious about securing such protection.

Specific precautions

The state has an ongoing obligation to minimise risks to life in the conduct of each individual operation. Much of this is achieved through effective implementation of the general measures of protection, but it should be ensured that such precautions are adapted to each particular operation. Killings can result from defects in the short or long term planning of an operation, or its command and control. In such situations lethal force may be used because of errors in the carrying out of a law enforcement plan and this can constitute a failure to protect the right to life particularly where it results in a death. The kinds of defects can include:

- The content and accuracy of the briefing given to law enforcement officials about the suspect or the circumstances of the operation (e.g. informing them that the suspect will be carrying a gun when the intelligence to that effect is unreliable)
- The types of weapons issued for use in an operation (e.g. live ammunition when plastic bullets would have been sufficient)
- The types of policing strategy used in that operation (e.g. surrounding an armed suspect in such a way that it is likely the law enforcement officials will be shot at and will need to take defensive measures).
- The quality and nature of the training given to the law enforcement officials used in the operation (e.g. the selection of officials not specially trained in the use of firearms for an operation in which these weapons are to be used)
- The choice of law enforcement body to carry out an operation (e.g. one which works with a “shoot to kill” ethos)

It is likely to be particularly difficult to obtain information about the planning of an operation which states may regard as highly sensitive, and in such cases it becomes essential that there be an independent and open inquiry into the events which led to the use of lethal force. As usual, the more facts are available, the more possible it may be to build a strong case.

RELEVANT PRINCIPLES:

Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Principles 2, 6-7, 11, 18-26
Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, Principle 2

3.2.2.2. *Institutions*

In an institutional context, similar considerations will apply as in law enforcement generally, as far as the protection of the right to life during law enforcement operations is concerned, e.g. where an operation is mounted to control a prison riot, or with respect to the training of prison officers to use lesser forms of restraint rather than firearms. In addition, however, there is a presumption that since

these institutions house persons who are under state authority and not free to leave at will, the state has a resulting obligation to look after their welfare. This translates, among other things, into an obligation to protect their right to life and ensure their security in the everyday running of the institution. This includes taking positive measures to preserve physical and mental health, to protect detainees from each other and to be alert to risks to life.

Examples of situations in which the state has failed to protect the right to life could include:

- A failure to provide a safe environment for detainees in terms of the physical environment (e.g. housing them in a building which is known to be dangerous, the roof of which collapses and kills them)
- A failure to protect detainees from known threats within the institution (e.g. other prisoners)
- A failure to carry out regular checks on detainees especially those at risk (e.g. a known suicide risk)
- Failing to be alert to known risks (e.g. suicidal tendencies, drugs, excess alcohol consumption)
- No access to adequate medical care, inappropriate medical care or denial of medical care
- Inadequate or inappropriate food and water
- Exposure to extreme temperatures
- Inadequate or absence of systems, regulations and procedures to protect from all the above

There can be a fine line between actions by state officials intended to cause death, and negligence or recklessness as to whether death occurs, for example, where medical treatment is deliberately withheld although it is known that the person in question will die without it, or if a prison officer deliberately places a victim in the same cell as a detainee whom he or she knows has threatened to kill the victim. In each case, it might be argued that the resulting death is sufficiently foreseeable to claim that there was deliberate intent, but the state will certainly argue that this was not the case. Where a death in custody could fall into either category, it is worth trying to argue that the state is directly responsible for the death, but always backing up that argument with the alternative one, that the state failed to protect the victim's right to life.

3.2.3. Non-state actors and the obligation to protect

Where someone other than a state official carries out a killing, what are the implications for trying to hold the state responsible for a violation of the right to life? Private persons can be tried in domestic proceedings under criminal legislation, but not generally for human rights violations as such, as these relate to obligations that are binding only on the state rather than individuals. From a human rights perspective, a state may be responsible for such deaths if it can be shown that it failed to protect the right to life.

As noted previously, the state has a general obligation to prohibit killings in its domestic law, and to enforce this prohibition through effective investigation and the consistent application of appropriate sanctions to those who are found responsible. It would be failing to protect the right to life if these systems were not in place or remained ineffective.

A failure to adopt effective measures to prevent deaths from occurring might take the form of tolerating certain traditionally accepted practices, such as 'honour' killings, or failing to provide protection for an individual who has received death threats. It might involve the promotion of impunity by failing to prosecute perpetrators where, for example, drug cartels are actively killing people in a certain region, or by failing to investigate a racist murder. It could involve tolerance of killings by detainees within a prison, or by paramilitaries in a region where guerrillas are known to be protected by the local population. It is also possible for the state to be held responsible for failure to protect the right to life and the prohibition of torture and other forms of ill-treatment, where a person is to be deported to a country where he or she is at risk of being killed, including at the hands of non-governmental actors.

As always, there are grey areas, where the state could perhaps be argued to be directly responsible – for example, if it is known that paramilitaries have a practice of killing certain categories of persons (e.g. sympathisers of an opposition party) and the state tolerates this. It may amount merely to a failure to protect – but if the state makes available a list of sympathisers to the paramilitaries, even without a direct order to kill, it may be possible to argue that it is directly responsible for their deaths.

3.3. Obligation to conduct an effective investigation

Where a reliable report of unnatural death is received, the state has a duty to investigate that complaint effectively. The most important characteristic of the investigation is that it be effective, not merely a formality. Although the most stringent requirements are provided for in the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, which are designed to apply in the context of killings by state officials, requirements regarding the effectiveness of investigations have been developed by the human rights supervisory bodies for wider application. Investigations into all forms of suspicious deaths should comply with these requirements, and if the state fails to investigate, such that no genuine attempt is made to identify the perpetrator of a killing or to bring that person to justice, it would have failed in its obligation to conduct an effective investigation. This could also amount to a failure to protect the right to life, since it represents a failure to enforce the prohibition of killings.

An effective investigation should be thorough, prompt and impartial. It should be carried out by an investigative authority which has the power to obtain all the necessary evidence, including the power to compel suspects and witnesses to appear and give evidence. The investigation should include an autopsy of the body, the collection and analysis of all relevant physical and documentary evidence, and the taking of statements from witnesses. The autopsy should be carried out by an impartial and independent physician, ideally one with forensic experience. The autopsy should be detailed and, as a minimum, establish the identity of the deceased and the cause and manner of death. The body of the deceased should be returned to the next-of-kin at the end of the investigation.

In order to ensure the transparency of the investigation, families and legal representatives should be granted access to all relevant hearings and entitled to present evidence. A final written report of the investigation must be produced within a reasonable time and made public. It should include details of the scope of inquiry, the procedures and methods used to evaluate evidence, and the conclusions and recommendations reached by the investigators on the basis of the facts established.

Such established investigative procedures should be initiated whenever there are reasonable grounds to believe that a death is unnatural. Where the procedures are inadequate or not impartial, an independent inquiry should be set up. Those implicated in the killing should be removed from positions where they may seek to influence the investigation, and complainants, witnesses, investigators and their families, should be protected from all forms of violence or intimidation connected to the investigation. All persons identified as having participated in unlawful killings must be brought to justice. As is the case concerning the obligation to protect the right to life, it is not each single breach of these detailed elements of the obligation to investigate which give rise to the responsibility of the state, but evidence that, overall, the state has not respected the obligation.

RELEVANT PRINCIPLES:

Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, Principles 9 – 18

3.4. Obligation to provide an effective domestic remedy

The state has a general obligation under human rights law to provide an effective domestic remedy for human right violations. This is an essential condition for the effective protection and enforceability of every right, including the right to life. States should ensure that fair administrative and judicial systems exist to provide access to criminal and civil sanctions and disciplinary measures in response to unlawful killings, which apply equally where those responsible are state officials. The provision of fair and adequate compensation is also an essential part of providing a remedy to the victim's family. Where the death results from torture, the UN Convention Against Torture specifies that dependants are entitled to compensation. Such remedies should be available equally to all victims and must be enforced.

RELEVANT PRINCIPLES:

Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, Principle 20
International Covenant on Civil and Political Rights, Article 2
European Convention on Human Rights, Article 13
Inter-American Convention on Human Rights, Article 25
Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Article 14

3.5. Enforced disappearances as a violation of the right to life

Enforced disappearances are a complex phenomenon encompassing a number of different human rights abuses, which can include the arbitrary deprivation of life. The phenomenon, as a whole, has its own particular characteristics which make it more than just a collection of individual violations and is beyond the scope of this handbook, but it does represent a particular kind of potential violation of the right to life which cuts across the range of state obligations deriving from that right.

Enforced disappearances typically involve the unacknowledged detention of persons for an extended or indefinite period, such that there is no opportunity to challenge the legality of the detention or to benefit from procedural safeguards, and no information is given to family or friends about the whereabouts or fate of the person. A disappearance does not always necessarily end in the death of the disappeared person, but can do so and, at the very least, creates a grave risk to life. The real problem for anyone wishing to pursue an alleged violation of the right to life in connection with a disappearance is that, by definition, the detention is not acknowledged by the state. This makes the direct responsibility of the state difficult to establish since evidence proving that state agents carried out the deprivation of liberty is not often available and, even less so, evidence that the person has died while in custody.

Where evidence does exist that a person has died while in unacknowledged detention, there is clearly a violation of the right to life. The state has an obligation to account for a person who has been taken into custody, so failure to do so where there is evidence that the state was responsible for the detention, creates a presumption of responsibility. Where death in custody cannot be established, a disappearance can still represent a violation of other aspects of the right to life. It can constitute a failure of the state's obligation to protect the right to life, particularly where the practice of enforced disappearance is widespread and the state tolerates or has not taken steps to eliminate it. It can also constitute a failure to respect the obligation to carry out an effective investigation if the state does not seek to establish the whereabouts of the person and account for their fate. There may be a further failure to provide a domestic remedy where, for example, family members may only seek compensation for an unlawful killing where it is able to prove that a death has occurred. Where no body has been found, this would make it impossible for a remedy to be pursued.

4. PATTERNS OF VIOLATION

You may find that through the documentation of a number of unlawful killings it becomes apparent that there are established patterns of behaviour, institutional faults or types of human rights violation. If you can analyse and describe such patterns, you may be able to access more than one type of remedy for ongoing violations and you can also produce reports based on information on cases about which you do not have sufficient information to take an individual action. Evidence of patterns also helps to persuade the international community that there is a serious problem that needs to be addressed, in particular, where it is indicative of gross and systematic human rights violations, which may amount to crimes against humanity, war crimes, or even genocide.

Patterns may be found in the agency involved (e.g. a certain branch of the security forces, or personnel from one particular police station), the type of person being targeted (e.g. children, certain ethnic groups), the circumstances in which killings take place (e.g. masked men take the victim from his or her house in the middle of the night, drive away in an unmarked van, and the body is found abandoned some miles away a few days later) or even the method of killing. You should watch for such patterns and develop a system of keeping effective and clear records to illustrate them. You could establish a database and/or a network with other NGOs who are dealing with similar cases. It is likely that pooling such information will strengthen your case.

5. IS THERE A VIOLATION?

Like all human rights, the right to life appears very complex when examined in detail. From the perspective of a person examining a set of facts to see if they might represent evidence of a violation of the right to life, the most important thing to remember is that they must point to the responsibility of the state for the killing. The state can be held responsible for four main types of violation of the right to life:

- An arbitrary killing by or with the acquiescence of a state official
- Failure to protect the right to life
- Failure to carry out an effective investigation where a suspicious death has occurred
- Failure to provide an effective domestic remedy where a violation of the right to life has occurred

If, upon initial consideration, the facts appear to fall under one or more of these categories of violation, a more detailed analysis can be carried out to see how best to present the allegation and construct the argument. The more facts you can provide, the better. You do not have to be certain that a violation has occurred in order to submit an allegation, but you do need to make sure that the subject-matter of your allegation appears to fall under at least one of the main types of violation of the right to life. Work your way systematically through the categories – Does the killing appear to have occurred at the hands or with the approval of a state official? Is there anything the state might have done to prevent the killing from occurring or to reduce the likelihood of it occurring? Did the state investigate the death effectively? Did the state provide an effective remedy for the death? Do not focus on one to the exclusion of the others, as there will often be more than one violation. Your task is to identify a potential (not certain) violation of the right to life and to document the facts as clearly and fully as possible. It is then up to the international human rights bodies to determine what exactly amounts to a violation and what does not.

Remember that, although not legally-binding in themselves, relevant detailed codes and principles (in particular the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the Standard Minimum Rules for the Treatment of Prisoners, and the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary, and Summary Executions) can give you guidance on what might amount to a violation of the right to life, and help you to support an argument that the state has violated that general obligation.

Be aware, also, that the same facts may reveal additional related violations of other human rights. Some rights you might want to bear in mind include:

The right to liberty and security of person, e.g. a killing that may have taken place during arbitrary or unlawful detention or an enforced disappearance.

The right to freedom from torture, e.g. a killing that may have resulted from the infliction of torture or inhuman and degrading treatment.

The right to humane conditions of detention, e.g. a death that has resulted from lack of food or water whilst in detention.

The right to be free from discrimination, e.g. a killing which was motivated by the victim's membership of a particular ethnic group.

SUMMARY

PART II – IDENTIFYING A POTENTIAL VIOLATION

1. RIGHT TO LIFE: BASIC RULE

The arbitrary or unlawful deprivation of life is prohibited.

This may be analysed in terms of four distinct forms of violation:

- Prohibition of arbitrary killing
- Obligation to protect the right to life
- Obligation to conduct an effective investigation
- Obligation to provide an effective remedy

A violation of the right to life may be alleged where it is possible to establish the responsibility of the state for a breach of one of these obligations, to demonstrate a causal link between the state and the circumstances surrounding a death or deaths.

2. PROHIBITION OF ARBITRARY KILLING

Not all killings by state officials are unlawful. There are three permitted exceptions to the prohibition of killing by state officials:

- Certain killings viewed as necessary measures of law enforcement
- Certain killings committed in the context of an armed conflict
- The death penalty, provided it complies with certain safeguards (not considered in this handbook)

In order to establish a violation of the prohibition of arbitrary killing it must be shown that 1) a state official was directly responsible for the death and 2) it did not fall within one of the lawful exceptions.

Exceptions:

- Necessary measures of law enforcement –

Force may be used only for a **legitimate purpose**, i.e. in the performance of law enforcement duties, in particular the prevention of crime or the carrying out of a lawful arrest. Firearms may be used only in exceptional circumstances involving a serious threat to life.

The force used must be **strictly necessary** under the circumstances. In the case of firearms, it must be strictly unavoidable for the protection of life. The amount of force used must be **proportionate** to the objective pursued and the seriousness of the offence involved.

- Certain killings committed in armed conflict -

Only persons taking an active part in the fighting can be deliberately targeted. Intentional attacks on persons NOT taking an active part in the fighting are unlawful. Care must also be taken when directing an attack against a legitimate target not to cause excessive incidental deaths of such persons. See **Section 3.1.3.2.** for more detailed rules. Separate sets of rules apply according to the nature of the armed conflict, whether it is international or non-international.

3. OBLIGATION TO PROTECT THE RIGHT TO LIFE

The state has a general obligation to create an environment in which the right to life is protected, both from abuses by public officials and from killings by private persons. In order to minimise the risk of abuse of the right to life by public officials, the state should:

- Develop a regulatory framework on the use of force (circumstances and manner in which it may be used)
- Ensure the proper selection and training of personnel
- Provide personnel with appropriate equipment for dealing with a range of situations
- Develop internal and external systems of effective monitoring and enforcement

The state should also ensure that killings by all persons are prohibited in domestic law and subject to effective and appropriate sanction.

PART II – IDENTIFYING A POTENTIAL VIOLATION

4. OBLIGATION TO CONDUCT AN EFFECTIVE INVESTIGATION

Where a reliable report of unnatural death is received, the state has a duty to carry out an **effective investigation**, i.e. one that is **thorough, prompt and impartial**.

5. OBLIGATION TO PROVIDE AN EFFECTIVE DOMESTIC REMEDY

Where a violation of the right to life has occurred, the state has a duty to provide an **effective, accessible and enforceable remedy**, including the provision of **fair and adequate compensation** to the victim's family.

**PART III – HOW TO DOCUMENT ALLEGATIONS OF
UNLAWFUL KILLINGS**

- 1. Introduction**
- 2. Basic Aims of Documentation**
 - 2.1. Good quality information**
 - 2.2. Accurate and reliable information**
 - 2.3. Urgent cases**
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 - 3.1. Medical evidence**
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**PART III – HOW TO DOCUMENT ALLEGATIONS
OF UNLAWFUL KILLINGS**

1. INTRODUCTION

The object of this chapter is to provide guidelines on how to document an allegation of an unlawful killing and the potential sources of evidence needed to take a case to an international human rights mechanism. This handbook deals specifically with documenting and reporting unlawful killings but the basic guidelines could also be referred to for allegations of torture, arbitrary detention and other human rights violations that involve deprivation of liberty and violations of physical integrity.

From the moment you receive the initial report of an allegedly unlawful killing you will begin to document the case. You should immediately be alert to the wide range of issues you should try to explore and basic principles to which you should adhere. The amount, nature and quality of information you can obtain about a case will determine whether you can approach an international human rights mechanism and which mechanism you can use. For example, where the facts are disputed, regional human rights courts will require much more detailed evidence in individual cases, than that needed by a UN Special Rapporteur, in order to communicate with a state about a case.

Here are some introductory points about the documentation of unlawful killings to bear in mind as you read this chapter:

- **Evidence.** All of the human rights procedures, both domestic and international, are very wary of false allegations, particularly in sensitive political contexts. The more evidence you can supply, the fewer doubts they will have. Sometimes the absence of evidence may support an allegation, e.g. where a state cannot provide results of an autopsy because it failed to carry one out. However, the fact that you have asked for an autopsy report and the state has failed to respond would be evidence in itself and should be documented.
- **Making the case.** Making a strong allegation to an international human rights mechanism involves ensuring you set out a logical case based on legal principles and facts that are, as far as possible, supported by evidence. It is important to be able to substantiate exactly how you feel the state has ignored or violated international standards and what evidence you have to support this. The quality of the argument and the evidence will determine whether others are convinced by what you are saying. However, this does not imply that you must have access to lawyers who are experts in human rights law, but simply, that you should be able to build a case upon an accurate understanding of the law and principles which guide international human rights bodies.
- **Working methodically and keeping clear and accurate records.** The need for substantiation of a case underlines the importance of keeping accurate, clear and detailed records of all of the work done. A piece of information collected near the beginning of a case may not seem important until later, perhaps when you are trying to find a missing link. As long as all information has been recorded, then you have not lost any potentially crucial evidence.
- **Analysing patterns and trends.** A full and accurate investigation, and documentation of individual killings, is crucial even if your final goal is to compile a report that discusses the general human rights situation in a country, as this is the only way to analyse and examine patterns and trends.
- **Security.** As unlawful killings often take place in sensitive political contexts and contexts of generalised repression, anyone having anything to do with the case may be placing themselves at risk. You may feel you are prepared to take such risks for yourself but you must bear in mind the implications of this for your colleagues and the victims and witnesses in the case. You should

consider all of the security implications which have been highlighted in this handbook (see **Part I, Chapter 2.3.1.**) and any others which are peculiar to the country you are in or the case you are dealing with, and take all possible steps to protect people who are assisting you with the case and the evidence you are gathering.

- **Providing information and protection to witnesses.** Persons who have been subjected to death threats may be in a position to give first-hand evidence of the incidents in question, but in cases where the victim has been killed, the allegations may be made by a relative of the victim, or witnesses who were at the scene of the killing or disappearances. Witnesses may well be traumatised by the incident and it is crucial to consider the ethical issues raised earlier (see **Part I, Chapter 2.3.2.**) and any other needs the victims and witnesses may have in the specific context you are dealing with.
- **Building knowledge of national regulatory and legislative framework.** In cases of unlawful killings various issues and questions must be addressed in the course of documentation and investigation. These relate to the identity and personal history of the victim, the cause and manner of death, the history and circumstances of the death, details of those who are suspected to be responsible for the killing and the regulatory and legislative framework surrounding the action that led to the killing and any subsequent killing. You may not be able to answer all of these questions or tap all of these sources especially if an arm of the state (such as the police force) is withholding the information. However, you will develop a good idea of the information, which should be available, and the procedures that should have been followed by the state in question. In such situations you will, at least, be able to provide the international human rights mechanism with these details and the mechanisms will themselves be able to request the information from the accused governments.

In order to provide guidance for documenting allegations of unlawful killings as human right violations, this chapter will consider the following:

- **Basic aims:** There are some basic aims that should be borne in mind when documenting allegations of human rights violations. These need to be considered to ensure your allegation provides accurate, reliable, good quality information.
- **Types of evidence:** There will be a discussion about the types and purposes of different types of evidence that may be available in a case.
- **Interview guidance:** In many cases, you will need to interview the person making the allegation and probably several other witnesses. These may be members of the victim's family, a witness to the incident or to surrounding circumstances, some other person wishing to report the incident or, in the case of threats and attempts to kill, the victim themselves. Suggestions will be provided as to how to carry out such an interview.
- **Investigative framework:** This section will deal with the questions to which you need to seek answers in order to substantiate an allegation of an unlawful killing.

2. BASIC AIMS OF DOCUMENTATION

This handbook aims to set out the standard for the ideal documentation, but we appreciate that in all cases you may not be able to achieve this. Do not let this put you off pursuing a case. You may still be able to use the information either on its own, or together with other allegations. Simply, do your best. It is likely that if you are unable to gather information it is because the state is antagonistic to your work and/or the witnesses feel insecure about giving evidence. In these circumstances you can explain your concerns to the human rights mechanism you have chosen and they can take your difficulties into consideration when examining the case and, at best, can themselves request the information from the state. You can assist by enabling the human rights mechanisms to clarify the questions that they should be addressing to the state or the recommendations they can make.

The primary goal of documenting allegations of human rights violations is to create a full, accurate, reliable and clear record of events, which can enable fair and just conclusions to be reached about the situation in a particular country. This means that when you are documenting allegations, you should:

- Aim to obtain good quality information
- Take steps to maximise the accuracy and reliability of the information
- Explore all relevant issues as fully as possible
- Keep accurate and clear records of all information and all action taken
- Abide by all ethical and security considerations
- Where appropriate, obtain copies and/or details of domestic decisions: If you want to bring a case before one of the international complaint procedures (see Part IV), 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 (or at least a record of dates, times, to whom, and by whom, a report was made), as well as any court decisions taken. These will also be able to provide you with a great deal of detail about the case as well as direct you to potential sources of evidence

TIP- Suggestions for your documentation kit

Your organisation should consider keeping an easily accessible supply of these items. Where appropriate, keep them securely and keep them together:

- Memo pads
- Sketch Pad
- Clipboard
- Files
- Supply of pens and pencils
- Camera with automatic flash (spare film and batteries)
- Reliable maps with grid references
- Measuring tapes (50 metres)
- A safe for secure items
- Tape recorder or dictaphone
- Video recorder
- Torch

2.1. Good quality information

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. The level of detail necessary to make an allegation will vary depending on the purpose to which it will be put. For example, judicial procedures, whether domestic or international, usually require a high standard of proof and, therefore, they will need detailed and comprehensive evidence. By contrast, international reporting procedures may be able to act without the provision of hard evidence or

PART III – HOW TO DOCUMENT ALLEGATIONS OF UNLAWFUL KILLINGS

extensive supporting documentation, but with a well-written, sound and reasonable case summary that outlines the basis for the complaint. (For more detailed information about international complaints and reporting mechanisms see **Part IV**)

Regardless of the level of the detail you should still aim to obtain good quality information. You should:

- **Be objective about the evidence.** 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 – regardless of your opinion of the general situation and however strongly you might feel about the allegation, you need to consider its quality objectively.
- **Aim for high standards.** The information **MUST** be 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, and those of your organisation, are considered in future.
- **Be well-organised.** Keep accurate, detailed and clear records of all the work done on a case including dates and times of telephone calls and letters, and interviews with informants and witnesses. Organise and preserve the evidence carefully and securely. Try to be methodical about your work and keep lists of outstanding and incomplete tasks.

🗨️ TIP - Organising your work

Methodical and accurate documentation is assisted by a well-organised work place. Here are some suggestions for how work on a case can be recorded and stored:

- **Case management file:** logs of all of your activities and notes, and “to do” lists
- **Communications file:** useful contact information, records of letters, telephone calls, faxes, emails. Bear in mind witness security!
- **Evidence files:**
 - **Witness statement file:** Copies of all witness statements. Consider anonymising them. Keep original statements and witness details in a secure location with limited access (the safe)
 - **Photograph file:** Record and description of all photographs, dates taken and by whom. Keep negatives and/or copies in the safe
 - **Physical evidence file:** a log of all evidence collected, date, by whom. Keep evidence itself in the safe
 - **Document file:** Copies of all documents and/or a record of all documents obtained. Keep original documents in the safe
 - **Sketch and map file:** Maps of the scene, wound charts and diagrams which are not connected to other documents or statements. Keep originals in the safe

NOTE!

- **Record times and dates of all work on a case**
- **Keep all physical evidence and original documents and witness details in a secure place/ a safe with strictly limited access!**

2.1.1. Evaluating the evidence

When evaluating the evidence to establish whether you have good information, you are examining whether it is credible and reliable. Here are some suggestions for how to do this:-

- 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 incident or the victim 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 that 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 could be because one is untrue or for some other reason, such as, that it 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: Do the witness statements corroborate each other? Does the physical evidence back up the testimonial evidence? Is there a medical certificate or autopsy report that confirms the victim’s injuries? The more supporting documentation you can provide, the more likely it is that the allegation will be found credible. It may be necessary to obtain the assistance of an expert in order to corroborate allegations in the information. Whether this is appropriate will depend on the circumstances of the particular case (e.g. whether the expert has access to the evidence resources s/he needs in order to form an opinion) and how far your organisation feels it can commission such opinions. Equally it may become apparent that certain information is only accessible through the state, e.g. if the police have custody of a dead body. However, you should note such barriers to corroboration in your documentation as they demonstrate the attitude of the state to the investigation.
- 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 that 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 that occurred several years previously? The fresher your information, the easier it is to investigate or verify the facts alleged.

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 will send it.

💡 *TIP – Good quality information*
 first hand + detailed + internally consistent +
 corroborated from several angles & sources +
 demonstrating a pattern + fresh
 = highest standard

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.

PART III – HOW TO DOCUMENT ALLEGATIONS OF UNLAWFUL KILLINGS

2.2. Accurate and reliable information

Verifying the accuracy and reliability of information can be a difficult and sensitive task and, to a large extent, you are dependent on the good faith of those who supply you with information. It is, however, possible to maximise the likelihood that information is accurate and reliable by taking certain general precautions, by seeking corroboration of allegations and the observations of witnesses, and by exercising good judgement.

General precautions, which you can take to maximise reliability, include:

- know your sources and familiarise yourself with the context in which allegations are being made
- maintain contact with sources - you may need to obtain or verify details at a later stage
- ask for victims' and witnesses names and contact details even if you keep them confidential
- be more cautious and thorough with vague or general information
- avoid basing allegations purely on media reports or rumours without seeking corroboration

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

- using precise questions and not influencing the answer of the questions (e.g. by asking “leading questions” – questions which already suggest the answer you are looking for)
- 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 the age, culture, gender and psychological state of the interviewee
- if the witness is an informant who may be implicated, considering whether they are minimising their own role in the incident
- whenever possible, where an interviewee has indicated the existence of potential corroborative evidence, trying to obtain it

Ultimately, you should exercise judgement - where you have reason to doubt the accuracy or reliability of an allegation, it is worth spending a little more time seeking corroboration than when all the circumstances indicate that it is sincere. If you have reservations about the allegation, it is likely that others will have them too, because they will have the same perspective as you, as presented 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.

2.3. Urgent cases

Remember that where you have genuine cause to believe that a person is in danger due to death threats or because they are being tortured or have disappeared and urgent action is needed, you should 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. EVIDENCE

There is no prescribed list of 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 that supports the specific case, and on the other, objective evidence that helps to show how the allegation fits into the overall picture. It pays to be creative and the possibilities are vast. Two forms of evidence, medical evidence and witness evidence, are of particular importance in the case of investigations into killings and will be addressed in detail, but 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. Film or video footage of a demonstration, attack or arrest, may be particularly useful in analysing what happened in a case and who is responsible for a killing. You may also find that national or international journalists have done investigations of their own into controversial matters such as unlawful killings and may be willing to assist you by sharing information.
- 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, 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 pattern of violations 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 - 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 killings are 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 that 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.

- Focused 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 killings 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 such

cases in the region. You can obtain information for such research from government reports and statistics, academic research, independent complaints bodies and investigative journalists.

3.1. Medical evidence

Medical evidence is probably the most important type of evidence that you can obtain and can add strong support to witness testimony. Technical procedures for medical personnel carrying out physical examinations on victims are described in a number of other specialised manuals and documents and will not be addressed in this handbook (see **Appendix I**). However, it is important for anyone wishing to report allegations of unlawful killings to understand the role of medical evidence, the difficulties it raises, and some very basic measures that may be taken to record and understand such evidence.

Predominantly, you will be dealing with forensic medicine to establish the causes and origins of injuries, which is a specialised field. In many countries, the same health professionals carry out both therapeutic and forensic functions, but where possible, you should seek the assistance of someone who has forensic skills and understands the distinction between the two forms of medicine.

It can assist with:

- Identification of the body
- Cause of death
- Time of death
- Manner of death
- Place of death
- Identification of the killer

Physical 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.

As a guide the following should be noted:

- Any obvious injury such as bullet holes, stab wounds, swelling, bruises, cuts, grazes or burns, shape and spread of blood stains
- Any deformity of shape or posture of the back or limbs

Establish:

- The **SITE, SIZE, SHAPE, COLOUR** and **TYPE** (cut, bruise, burn etc.) of any injury
- Make an estimate of size through comparison with a common object (but avoid using objects of variable size such as coins or an orange)
- If there were numerous injuries, indicate them on a body diagram (See **Appendix V**)
- 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 of the photograph is important
- 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 how they saw the injury being inflicted
- You should also keep a record of the conditions in which a dead 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)

3.2. Witness evidence

Witnesses are likely to be a CRUCIAL source of information. As the evidence of witnesses is so important, the training of personnel in interview techniques should form part of the preparation any NGO makes before attempting to document allegations. A thorough and complete guide is beyond the scope of this handbook. However, the following guidelines and suggestions are designed to be used as an aide memoire and are not intended to replace full professional training of personnel.

Remember that reports and witness statements can be obtained from a wide variety of individuals:

- the victim (in the case of death threats)
- the relatives, co-workers and friends of the deceased or missing person
- eye witnesses to a killing
- witnesses who can tell you something about the history of the event and/or the scene of the killing (e.g. co-detainees, people who were present during any part of the incident)
- medical and religious personnel who treated, examined or attended the deceased

Aims of interviewing a witness:

1. Find out everything the witness knows about a case
2. Gather sufficient information to evaluate a witness's reliability and credibility
3. Discover any additional witnesses or physical evidence, which the witness may know of
4. Obtain enough background information to enable the witness to be contacted in future
5. Have due regard and respect for the witness and use the ethical and security principles which underpin the documentation of human rights violations

3.2.1. General considerations

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

- Remember and act upon the security and ethical principles discussed in **Part I, Chapter 2** and any policies, which your organisation has adopted.
- Balance two important requirements: the need to obtain a useful account and the importance of respecting the needs of the person being interviewed.
 - ⇒ 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.
 - ⇒ However, it can be very difficult for a person who has already undergone a traumatic experience 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 or sensitive areas such as sexual abuse or rape. 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 and witnesses to be very stressful. They should be prepared to discuss their responses and feelings amongst themselves, and if necessary seek professional help.

3.2.2. Witness statements

Don't forget that the same principles of informed consent discussed in **Part I** apply to witnesses particularly when 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, depending on the circumstances. Remember never to name an individual without his or her consent. The purpose of witness statements is to help to understand exactly what took place, and they should, therefore, be as detailed as possible.

In addition, if you intend to initiate court proceedings at the national level, you will need a written statement. The statement should describe, in detail, the relevant facts known to the person. There is no particular format for such a statement, but it should be as informative as possible. 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.

A written statement describing the events and signed by the victim or other witness, particularly those 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.

Organisations often record such statements by asking the individual making the report, to fill out a standard questionnaire setting out the information required. Your organisation may find it helpful to draft one that is appropriate to your work.

3.2.3. Conducting the interview

You must not put words into the interviewee's mouth.

As a general guide begin with general or open questions (questions to which the answer is unlimited, e.g. "what did you see?", "what do you know about the incident?" rather than, "did you see him fire a gun?" or "did you know X well?"). Such questions may well invite longwinded answers, but ensuring that the content of the answers is spontaneous will enable you to evaluate the quality of the evidence you are being provided with. As the interview continues you can become increasingly specific and fill in general points that have been made by the witness.

3.2.3.1. Before you start

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

3.2.3.2. 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.

3.2.3.3. 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.

3.2.3.4. By whom should the interview be conducted?

Interviewing an individual, particularly a victim, about a horrific and frightening incident 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 in pairs, 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. The person who is not asking the questions at any particular moment should be responsible for keeping the notes.

3.2.3.5. 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 witness 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’ or become detached 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.

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

Interviews 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.

3.2.3.7. 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 2.3.1.** 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 2.3.1.**).
- Never name individuals who make allegations 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.

3.2.3.8. 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 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.

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

Interviews can be very sensitive and painful, but you can take steps to minimise the risk of re-traumatisation. 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
- 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

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

You should not put words in the interviewee's mouth. Always begin with general or open questions (questions to which the answer is unlimited, e.g. "what did you see?"), and then proceed with specific or closed questioning to tease out the detail that you need to make your account reliable and helpful.

- Avoid leading questions - these are questions which already suggest the answer you are looking for. It is important that the account given by the interviewee is his/her own, not yours
- Encourage the interviewee to use his or her own words
- Be aware that inconsistencies do not necessarily mean that an account 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

3.2.3.11. 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.

3.2.3.12. 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:

- Children may have been forced to witness the murder or ill-treatment of others, particularly parents or close family members. You should not underestimate the effects that 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
- Try to ensure that the child is provided with a support network after the interview

4. INVESTIGATIVE FRAMEWORK

4.1. Introduction

In this section we create an investigative framework to guide your approach to an alleged unlawful killing. In any scenario of documenting an unlawful killing, you should attempt to explore all the avenues, detailed in this section, as fully as possible. However, if you are not having any luck with some lines of enquiry, persevere with the case but note the reasons why you are having difficulties and aim to obtain as much other information as possible.

The investigation of the fact, causes and background circumstances of a death is a complex and multi-layered process. The death investigator’s “Golden Triangle” and “5 Ws” can assist you to understand it. These clarify the aims of an investigation, demonstrate the interdependence of all the evidence and the importance of the context of each piece of evidence. However, as a documenter of human rights violations, you are not only trying to document the evidence which fulfils the requirement of the “Golden Triangle” and answers the “5 Ws”, but you are also focussing on the state’s role in the fact, causes and reaction to the death.

The “5 Ws” also provide a quick guide to the questions that should have been answered by the state in the course of a full, fair, professional and independent investigation following a suspicious death. They will, therefore, help you to evaluate the state’s response to a death even if you find that your organisation is itself having to take steps to establish answers to some of these questions.

It is crucial not only to document the killing itself but also the state’s activities in responding to the killing (i.e. whether there was a thorough, competent, prompt and impartial investigation, an autopsy with public results, whether any agencies or suspects have been held to account and whether reparations have been provided to the victims.)

These are equally important aspects of a case when responding to an unlawful killing using the international system for the protection of human rights. All the information is needed for the mechanism to evaluate whether there has been a human rights violation and the exact nature of it. This is especially the case where the killing was not the responsibility of the state, but the state responded (or failed to respond) to a death in a way that did not meet international human rights standards. The specific context of the case you are dealing with will dictate how you approach the evidence gathering process and how easy it is for you to obtain all the relevant information. For example, if you have

TIP – Approaches to death investigations:

Goals of death investigation:

“ 5 Ws ”

Who – is the deceased?

When – was the time of death?

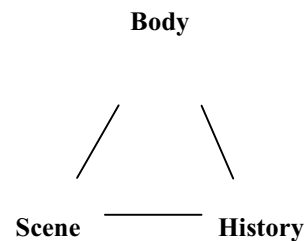
Where – was the place of death?

Why – the cause of death

hoW? – the manner of death

Investigation process:

“The Golden Triangle”



Each of these three elements is equally important in a death investigation. A failure in one area will likely lead to a failure in the investigation and each element needs to be examined in the context of the others.

access to the body you will be able to obtain evidence from it, if there is a public inquiry you will be able to attend.

This section goes on to provide more detail about how to approach establishing the facts, causes and background circumstances of a killing.

4.2. Basic facts about the killing

4.2.1. Who - is there a dead body and what is its identity?

You should aim to document the true identity of the victim(s) and any evidence of death. This may seem obvious but here are some examples of situations where establishing such facts can be difficult or impossible:

- You may be dealing with a case of multiple killings in a context where numerous people are reported missing, and there is neither evidence of their bodies, nor evidence of all the identity of all those missing.
- You may be dealing with a case of a death in custody where you may be clear about the identity of the victim but the body is in the hands of the state, so you may not have proof of death.
- You may have evidence of a death, e.g. a photograph of a decomposed body or a witness to a killing, but be unable to establish its identity.

**☛ TIP – Death threats /
Refoulement**

You may be dealing with a death threat in which case the person may be in hiding, and/or using an alias. Remember if you are dealing with such a case urgent actions cannot normally be taken without a name.

However in any event you should aim to document as many of the following as you can. Establishing some of the facts may help you to get answers to others:

- Full name, aliases, nicknames (and father's name - relevant to some cultures). This should include any alternative spelling of the name if it is originally written in a different script
- Gender (this may not be clear from the name alone)
- Date of birth/age
- Nationality
- Identity card number
- Occupation and/or activity (e.g. human rights, political etc.)
- Usual address
- Description of appearance - height, weight, left or right handedness, complexion, hair and eye colour, any unusual characteristics (scars, birthmarks, tattoos), state of nutrition, dental care, cleanliness
- Description of clothing, jewellery, personal effects
- A photograph - of the victim alive or indeed dead (these might help experts to interpret the injuries which may have caused the death)
- Some indication of the victim's state of health before being arrested or detained - medical records, witness accounts etc.

4.2.1.1. Sources of evidence:

Establishing the identity of a body may not be straightforward but there are procedures for establishing the identification (or correct attribution of a birth/legal name to human remains) which are well-established and universal in their application and governed by the international rules.

The expertise falls within the medical speciality of “forensic pathology” but other skilled professionals are also involved such as police, dentists, anthropologists and biologists. In addition, circumstantial evidence is crucial, e.g. witnesses to deaths and burials. Experts aim to establish “initial indicators” of identity through recognition of the body, recognition of clothes, documents and then, this information is cross-checked, using any information about the missing person, e.g. age, height, sex, with the physical knowledge of the corpse.

To establish the identity of the victim(s) and the fact of death there are the following potential sources of evidence:

- Death certificates – should give details of identity as well as proving the fact of death
- Autopsy reports
- Witness statements – visual identification by a close family member or person known to the deceased (ideally two visual identifications), statement by an examining physician who had access to the victim, eye witnesses to the killing, religious personnel allowed access to the body
- Photographs of the body
- Clothing and personal effects – may be hand-made or repaired by a living witness, or they may be worn in such a combination that it is highly unlikely to come across them in the same combination twice
- Property found on the body: photographs, identity cards, passports. Such items may be misleading. Do not automatically assume that such items belong to the corpse or that they reflect his/her true identity until they have been cross-checked with other facts about the missing person
- DNA testing
- X ray records and body uniqueness (e.g. curved spine, evidence of previous injury)
- Dental records (where they exist and are still available)
- Fingerprints (where they exist and are still available)
- Registration plate on a car

• TIP-

If you cannot obtain crucial documentation or reports, e.g. a death certificate, but you know they exist or should exist, then remember to tell the human rights mechanism. They will be able to ask for the documentation from the state and stand a better chance of obtaining it. It is, therefore, important to familiarise yourself with the law, regulations and procedures governing what should happen following a suspicious or reported death, so you know what steps the state should take and what documents should be available in the case you are dealing with.

4.2.2. When, where - the scene of the killing?

You should aim to provide the date, place and time of death as accurately as possible.

The time and place of death should have been established in the course of a post-death inquiry or investigation, e.g. at the autopsy. If these are difficult to establish then you know that the state is falling short of its duty to investigate the case effectively.

Killings can take place in any location, especially in countries where there is a widespread climate of violence. High-risk locations are those where demonstrations take place, where people are arrested (their homes, or the homes of loved ones), places of detention, places where people have gathered to

escape violence, e.g. churches. While the majority of such places will be familiar to those in the local area, it is fairly common for unacknowledged places of detention to exist also, or for mistreatment to occur during transportation to an official place of detention. You may be able to obtain evidence of the existence and location of such places from other detainees.

The location of the death should be identified as closely as possible by description, maps and sketch plans. You may need to establish the general location, (e.g. an address) as well as the specific location (e.g. the position of a body in a particular room in the address). It is usually extremely helpful to your understanding of a case to visit the location of the killing if it is safe to do so and will not disturb evidence, and then to establish the general and specific locations with:

- The grid reference
- The exact address
- A map of the area
- A sketch map of the location where the body was found (and possibly also of the building and room, if indoors)

The time of death can be extremely difficult or extremely simple to establish. This will depend on an enormous variety of factors: the number of witnesses, the general context (e.g. discovery of a mass grave), the amount of time which has elapsed since the death, the location of the corpse since the death (e.g. buried or not?), the state and amount of biological material which remains, and whether or not the state grants access to the corpse of the deceased. Like establishing identity, there are numerous scientific ways of establishing the length of time which has elapsed since a death and you would need a qualified forensic examiner to undertake such a study. Clearly forensic examiners can only do this work if they have access to the body. If you find yourself in a situation where you need this kind of help you should obtain assistance from a more experienced lawyer, NGO, independent investigative authority or international organisation who is working in the area.

4.2.2.1. Sources of evidence:

- Death certificate
- Inquiry or autopsy report
- Testimonial evidence from: eye witnesses; people who live in the area or know the location well; people who know the victim or had knowledge of the victim in the period prior to the killing; informants who may be responsible and/or know those responsible for the killing; if a death in custody, former or fellow detainees
- Site visit
- Photographic, video, closed-circuit televisual evidence
- Court records
- Media reports and photographs (times of broadcasts?)
- Custody and prison records, (records of admission and release in police stations and prisons - inconsistencies and gaps in such records are often a sign of an irregular practice)
- Police records of the operation, notebooks, internal investigation procedures
- Military records of operation

4.2.3. Why and how – cause and manner of death?

There are innumerable ways in which a person's life can be ended (causes) but it is necessary to identify the specific cause by retracing the origins of the death until no further questions can be asked. For example, a death was caused by a haemorrhage, which occurred because of an entrance wound,

which was caused by a gunshot. So you are aiming to identify the illness or injury which initiated the train of events which led to the death.

The manner is determined by the type of condition which has resulted in the death and the circumstances which led to that condition. These may be natural – the result of disease, or unnatural – in that it was caused by an external condition causing injury or poisoning (accidental, homicide or suicide). The manner of death cannot always be determined and will be classified as “undetermined.” Generally, if the manner of death involves any external condition it should be referred to a coroner or medical examiner performing the same function. The cause and manner of death should, therefore, be evident on the death certificate and any autopsy report. The degree of difficulty which you have establishing the cause and manner of death will illustrate whether the state is meeting its obligations to adequately and appropriately investigate the death. However, as we are focusing on deaths which take place during law enforcement and military operations, including those in custody, such deaths are largely likely to be homicides or possibly, in the case of deaths in custody, suicides.

Clearly in documenting the cause and manner of death you will be going some way towards exploring the circumstances which led to the death and, therefore, the nature of the state’s involvement in the death. Depending on the circumstances of the death, you may obtain a lot of detail about the state’s direct or indirect responsibility.

4.2.3.1. Sources of evidence for establishing cause and manner of death:

- Autopsy report
- Death certificate and/or coroner’s report – should provide the definitive answer
- Statements of medical staff, or medical records of the individual before they died
- Witnesses statements: eye witnesses or people who arrived on the scene soon afterwards
- Items found or scene at the scene, e.g. spent cartridges, knives, syringes, drugs, ropes or a noose, blood stains
- Toxicology reports (on levels of drug, poison, alcohol)
- Police records of operation, notebooks, documents from internal investigation procedures
- Custody records (records of admission and release in police stations and prisons - inconsistencies and gaps in such records are often a sign of an irregular practice)
- Military records of operation

4.3. History & circumstances of the killing

You should aim to establish a full and detailed chronological history of the individual victim and of the circumstances surrounding their death.

Exploring the history and circumstances of the killing may assist in establishing some of the answers to the “5 Ws” and conversely, answering the “5 Ws” may have provided a lot of information about the history and circumstances of the killing.

Such a wide-ranging survey of the surrounding facts may also lead you to establish who or, at least, which type or group of suspects have responsibility for the death. If this happens you should seriously consider obtaining advice from a more experienced NGO or an international organisation present in your area. Depending on the circumstances, you may wish to bring this to the attention of the prosecuting authorities in your country in order for them to take steps towards initiating a criminal prosecution.

Remember, all information gathered about the deceased person and the circumstances may be useful, do not discount any of it and keep of all records of it.

i INFORMATION BOX – Forensic testing

Forensic testing can reveal an enormous amount about a case. It should be carried out only by experienced and professional specialists. Such tests may, of course, be carried out by the state in the course of a police investigation or autopsy, so you may have access to reports. However, the state may not have the resources or personnel to carry out many of these tests. If your organisation feels there is a need to carry out one of these tests in order to establish a crucial point in the case, then we advise you to contact an experienced or specialist NGO or an IGO to ask for assistance (see **Appendix I**). Here we provide you with a summary of the main types of forensic test that can be carried out:

- Ballistics – determination of whether a bullet recovered at the scene, or from the victim, was fired from a particular gun or type of gun, e.g. one thought to be a murder weapon
- Blood – analysis can determine and compare blood types
- DNA – comparison of the DNA structure of body parts/fluids
- Engineers – examination of vehicles and tyre marks on roads to explain how a road traffic accident came about
- Fibre analysis - establishes the origins of fibres and compares different fibres
- Forensic anthropology – examination of skeletal remains to draw conclusions about height, age and sex etc.
- Forensic entomology – examination of insect life on a corpse to establish the time elapsed since death
- Forensic odontology – analysis and comparison of bite marks and teeth
- Forensic pathology – examination of all systems of the body to establish cause of death
- Handwriting analysis – comparison of handwriting and identification of whether the authors are the same
- Latent fingerprints – lifting and preservation of prints from physical evidence recovered and comparing with a suspect or a victim (for identification)
- Speech analysis – comparison of the acoustic properties of recorded speech with real speech
- Tyre tracks and shoe comparison – comparison of the marks left by tyres and shoes with the actual imprint
- Typewriter analysis – analysis of 2 samples of typewriting to see if they are the same

4.3.1. What you need to know about the deceased

Knowing a full picture of the deceased will assist you to establish the motivation of the killer and could provide clues about how, when and where they were killed:

- Job and occupational history
- Affiliations (political, human rights, criminal)
- Family background and history (draw a family tree detailing names and ages of relatives)
- Friends and associates (how long known to the deceased, nature of relationship)
- Places frequented (homes of relatives or friends, bars, shops, clubs, medical advice)
- Habits and routines
- Any known and recorded death threats made against the person, if so, when? how? to whom made? whether recorded? and how the state responded?
- Personal issues: drug or alcohol habits, debt, criminal convictions, any known “enemies”, whether these were known to carry any kind of weapon?

4.3.1.1. Sources of evidence:

- Autopsy report
- Witnesses to the death and the events leading to the death
- Family, friends, associates, colleagues of the deceased
- Religious or community leaders
- Medical records of the victim (whilst free and in custody)
- Police records, notebooks and documents from internal investigations
- Diary of deceased (work and personal)
- Property in the home, e.g. bank statements, personal letters, drug paraphernalia, weapons/arms, political material
- Tapes of telephone calls and answer phone or voicemail messages
- Records of attendance at a place of employment or education
- Community support groups, e.g. youth groups

4.3.2. The scene and the suspect(s)

There is an enormous amount of information that can be established about the scene of a killing and additionally, an enormous variety of sources of evidence. Using all the evidence that you gather, you should aim to document a chronological and consistent account of the death, which is as detailed as possible. You may also find that there are scenes other than the scene of death, which it is useful to visit and investigate in order to obtain a fuller history of the killing, such as, the victim's home, work-place or vehicle, the hospital where the victim was taken, news agencies, churches, abandoned vehicles. You should try to fill any gaps and, if you cannot, you should explain why, (e.g. because the authorities wouldn't tell which officers were on duty). The kinds of questions which need to be established about the scene are as follows:

- Who killed/apprehended the victim? - ideally the number of people? Identities and/or descriptions (age, height, clothing, hair colour)
- Were they part of a state or non-state agency? Be as specific as possible. Who were they answerable to, or who was controlling them?
- Which law enforcement, security force, military, or paramilitary unit did they belong to? and their name, rank and unit. (If not known then the following details can help with their identification)
- How were they dressed? - uniform or plain clothes? Give description
- What did they look like? – give a full description, 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?
- Was there a riot or disturbance? How many people were there? What kind of persons were they? How many state officials? Who were they? What were they wearing? Were they armed and, if so, what with?
- Was any form of restraint or crowd control used? What type and how was it used? Was there any warning?
- Were any others present who would have seen the general or specific incident? - if no detail is known, when and where was the last time the victim was seen and in whose company?
- Was s/he arrested? 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
- Was the victim armed, if so with what?
- Was the person taken into custody? Where was the person taken into custody? - home, street, place of worship, outside a military base

PART III – HOW TO DOCUMENT ALLEGATIONS OF UNLAWFUL KILLINGS

- Was there an attack on a group of people? Where were they? Why were they in a crowd? Had anyone asked them, or forced them, to gather together? What weapon(s) were used? Any evidence of who used it?
- What happened at the scene after the attack? Did the killers disappear? Did they take the body(ies)? Was the area roped off? Did anyone tamper with evidence?
- What happened to the bodies? Were they abandoned, if so, where were they found, by whom, how long after death? Was some attempt made to hide them, e.g. by burial or burning?

(Note- The method of control, arrest, 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 the identity of the perpetrators.)

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.

TIP - If you think the evidence you are gathering may lead to a criminal prosecution then you should consider obtaining further advice from a more experienced NGO, or an IGO, and/or reporting the matter to the prosecuting authorities. In such cases the evidence gathering process becomes crucial because the standard of proof for a successful prosecution is very high. Anything that could be interpreted as having affected or interfered with the evidence could undermine the prosecution's case. Although it is equally important to be sensitive when investigating and handling evidence in a human rights case, the standard of proof is not as stringent because no individual is at risk of being punished.

4.3.2.1. Sources of evidence:

- Witness evidence: eye witnesses; people who live in the area or know the location well; people who know the victim, or had knowledge of the victim in the period prior to the killing; informants who may be responsible and/or know those involved in the activities which resulted in the killing; if a death in custody, former or fellow detainees
- Photographic, video, closed-circuit television evidence (CCTV)
- Custody and prison records, notebooks (including notes of admission and release)
- Police records of the operation, notebooks, internal investigation procedures, records of ammunition use or records of use of force
- Maps and sketch maps (obtained through site visits)
- Physical evidence – anything of any importance found at the scene (ropes, spent cartridges, clothing, knives, documents)
- Forensic testing of physical evidence – (of any object which can provide information about the event e.g. weapons, area where attack took place)
- Fingerprint analysis
- Primer residue testing – test to examine for traces of material deposited on a person after the firing of a gun
- DNA testing
- Media reports
- Court records where hearings have taken place, which may include statements of any suspects, or others closely linked with the operation that resulted in the death

4.3.3. The general context

Allegations may be received in a wide range of contexts and places. It is also useful for the human rights mechanisms to be given some background material about the general context in which the suspected violation occurred so that they have an overall impression of the prevailing political, social,

economic and legal climate in countries where violations are taking place. You should aim to provide details about the prevailing political climate, its historical basis, whether there is a generalised atmosphere of repression (e.g. is there press censorship, freedom of religion etc.? is there corruption in public and private institutions? are governmental institutions accountable and transparent?).

You should aim to provide the main characteristics of the general contexts including:

- Situations of political unrest or generalised repression of human rights
- 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. Also, remember that during conflicts fear and intimidation is likely to be a great disincentive to civilians, who can be subject to persecution by both parties, to discourage them from offering support and assistance to the opposite party

4.3.4. Death in custody and non-custodial residential settings

Such deaths require a specific approach by the human rights documenter. It is clear that it may well be more difficult to obtain details about the scene of the offence and, indeed, the cause and manner of death. Given that the deceased was in the custody of the state at the time death occurred then the state has a clear duty to account for and investigate any death. It should establish the “5 Ws” and take any necessary action to deal with institutional failures and/or individual acts or omissions that contributed to the death. However, this also means that the victim’s family and the human rights activist is greatly dependent on any information provided by the state.

It may well be possible for the state to identify a suspected killer or a range of suspects quite easily, for example, by checking who was on duty at the time of death but the authorities may be extremely reluctant to give out such information. This section aims to give some guidance on the specifics of these types of cases.

PART III – HOW TO DOCUMENT ALLEGATIONS OF UNLAWFUL KILLINGS

Checklist – THE DEATH SCENE – Guidance for interviewing a witness

Witness Details

- Details of witness supplying information (name, address, date of birth, occupation)
- Date of interview with witness
- Date and time of witness's observations of scene
- Time of their arrival at scene
- Reason for their arrival at the scene

Questions for witness:

1. Location

Describe:

- The path taken to and from the scene
- Weather and light conditions
- Location of scene (describe as exactly as possible – use grid references if possible, consider sketch map and photographs)
- The scene itself (was it a street, a square, a transport point, an open space, what were the surrounding buildings, was it a residential or commercial area? etc.)

If inside a building:

- Type of building
- Layout and description of rooms in the building
- Entrance and exit points including windows – were they open? locked? damaged?
- Furniture and décor - location? disarray? damage? missing?
- Temperature and lighting?
- Mail and newspapers?
- State of food and drink left at scene?

2. People

Describe:

- ALL people present including the deceased (names; organisation – police, military, ambulance, fire personnel; clothing including description of uniform; all other identifying feature, e.g. sex, approximate age, height, appearance) - Give them "names" for ease of reference, e.g. Police X, Police Y, Victim A, Victim B etc.
- Locations and movements of all persons at the scene including the deceased (use sketch map)

People contd.

- Actions of all persons at the scene, including the deceased:
 - What did they do?
 - What did they say? Which language?
 - What was their demeanour and how did you know?
 - Were they armed? Describe the weapons.
 - Did they use their weapons? When and how?

After the apparent death:

- Did they touch anything?
- Did they move anything?
- Did they change anything?
- Did any other people arrive at the scene during or after the incident? – describe them, their locations, movements and actions?
- Was the scene barricaded off or protected? If so, when and how?

3. Vehicles

- Describe ALL vehicles at scene: identify them as exactly as possible (was there a registration plate, what were the numbers, colour, make and model of vehicle?)
- Describe who and what was in the vehicle
- Describe their location – moving or parked? (use sketch map)
- Describe their movements including which directions they arrived from and left in

4. Other

Description and location of:

- Marks on surfaces e.g. footprints, tyre marks, drag marks, blood – liquid/smears/spatters/spots? other body fluids?
- Evidence of use of weapons, e.g. empty cartridges, abandoned weapons or items which could have been used as weapons, e.g. ropes, razor blades (location and orientation)
- Other objects, e.g. broken glass, cigarettes and butts, bottles/glasses of alcohol, evidence of drug use - syringes, plastic bags, containers of medicines or illegal drugs
- Any distinctive odours, e.g. petrol, gas, perfume?
- Any other information which could possibly be relevant

4.3.4.1. Types of institution

In this section we give some detail about the types of institution where deaths can occur and some guidance as to the types of questions you may wish to explore when investigating a death which has taken place in such an institution.

- Police station lock-ups. When people are being held in custody before, they have been charged, they are usually held in a cell in a police station, or some other kind of lock-up, which is supervised by the police rather than the prison authorities. They may well be interrogated during this period by the officers who are investigating the matter for which they have been arrested. Following arrest, it is possible that prisoners could be intoxicated from drugs or alcohol, have mental or physical health problems, or any combination of these. They may have been detained by the use of force and may be injured. In addition, they may be at risk of torture and ill-treatment during the interrogation which could exacerbate medical conditions or cause injuries possibly resulting in death. The conditions and supervision of their detention at this time is absolutely crucial to ensure there is no harm inflicted upon them by police officers or other detainees and that they are protected from foreseeable self-harm or death from causes associated with a medical condition, or their alcohol or drug induced state. Certain groups may be particularly vulnerable to ill-treatment or lack of treatment whilst being held in police stations: members of minority groups, young prisoners, or those who are mentally ill.
- Institutions of long-term detention would include prisons (holding both remand, i.e. awaiting or under trial, 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, 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. You should also be open to the possibility of group ill-treatment, harassment and bullying, e.g. on the grounds of race or sexuality, or excessive use of force or brutality in response to disciplinary problems such as riots. You should also consider the steps taken by the authorities to prevent bullying and violence between detainees (which may even have been encouraged by the prison authorities, e.g. by requiring bully and bullied to share a cell or using certain detainees to “police” others) or to deal with situations like mass uprisings of prisoners. In addition, the state may have failed to take appropriate steps to obtain medical or psychiatric assistance for detainees or to monitor a detainee who was clearly a suicide risk (or left such a person in possession of the means to commit suicide).
- 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 and may include psychological abuse. A practice common to many children’s and psychiatric institutions, which gives rise to controversy is the use of restraints on residents. Lack of medical care, lack of nutritional food and bullying between residents may also be issues, which the state has caused or is failing to prevent. (NB- Remember that it is best for children to be interviewed by someone with at least some experience of working with children- see **Section 3.2.3.12** above).
- 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 the deportation of persons to countries where they are believed to be at risk of an arbitrary execution. 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 killed in order to establish a strong basis for not deporting them. You will need to ask about any previous threats or torture undergone by the interviewee or close relatives, and any other reasons to fear that there is a risk to the person. Remember that you should focus on current not prior risk.

When collecting allegations in camps for refugees and internally displaced persons, be aware that you may receive allegations about abuses which occurred prior to arriving in the camp, and 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.

4.3.4.2. Circumstances and location of detention

The history or context of the detention will inform the cause of death and whether it is possible to establish that there has been a human rights violation.

- 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 and killing in custody because it means that there is no external monitoring of the interrogation or detention process. Sometimes, the security forces only officially register the detainee once they have completed the initial interrogation.
- 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 killings as a means of instilling fear or intimidation in the community. Cases of disappearance involve violations other than the right to life (i.e. right to be free from torture, right to liberty and security of person) and the disappearance could also, itself, be found to amount to torture for the relatives of the victim.
- For secret or inaccessible 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.

4.3.4.3. Conditions of detention

Obtain as much detail as possible about the place in which the deceased was held, particularly the cell or place where they slept and any other rooms where they were taken, including for any interrogation. (Witnesses may themselves 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:

- What information was gathered and recorded about a detainee? Their age, medical conditions, mental state, level of intoxication or aggression towards others?
- The level of supervision: were they checked periodically, e.g. every 15 minutes, one hour, or not at all? Did the authorities ensure they were deprived of the means of self-harming or committing suicide? Did the authorities ensure they were in a cell where there was little risk of them attacking others or being attacked by others?
- 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?

- 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?
- The allocated room or cell: How long was the person held in there? What size was it? What were the walls, floor, ceiling, door made of? What shape was it? Was there anything unusual about it?
- 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?
- 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?

4.3.4.4. Sources of evidence:

- Witnesses – family members, lawyers, religious personnel & doctors who had visited the deceased, other prisoners/detainees, police and prison officers or other employees at the institution
- Records of admission and release in police stations and prisons (inconsistencies and gaps in such records are often a sign of an irregular practice)
- Custody records (all records made during the period when the person was in the institution)
- Medical records of the victim
- Court files
- Prosecution files
- Video or tape footage of custody areas
- Previous government or non-governmental reports on an institution or investigations into previous deaths
- Newspaper and media reports

4.4. The state's response

You need to provide an overview of what the state has done to regulate and respond to a report of a suspicious death or to a death threat. As the state is obliged to establish procedures which prevent unlawful deaths occurring, it is important to document whether those procedures exist and how they have been implemented in this particular case. Of particular importance is the duty upon the state to investigate an unlawful killing. This will involve obtaining some familiarity with the regulatory and legislative framework that applies to the work you are doing.

In cases where killings seem to be the responsibility of a private individual or non-state individual agency, it is particularly crucial to understand how the state has regulated their behaviour and what action it has taken following the death. This may be the only way of establishing that the state has some responsibility for the killing in human rights law.

You should aim to provide details (and ideally copies) of the law, procedures and regulations governing the following:

- Rules relating to procedures following a report of a suspicious death and deaths in custody (e.g. obligations to report to coroner, procedure for autopsies and inquests)
- The operation or situation in which the killing occurred (e.g. national police codes of conducts on use of force and firearms, custody rules, rules of engagement, prison rules, regulations for alternative care institutions)
- Complaints and internal disciplinary procedures of the relevant state agencies
- Laws, codes and statutes which allow for the criminal prosecution of unlawful killings
- Laws codes and statutes which allow for an individual or an agency to be sued for damages if they are responsible for a death
- Constitutional protections of the right to life and details of other human rights provisions or institutions (e.g. national human rights commissions or ombudsperson)
- Compensation provisions for victims of crimes or abuses of state power
- Amnesties, pardons, truth commissions or other inquiry mechanisms for those responsible for state killings

These documents should go some way towards enabling the human rights system to analyse whether the state has met some of its international obligations to regulate and prevent activity, which can lead to lethal force being used by the state or by private individuals or agencies. If your organisation has the time and resources you may find it helpful to establish a permanent library of such information. A useful and time-saving exercise would be to undertake an analysis of the regulatory framework and how it is implemented and to evaluate whether this is in line with the international human rights standards detailed in **Appendix IV**. Such an analysis could, itself, be provided to human rights reporting procedures to demonstrate a generalised pattern of violations through the failure to properly implement human rights obligations. Your analysis could then be used to support individual cases without having to repeat the same exercise. In each case you subsequently deal with, it will then be easier to establish whether it is the regulations themselves that fall short of international standards, or just the way they have been implemented or complied with.

However, you should also try to evaluate and document how the regulations have been applied in the circumstances of the particular case, unless you are dealing with a state where the regulatory system is so weak that it is not functioning. If this is the case, then explain that it is, and provide some examples of how it is not working, e.g. there are no facilities to preserve bodies and an insufficient number of doctors and facilities for autopsies to be routinely carried out.

You will need to know whether:

- the state has been notified of the death. If so, when, how, by whom? Is there any official record of this?
- steps were taken to make an inquiry into the death (to establish the “5 Ws”). What was done? Who by? When was it done?
- an autopsy was carried out. If so, who was notified of the results and where is the report?
- a police investigation was set up to recover evidence, and identify possible witnesses in order to identify and apprehend those involved with the killing?
- all the relevant expertise was available and used. If not, why not?

- steps were taken to bring any perpetrator before a court, or military or disciplinary tribunal. How long did the procedures take? What was the outcome? If not, what reasons were given for failing to do so?
- the victim's relatives were compensated for the loss. Did they receive an apology or any other form of reparation?
- if there were special circumstances (e.g. a death for which the LEOs or prison officers were clearly responsible), a special impartial investigation was set up
- there were internal investigations by the agencies responsible for the death. If so, what did they conclude? Were changes to policy and practice implemented as a result? If so, how? And if not, why not?
- there was a public inquiry into the situation which resulted in the killing. Was it acted upon by the government? If so, how? And if not, why not?
- there was a finding of a human rights violation by a national court. If so, did the state act upon it and change its systems? If so, how? And if not, why not?
- there was an investigation by an ombudsman. If so, what happened as a result?

Where the killing resulted from a generalised failure of the state to bring about law and order in a community, e.g. where there are many firearms in the hands of private citizens, or where there are communities which are dominated by gangs, you need to analyse what steps have been taken to draw the state authorities' attention to the situation and what steps they have taken to enforce the law. You will need to show that the state has failed to act in order to demonstrate that there is a human rights violation, e.g. a failure to investigate the killing effectively, a failure to prosecute the perpetrator, etc.

4.4.1. Sources of evidence

4.4.1.1. General legislation and regulations:

- Public or university libraries
- Court libraries
- Offices of individual lawyers
- NGOs
- IGO offices
- Media or journalists
- "Insiders", e.g. friendly police or military who will let you have copies
- Internet research

4.4.1.2. Documentation on the state's response in the individual case:

- Police records (receipts of reports made, name of officer responsible for the case, statements taken, police investigation file)
- Court papers and records (copies of court documents about the case)
- Letters from the police, court, government departments (to victims and witnesses)
- Witnesses: statements from victims of death threats, witnesses, relatives and friends of victims
- Autopsy reports
- Media reports about court cases, inquiries (investigative journalists may also have background information)
- Other NGOs who may be working on similar cases

SUMMARY

PART III – HOW TO DOCUMENT ALLEGATIONS OF UNLAWFUL KILLINGS

1. BASIC AIMS 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. EVIDENCE

You should always aim to provide as much supporting evidence as possible when submitting an allegation - 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.

Particularly important forms of evidence include:

- **Medical evidence:** Both physical and/or psychological
- **Witness evidence:** These could include relatives, co-workers and friends of the deceased or missing person, eye-witnesses to a killing, witnesses who can tell you something about the history of the event and/or the scene of the killing, medical and religious persons who treated, examined or attended to the deceased, or the victim him or herself in the case of death threats or attempted killing

Other types of evidence might include: media reports; expert reports; official reports and statements; any evidence of a pattern of violation in the country or region in question; focused research; copies of national judicial or administrative decisions.

3. OBTAINING WITNESS STATEMENTS

Interviewing an individual about a killing, particularly of someone close to them, 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)

4. INVESTIGATIVE FRAMEWORK

A **death investigation** should aim to answer the **5 W's**:

Who? – the identity of the deceased

When? - the time of death

Where? - the place of death

Why? – the cause of death

HoW? – the manner of death

In order to discover the facts, the **investigative process** should focus on **3 elements** (the “**Golden Triangle**”), both alone and in combination with each other:

The Body

The Scene

The History

In addition to investigating the facts of the killing itself, it is essential to examine the **state's response to the killing**. Unlike traditional death investigation, which is concerned with the criminal responsibility of individuals, an investigation into an alleged violation of the right to life must focus on the potential responsibility of the state, which may include not only direct responsibility for the death itself, but also a failure to protect, a failure to carry out an effective investigation or a failure to provide an effective remedy.

Detailed suggestions are made in the main text regarding the **types of questions that need to be asked** in order to obtain the required information, as well as **potential sources of evidence** for finding this information.

Ultimately, the **overall goal** of an investigation into a potential violation of the right to life must be to establish the responsibility of the state for the killing. An examination of the facts revealed by answering the 5 W's and analysing the “Golden Triangle” must answer the essential question:

Was the state responsible for the killing?

**PART III – HOW TO DOCUMENT ALLEGATIONS
OF UNLAWFUL KILLINGS**

**PART IV - 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

(Continued overleaf)

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

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

1. INTRODUCTION TO POSSIBLE COURSES OF ACTION

Once you have finished collecting your raw information, you will need to decide which is 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 that 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 IV, 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 general human rights situation in a country, or to patterns of human rights violations of a specific type

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 unlawful killings is very wide. The focus of the handbook 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 unlawful killings under international law. It is through these procedures 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 unlawful killings and obtain some form of remedy for the violation.

It is also important to remember, however, that there are additional sources of help, 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 V, Chapter 1.**

1.1.1. Range of international procedures

There are many different possibilities for action at the international level. There are mechanisms that were created by the United Nations and can examine the situation of countries throughout the world. There are others that were created within a regional organisation and can only act in relation to states within that region. There are mechanisms that were created to consider only matters relating to unlawful killings and others that are empowered to examine more general human rights issues,

including unlawful killings. The ways in which the mechanisms carry out their functions can vary quite widely from one 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 International Covenant on Civil and Political Rights sets out a number of obligations that States Parties must respect, and it has also created a supervisory body called the Human Rights Committee that 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 an unlawful killing 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 that have not been part of that agreement.
- Non-treaty mechanisms are those that 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 that 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 that 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 Extra-Judicial, Arbitrary and Summary Executions by a resolution. This means that the Special Rapporteur can examine and receive allegations about any state that 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 that 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.
- 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.

1.1.1.2.1. REPORTING FUNCTIONS

These 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. killings 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 that are considered a particular cause for concern.

1.1.1.2.2. COMPLAINT PROCEDURES

These 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 that 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 IV – 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	Compulsory
Human Rights Committee	√			United Nations	√			√	
Committee Against Torture	√			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 that exist at the international level, you need to consider:

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

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 that have been created by treaty are, as a rule, applicable only to those states that 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 that 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 that 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:

PART IV – RESPONDING TO THE INFORMATION COLLECTED

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 an unlawful killing	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 as there are countries in the world. This handbook does not aim to address them in any comprehensive way. For this reason, this section will merely introduce some of the courses of action that 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 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 a public official has killed 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 punishments 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 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 an unlawful killing by a member of the military could lodge a complaint with the appropriate senior officer who would, ideally, be in a position to initiate an investigation.

It is obvious that 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 an unlawful killing under military law could constitute a failure to investigate, 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 II, Section 3.1.3.**) 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 that 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. Human rights proceedings in national courts

If the country has incorporated human rights principles into its national legislation, e.g. through a Constitution, a Bill of Rights or through legislation which allows international treaties to be enforced in domestic courts, then a case could be taken to the appropriate court for a declaration of a violation in a particular case or pattern of cases. It is also possible that a claim for compensation could be made on behalf of the victim(s). Such actions may have to be taken to a specific court, e.g. a higher court, and arguments based on human rights principles may support applications in other types of cases.

1.2.4. Administrative proceedings

Examples of administrative remedies, which might be relevant to a victim of an unlawful killing, 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.

1.2.5. 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 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.

1.2.6. 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 some cases, the basis for showing that they are likely to be subject to persecution will be to show that they are at risk of being killed.

In such cases, the objective will not be to establish that the state, in which the person finds himself or herself, is responsible for an unlawful killing, but to demonstrate that a risk of death exists if they are sent back to another state. This will 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 (i.e. not that unlawful killings occur in that country)
- That the risk is ongoing (i.e. that this risk continues to exist)

Where the risk originates from non-governmental actors, it may be more difficult to establish, 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.

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 Extra-judicial, Summary or Arbitrary Executions has also intervened on occasion in such cases by sending an urgent appeal. None of these requests are binding, but they can cause embarrassment in the international community and are often complied with, at least temporarily.

1.2.7. 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 and killings.

Also, 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.

1.2.8. National human rights institutions

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 ombudsperson (or "Ombudsman") institutions and national human rights commissions, are concerned with current abuses. Others may have been established by the state or by an international organisation working in partnership with the authorities, such as truth commissions, and have the specific task of investigating past human rights violations 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 that 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.

1.2.9. Field offices of inter-governmental organisations

In some states, particularly in the aftermath of armed conflict, inter-governmental organisations, such as the United Nations, or the Organisation for Security and Co-operation in Europe, may establish field offices. These will have a variety of purposes which will be dictated by the mandate for their presence. They may be enforcing aspects of a peace agreement, establishing a commission of investigation into serious crimes or supporting the authorities in rebuilding the state after the conflict, in line with human rights principles. It is possible that they will employ field workers and/or human rights officers to make reports of cases and to advise on what action can be taken within the remit of the organisation and the context of the situation in the country.

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 respect 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**)
- Make urgent appeals (in some cases)

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 IV, 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 IV, 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 Extra-Judicial, Arbitrary and Summary Executions or Human Rights Committee

2. Who you are

the name and function of your organisation
e.g. Campaign for Kids, NGO working with street children

3. Which country the allegation relates to

4. The purpose or content of your information and if urgent action is required

e.g. 5 allegations of unlawful killings of human rights activists, indicating pattern of government abuse against its critics. All deaths in suspicious circumstances and in some cases, following reported death threats
or

Violation of Article 6 of ICCPR. Miss B to be deported to country X, where at risk of being killed. Had received 3 death threats from paramilitaries before leaving the country. All were reported to the police and ignored. There is other evidence of paramilitary involvement in killings in country X.
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 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 that 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 IV, 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 that 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 that 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 an unlawful killing has occurred, while at the same time remaining as concise and 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 violence. 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 that 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 incidents of unlawful killings 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

Instead you **should**:

- Use as many *examples* as possible.
- *Analyse* the individual allegations in order to demonstrate *patterns*, e.g. if you find that a lot of your allegations are about killings by riot police carrying firearms during political demonstrations, or about the deaths in custody in a particular police establishment, you could suggest that the allegations, taken as a whole, support a pattern - in these cases, victimisation of oppositionists, or failure to train the riot police in the lawful use of firearms OR the use of lethal force by a particular group of police officers.

Other apparent patterns, which might be of relevance, could include the activities of a particular military or police authority that result in unlawful killings; a high incidence of deaths of detainees

from a particular age, ethnic or social group; or consistent failure to investigate and/or prosecute officials for unlawful killings.

The aim is to show that certain types of killings, or types of victims, 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 4 for guidelines on the information to include on each individual allegation) • Any available supporting documentation? • A list of local organisations or persons that 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:

- **Number and name(s) of victim(s):** 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, place of origin 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 violent incident(s) 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 location of any incident, including the place of arrest, any place of detention and the place of the killing, if these are not the same.

- Alleged perpetrator(s): This should include the name and rank of the perpetrator if known, but at least the branch of the police, 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. If the allegation concerns non-governmental actors, provide information of how they relate to the state (e.g. co-operation with the state or tolerance of their activities).
- Details of the incident: The best approach is to describe the incident in as much detail as possible chronologically and with references to the existence of ALL supporting evidence. In this way, the international body will be able to determine for itself whether there has been a human rights violation. The details should include a description of the incident, any weapons used or other details of the manner of death, and the nature of the injuries that caused the death. For example, instead of saying ‘Mr. X was killed by a soldier’, which could mean just about anything, it is much more informative to say ‘Mr. X was shot by a soldier as he walked along High Street where he lives. The soldier was at a distance of about 10 metres and did not shout a warning. X fell to the ground and blood began to stain the back of his jacket. The autopsy showed that he had died of his injury at the scene’.
- Details of action taken following the incident: You should then provide a chronological and concise account of all the action taken since the death, and the state’s responses to these actions. You should state when, where and to whom incidents were reported, any details of actions taken, dates, details and outcomes of any legal or administrative proceedings, and any information about steps taken by the authorities to investigate the alleged violation of the right to life, to protect those under threat and to prevent similar incidents.
- General information: Where possible, you should provide copies, extracts or explanations of any legislation that relates to the implementation of the right to life, punishment, amnesty laws or other information about administrative or legislative structures which are incompatible with international legal principles or allow for impunity.

While there is a minimum amount of details that should be present, there is really no maximum to the amount of relevant details that can be included. What does relevant mean? Basically, it means anything that 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 unlawful killings, this includes information about what happened afterwards. Details which might be relevant and should be included, if known, include:

- Date of birth and sex 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
- Profession and/or activity (e.g. political, religious, trade union, humanitarian/human rights, etc.)
- Identity card number, issued by, date of issue
- Address or place of residence
- Nationality
- Race or ethnic group
- Did the victim make a complaint of death threats?
- Did the next of kin, or anyone else, report the matter to the authorities, when, where, to whom?
- If complaints and/or reports were 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 incident including references to supporting evidence ⇒ details of action taken following the incident ⇒ details of the state’s responses <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 that 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** 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 aspects of the treaty obligations about which you have information and explain how they are being implemented in the country. This ensures that you are addressing issues that the committee will be most interested in, and it helps you to identify the points that 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 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 that 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 4** for suggestions on how to describe the general background in a country.
- Try to suggest some questions that the committee might like to ask when considering the state report. This can help the committee to identify important areas of concern that 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 II**) 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 that 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 that 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 that need to be examined most closely.
- Identifying the areas, towns and/or specific institutions that 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 any institution that should be visited. Sometimes it may even be possible to construct a plan of the layout of the building.
- 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 places restrictions on the possibility of prosecuting state officials, or allows certain defences (such as “honour”) to be used in court which may not be legal in international law.
- 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 unlawful killings or failure to investigate suspicious deaths (e.g. a particular prisons commissioner in an area where there have been many deaths in custody, or the head of a military unit who has failed to take action on violations committed by soldiers in that unit), or because of any attempts on their part to address human rights violations (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 witnesses or relatives of victims 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 witnesses and next of kin** 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 that is not intimidating. 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 allegations, such as medical reports or judicial decisions.
- **Details of the people and institutions responsible for instituting investigations or complaints following an allegation of unlawful killing**, e.g. the name and location of a particular superintendent responsible for processing complaints against police officers, or the names and

locations of the particular officers in the Human Rights Commission or Ombudsperson's office responsible for following up reports of such incidents.

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 IV, 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 IV, 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 a life-threatening situation
- 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
- Take urgent action

Complaint procedures **cannot**:

- Fully 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. a deliberate killing by a state actor), but also through its omissions (e.g. failure to take effective steps to prevent a death or to investigate allegations). This means that an alleged violation covers more than the incident itself, and also includes the circumstances surrounding the incident. It should be noted that complaints brought under a general human rights 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 life, the rights to liberty and security of person, and 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 that 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 that occurred before the treaty entered into force** for the state concerned. For example, under Article 49 of the International Covenant on Civil and Political Rights and Article 9 of its 1st Optional Protocol (enabling it to accept individual complaints), the conventions come into force (become applicable) 3 months after a state has ratified them. This means that if State X ratifies the conventions on 31 March 2002, they will come into force for that state on 30 June 2002. The Human Rights Committee can then only examine complaints which are about events which occurred on or after 30 June 2002
- 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 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.

3.3.2.2.1. 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 that 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) that is:

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

If the existing domestic remedies do not fulfil these criteria, a victim may not have to exhaust them before complaining to an international body. However, the 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 case of unlawful killing has led to a grant of compensation from a particular mechanism. 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 also 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.

⇒ 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 that will help it to reach a decision. It is a practice that has not yet been accepted in the context of the UN mechanisms, which does not necessarily mean that it will not be developed in the future, but has been resorted to on a fairly regular basis by the European and Inter-American Courts of Human Rights.

An *amicus* brief is a written submission made by an interested third-party to the proceedings, i.e. by an individual, an organisation, or even another state 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 life threatening situation. There are three criteria that must be fulfilled when making an application for provisional measures in such cases:

- **Arguments** concerning the state's obligation of non-expulsion must have been made **before the domestic tribunals**
- The complaint must show that the individual is **personally at risk** of a life-threatening situation. It would be insufficient to argue that people, in general, are affected in the country in question - it must be shown that there are grounds to believe that this particular individual would be at risk 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 threatened 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 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:

- Details of the name, address and other communication details of you, and your organisation
- 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 IV, Chapter 2.2.2.** for an indication of the details which should be included)
- An indication as to how 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 next of kin or the victim (in a death threats case). (This must always be included if the person sending the communication is neither the victim nor his or her family)
- Death certificate
- 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
- Witness statements
- Autopsy reports
- Forensic reports
- Photographs
- Media reports
- General background information, e.g. NGO reports regarding general practices

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 languages within the OHCHR are English and French. The OHCHR, like many international organisations, has very limited resources. See **Part IV, Chapter 2.1.1.** 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 IV, Chapter 4.2.1.2.1.**). Some organisations that 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 V, Chapter 2.8.**). 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 II** 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 revised 1503 Procedure

4.2.1.1.1. HOW DOES THE REVISED 1503 PROCEDURE WORK?

The 1503 Procedure took its name from the number of the Commission on Human Rights resolution which created it. In 2000 it was revised following a review by the Commission. 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 OF: REVISED 1503 PROCEDURE

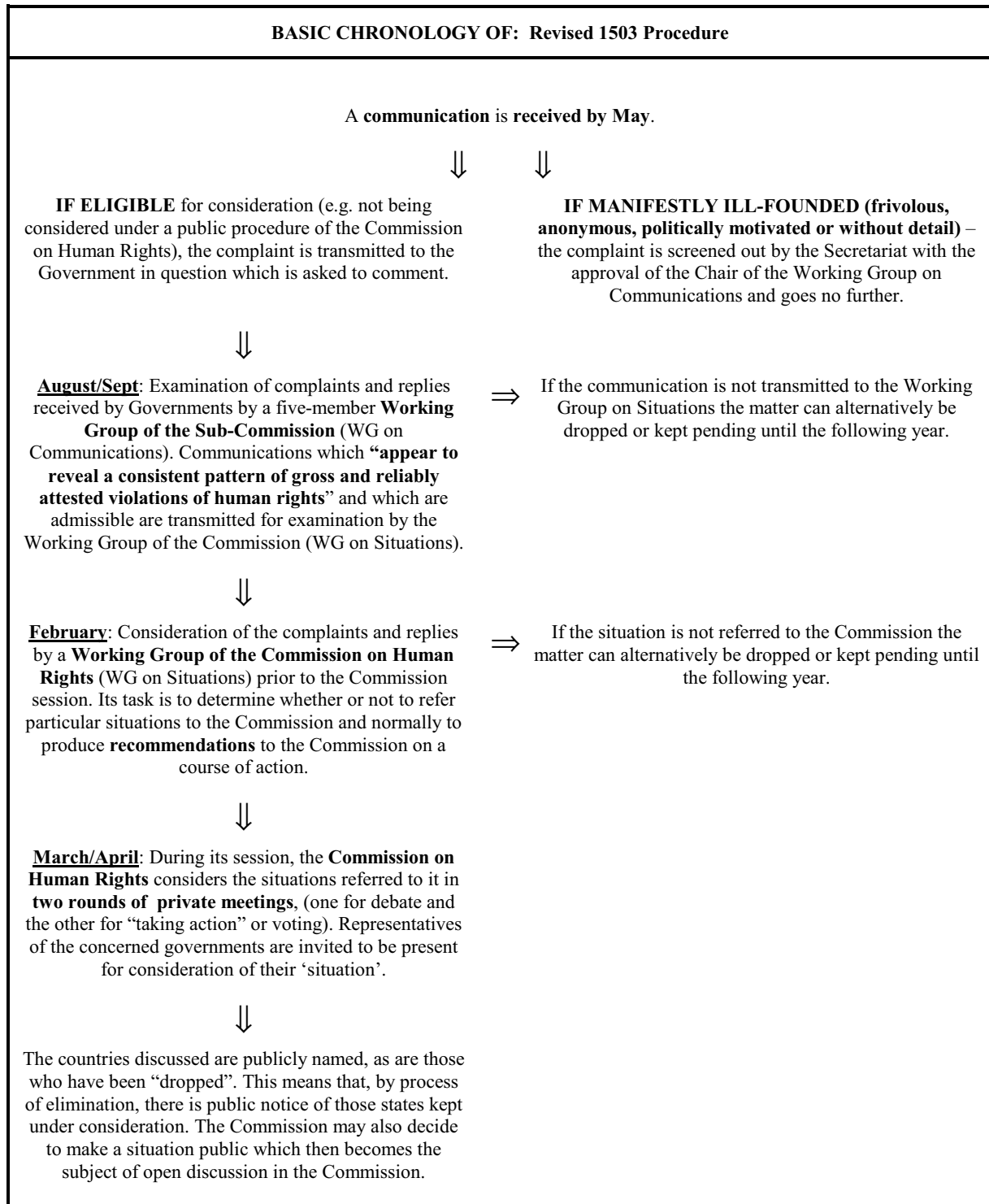


TABLE 8: BASIC FACTS: REVISED 1503 PROCEDURE

BASIC FACTS ABOUT: The Revised 1503 Procedure		
Origin:	How was it created?	By a 1970 resolution of the UN Economic and Social Council. (Revised by resolution of the Commission of Human Rights in 2000.)
	When did it become operational?	1972
Composition:	The revised 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 REVISED 1503 PROCEDURE?

The effectiveness of the revised 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 that 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 Commission. For those complaints and replies that 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 IV, Chapter 4.2.1.2.)

The revised 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 REVISED 1503 PROCEDURE CONTAIN?

A communication to the revised 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 it helps and it must, at least, be requesting action by the UN.

A communication to the revised 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 revised 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 killings).
- 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 IV, 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 IV, 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 August, you should make sure that it reaches the OHCHR by the beginning of May. Otherwise it will not be considered until the following August.
- The revised 1503 Procedure accepts communications by email, which the Human Rights Committee and the Committee Against Torture 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, the CERD or CEDAW, 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 allegations of unlawful killings is the Special Rapporteur on Extra-Judicial, Summary or Arbitrary Executions who will, therefore, be used as the basic example. It is important to remember, however, that s/he is only one of a number of special procedures to which such allegations 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 Extra-Judicial, Summary or Arbitrary Executions. 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 an unlawful killing you should send it to the Special Rapporteur on Extra-Judicial, Summary or Arbitrary Executions, 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 being a human rights activist. She is raped and dies in custody. Depending on the degree of detail available and the particular circumstances, this could potentially motivate action by the Special Rapporteurs on Extra-Judicial, Summary or Arbitrary Executions, Torture, Violence Against Women and Human Rights Defenders, 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 Extra-Judicial, Summary or Arbitrary Executions decides s/he cannot take action is one that another special procedure can, in fact, pursue. It is important not to focus exclusively on one procedure where others may also be competent. As the Special Rapporteur on Extra-Judicial, Summary or Arbitrary Executions must decide each case on its own facts, it is difficult to predict with certainty if s/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.

PART IV – RESPONDING TO THE INFORMATION COLLECTED

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, she or he 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 torture	The SR examines allegations of torture and other cruel, inhuman and degrading acts and investigates legislative and administrative measures taken by countries to prevent torture and to remedy its consequences whenever it occurs. Also s/he focuses on the ill-treatment of particular groups especially children and women. The SR also responds to credible and reliable information of individual cases that comes before her/him. S/he receives requests for urgent action, which s/he brings to the attention of the governments concerned in order to protect individuals who are at risk torture. S/he also conducts fact-finding visits. You should indicate if you wish the name of the victim to be 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 extra-judicial, summary or arbitrary executions	See below
SR on human rights defenders	This is a relatively new mandate which aims to receive, examine and respond to information on the situation and rights of those acting to promote human rights; to establish co-operation and conduct dialogue with governments and to recommend strategies to better protect human rights defenders. All reliable information can be brought to the SR's attention and those submitting allegations are encouraged to provide information regarding their own human rights work. You should indicate if you wish the name of the victim to be confidential.
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; SRSG on children in armed conflict; SRSG on internally displaced persons; SR on the human rights of migrants; SR on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; SR on the question of religious intolerance.	

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

4.2.1.2.2. SPECIAL RAPPORTEUR ON EXTRA-JUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS

TABLE 10: BASIC FACTS: UN SPECIAL RAPPORTEUR ON EXTRA-JUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS

BASIC FACTS ABOUT: The UN Special Rapporteur on Extra-Judicial, Summary or Arbitrary Executions		
Origin:	How was it created?	By a Resolution of Economic and Social Council 1982
	When did it become operational?	1982
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 on the occurrence and extent of summary and arbitrary executions. Expanded to include extra-judicial killings in 1992
	Functions	<ul style="list-style-type: none"> • Monitoring • Fact-finding

4.2.1.2.2.1. HOW DOES THE SPECIAL RAPPORTEUR ON EXTRA-JUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS WORK?

The job of the Special Rapporteur is to present to the Commission on Human Rights an accurate and comprehensive report as possible about the nature and extent of the practice of extra-judicial, summary and arbitrary killings throughout the world. In order to do this, s/he relies on information received from a variety of sources, including NGOs, individuals, intergovernmental institutions and governments themselves. These contain specific allegations of alleged unlawful killings and/or death threats and/or general information about issues related to the implementation of right to life. On the basis of this information s/he:

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

To give some idea of the breadth of the Special Rapporteur’s mandate and the types of allegations you can submit to this mechanism we provide below, a list of the violations of the right to life upon which the Special Rapporteur takes action:

- Genocide
- Violations during armed conflict especially of the civilian population and other non-combatants
- Deaths caused by security forces, paramilitary groups, death squads or other private forces co-operating with, or tolerated by, the state
- Deaths due to use of force by law enforcement officials when the force is inconsistent with the criteria of absolute necessity and proportionality
- Deaths in custody
- Death threats and imminent fear of extra-judicial executions
- Expulsion, refoulement or return of persons to a country or place, or prevention of asylum seekers from leaving a country where their lives are in danger
- Deaths due to acts of omission by the authorities including mob killings
- Breach of obligation to investigate alleged violations of right to life
- Breach of obligation to provide adequate compensation to victims and failure of governments to recognise compensation as an obligation
- Violations of the right to life in connection with the death penalty

Dialogue:

The Special Rapporteur's dialogue with a government can begin in one of two ways. If s/he believes that allegations s/he has received are credible, s/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 imminent risk of being killed. This includes cases of death threats or death sentences in contravention of limitations on the use of capital punishment. The appeal aims to prevent loss of life and this procedure can be used regardless of whether domestic remedies have been exhausted. Such appeals are non-accusatory in nature. The government is requested to ensure effective protection of those under threat or at risk of execution and urges full, independent and impartial investigation and adoption of all measures to prevent further violations of the right to life. S/he adopts no position as to whether or not the fear of death is justified.

Standard communications are transmitted to governments periodically and contain allegations concerning individual cases (individual allegations) in the form of case summaries. They request progress reports on the investigation of these cases and any prosecutions or reparations that have resulted.

Allegations concerning general trends are also communicated. Patterns and special factors contributing to the occurrence of unlawful killings in a country (general allegations), e.g. impunity or legislation which contravenes international standards, are reported to states with requests for adoption of measures to prevent recurrence.

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. Many of these remain unanswered. 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 prevent violations of the right to life.

Fact-finding:

The Special Rapporteur on Extra-Judicial, Arbitrary or Summary Executions also carries out fact-finding visits to obtain first-hand information. S/he does not have a right to visit any country of his/her choice, but must first obtain an invitation from the Government to carry out a visit. During the visit, the Special Rapporteur meets with victims, witnesses and relatives of victims, Government officials, NGO and IGO representatives. His/her objective is to obtain an understanding of the situation on the ground in order to formulate appropriate and useful recommendations. Following the visit, s/he produces a report in which s/he presents the conclusions s/he has reached about the scope of the problem 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 EXTRA-JUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS?

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

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

- Publicise the prevalence of unlawful killings 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, s/he **can** be used to:

- Publicise individual unlawful killings
- Make recommendations to governments in relation to individual incidents including recommending the prosecution of perpetrators
- Seek to prevent deaths of individuals who are considered at risk, e.g. by reporting death threats or requesting a stay of execution in death penalty cases
- 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 a life-threatening situation

S/he **cannot**:

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

4.2.1.2.2.3. WHAT SHOULD A COMMUNICATION TO THE SPECIAL RAPPORTEUR ON EXTRA-JUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS CONTAIN?

- If you would like the Special Rapporteur to take action concerning a **non-urgent individual incident** of an unlawful killing, you should follow the guidelines set out in **Part III, Chapter 2.2.2.** for the content of a standard communication and also use the standard form (see **Appendix III**) if at all possible.
- 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:
 - ⇒ you must show that there is a risk that death may occur. This means that you need to emphasise the factors which show that this risk exists: e.g. dates, times and origins of a death threat.
- There are no precise guidelines for submitting information for the Special Rapporteur to use in his/her **general allegations**. General allegations can be limited to the case of one individual, or a single incident, but they can also be based on a collection of individual incidents or on defective legislation or administrative systems. They are used to identify patterns of violation on the basis of consistent reports, and to express concern about specific factors which violate the right to life in a country. Examples of the patterns which may be demonstrated by general allegations include:
 - ⇒ Consistent reports that there are no prosecutions of state officials for alleged unlawful killings
 - ⇒ Consistent reports that a specific police station or branch of the security forces is responsible for deaths
 - ⇒ Consistent reports that members of a particular ethnic group are more likely to be killed
 - ⇒ Consistent reports that prisoners with life-threatening illnesses are refused medical treatment

- ⇒ A law permitting defences to be used to allegations of unlawful killings which are not consistent with international law
- ⇒ An amnesty law that prevents the prosecution of all state officials responsible for unlawful killings before or during specified dates

If you are trying to demonstrate a pattern of violations then the more cases you can collect to support your the allegation 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*

- Is it necessary to provide the identity of the victim?

In order for the Special Rapporteur to take action in an individual case and communicate the case to the Government then s/he ideally needs the identity of the victim and as much detail as possible. Cases of unidentified persons can be presented but only where the identity is not known to the source of the information but the allegation is still substantial and credible.

However if the case is presented to the Special Rapporteur only to illustrate the general situation in a country then the identity of the victim is not strictly necessary. These cases are generally obtained on field missions when the SR takes confidential testimony from witnesses and victims and uses the information, in his/her reports, to illustrate patterns of abuses or geographical concentrations of problems. Remember that these unidentified cases cannot be communicated individually.

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

The source of the cases is not reported to anyone but it helps the Special Rapporteur to know the source as it enables him/her to assess the credibility and reliability of an allegation. In addition where the Special Rapporteur receives information from the government or questions are raised about the allegation s/he will ideally go back to the source to verify the answers or to obtain further information.

- Will you receive any feedback about your submission?

You will not receive any acknowledgement of receipt of your submission. As the mandate is very busy it does not have time to engage in a dialogue with the source of the information. This is why it is so important to provide as much detail as possible. 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's mandate is to identify and monitor the ill-treatment of specific groups of persons. In recent years, s/he has focused particularly on refugees and internally displaced people, children, and the persecution of ethnic groups, women and sexual minorities. If you have information concerning any of these categories, or other identifiable groups, it would be important to send it to him/her.

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 violations of the right to life, in the specific

country for which they are responsible. In general, such rapporteurs will be appointed in relation to countries that have particularly serious human rights situations, including those caused by 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 unlawful killings 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, therefore, he or she should be included on the list of procedures to which the allegation should be circulated. So, for example, if the killing of the female human rights activist, mentioned previously, took place in a country for which there is a special rapporteur, e.g. Myanmar or Equatorial Guinea or Iran, s/he should also receive the information.

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

TABLE 11: COUNTRY RAPPOREURS (2001)

▪ Afghanistan (SR)	▪ East Timor (SG)	▪ Iraq (SR)
▪ Bosnia and Herzegovina and Federal Republic of Yugoslavia (SRCHR)	▪ Equatorial Guinea (SRCHR)	▪ Myanmar (SR)
▪ Burundi (SR)	▪ Federal Republic of Yugoslavia (see Bosnia)	▪ Occupied Arab Territories (SG, SR, & Special Committee)
▪ Cambodia (SRSG)	▪ Federal Republic of Yugoslavia (Kosovo) (SG)	▪ Somalia (IE)
▪ Cyprus (SG)	▪ Haiti (IE)	▪ Sudan (SR)
▪ Democratic Republic of Congo (SR)	▪ Iran, Islamic Republic of (SRCHR)	

KEY: SG = Secretary General, 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 unlawful killings may be made are the following:

- 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
- Committee Against Torture (CAT): supervises the UN Convention Against Torture

The most relevant for the purpose of these kinds of cases is the HRC, which is a well-established body dealing with a range of human rights including violations of the right to life. However, the other committees are very important where 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. Human Rights Committee

TABLE 12: 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 IV, Chapter 4.3.2.)

4.2.2.1.1. 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 to life (Article 6). 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 IV, Chapter 4.3.1.**)

See **Part IV, 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.

4.2.2.1.2. 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
- 25 copies of NGO reports should be provided if possible

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4.2.2.2. *Other Committees*

TABLE 13: 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) Discussions are currently ongoing regarding the possibility of adopting a protocol to the CRC which would allow individual complaints

TABLE 14: 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) Individual complaints (optional) (Optional Protocol to the CEDAW came into force on 22/12/2000) (see Part IV, Chapter 4.3.3.) Fact-finding through confidential inquiry procedure for gross and systematic abuses (Article 8 CEDAW)

TABLE 15: 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 IV, Chapter 4.3.2.)

TABLE 16: 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 IV, Chapter 4.3.4.)

Of these four committees, all currently function principally through the **state reporting procedure**. The CAT, CERD and CEDAW operate individual complaint procedures (**see Part IV, Chapter 4.3.3.**), and it is possible that the CRC will do so in the future.

You should refer to **Part IV, 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.

In addition, CAT and CEDAW operate a **confidential inquiry procedure** in cases of systematic abuses of the obligations in those Conventions. These can be instigated when “reliable information” of such abuses is received. Clearly the vast majority of sources of this type of information will be NGOs. If a state agrees then the inquiry can involve a fact-finding visit to a country during which it is useful for the Committee to meet with NGO representatives. The Committees will reach a conclusion about

whether a systematic abuse is taking place and make recommendations which are transmitted to the state who is invited to respond.

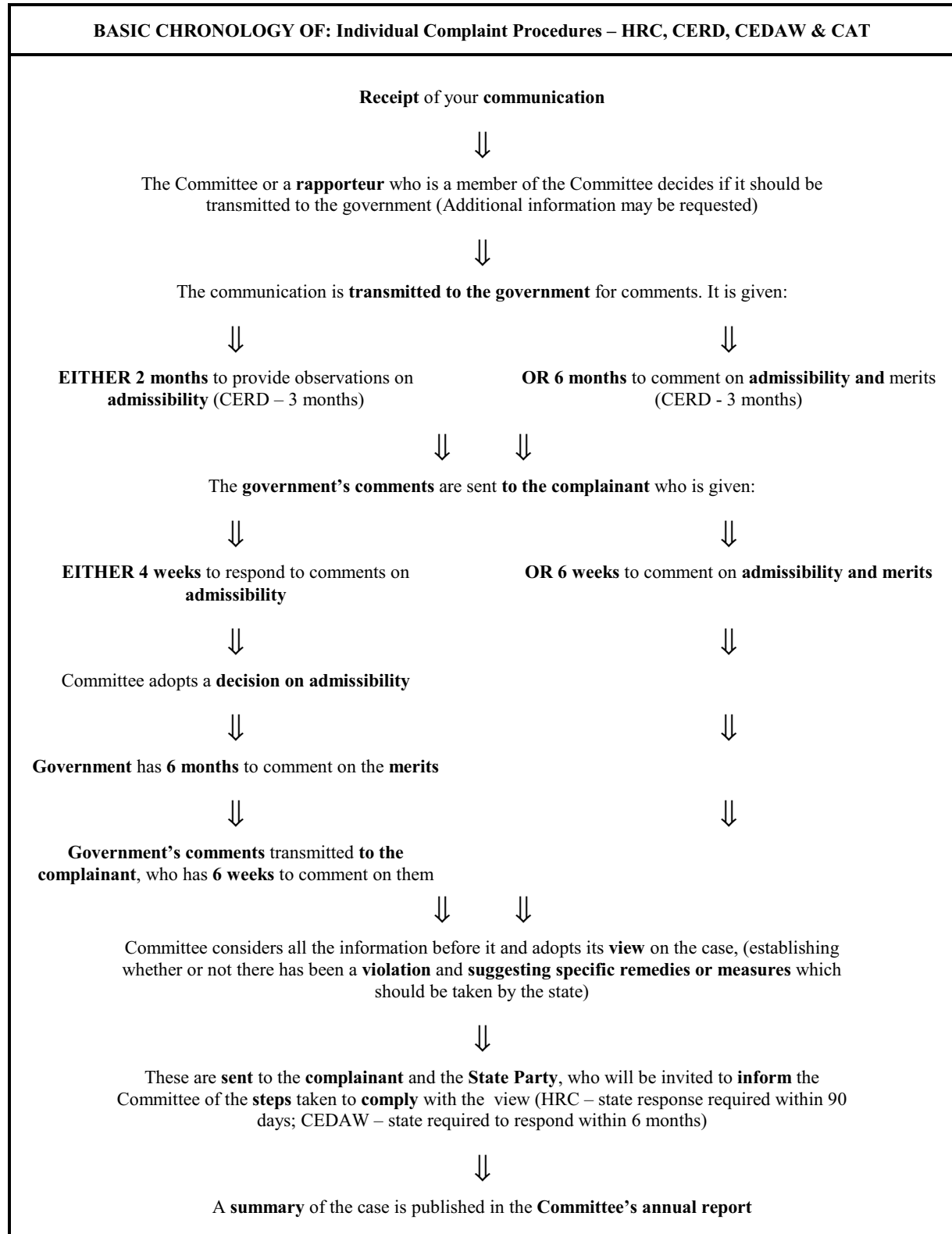
Such procedures have negative implications for a state, as they will only be initiated in very serious cases. Their use creates immense pressure for the state to act to rectify the situation and prevent further abuses.

4.2.2.2.1. 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

TABLE 17: BASIC CHRONOLOGY OF: INDIVIDUAL COMPLAINT PROCEDURES – HRC, CERD, CEDAW & CAT



4.3.1. Human Rights Committee

See **Part IV, Chapter 4.2.2.1.** for ‘Basic Facts: The Human Rights Committee’.

The basic chronology for the individual complaint procedure of the Human Rights Committee is as above. See **Part IV, Chapter 4.3.**

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

4.3.1.1. 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 18: 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</u> be 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 <i>amicus</i> 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.

4.3.1.2. *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 that 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 that prevent the Committee from examining cases that have already been examined by other bodies. You should, therefore, check the reservations to see if this applies in your case.
- Instead of appending a summary of its views to its annual report, the Human Rights Committee publishes its views.

4.3.2. CERD

See **Part IV, Chapter 4.2.2.2.** for ‘Basic Facts: The Committee on the Elimination of Racial Discrimination’.

The basic chronology for the individual complaint procedure of the Committee on the Elimination of Racial Discrimination is very similar to that for the HRC and CAT. See **Part IV, Chapter 4.3.1.**

See **Part IV, 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
- 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

4.3.2.2. *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

PART IV – RESPONDING TO THE INFORMATION COLLECTED

TABLE 19: 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/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 <i>amicus</i> 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

4.3.3. CEDAW

See **Part IV, Chapter 4.2.2.2.** for ‘Basic Facts: The Committee on the Elimination of Discrimination Against Women’. As the individual complaint procedures is still very new, details of how it will function in practice have yet to emerge. The rules of procedure adopted by CEDAW suggest that the basic chronology for the individual complaint procedure will be similar to that of the HRC, CAT and CERD. See **Part IV, Chapter 4.3.1.** See **Part IV, 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 state in question is not a party to the Optional Protocol (even if it is a party to the CEDAW)
- the communication is not submitted in writing
- the communication is anonymous
- the same matter has already been examined by the Committee or is being examined under another international procedure
- the communication is an abuse of the right of submission
- the communication is incompatible with the provisions of the Covenant
- domestic remedies have not been exhausted, except where the remedies are unreasonably prolonged or unlikely to bring effective relief
- it is manifestly ill-founded or not sufficiently substantiated
- the facts in question occurred before the state ratified the Optional Protocol

4.3.3.2. *Specific tips*

- Check that the state is a party to the CEDAW and the date it entered into force
- Check that the state is a party to the Optional Protocol
- Although CEDAW is a very widely ratified convention, few States Parties have so far ratified the Optional Protocol thereby accepting the individual complaints procedure
- Remember that this procedure will be run from the UN offices in New York NOT the OHCHR in Geneva. See address and contact details in Appendix II
- At the time of writing, the CEDAW had just adopted a communications form to guide complainants. It will be available in UN document E/CN. 6/2002/CRP.1, and on the website of the Division for the Advancement of Women, a reference for which can be found in the Appendix to this handbook.

TABLE 20: PRACTICALITIES OF USING INDIVIDUAL COMPLAINT PROCEDURE: CEDAW

PRACTICALITIES OF USING THE INDIVIDUAL COMPLAINT PROCEDURE: UN Convention on the Elimination of Discrimination Against Women	
Who can bring a case under this procedure?	An individual or groups of individuals claiming to be a victim of any of the rights in CEDAW. Communications submitted on behalf of such people, but proof of their consent must be provided, unless the author can justify acting without their consent.
Is there a time limit for bringing an application?	There is no formal time limit but it should normally be brought within a reasonable time (about six months) of the exhaustion of domestic remedies. In all cases, the alleged violation must have occurred after the entry into force of the State Party’s declaration accepting the procedure.
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 <i>amicus</i> briefs accepted?	These are not specifically 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. A request may be made to keep the names of victims or authors of communications confidential.
How long does the procedure take?	It is likely to take about two years, but this will become clearer once practice develops.
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; relevant documentation from organisations within the UN system and other bodies.
Are provisional or urgent measures available?	Yes. The Committee may transmit a request for a state to take interim measures to avoid irreparable damage to victims.

4.3.4. CAT

If you are considering sending information to CAT you could refer to **The Torture Reporting Handbook** by Camille Giffard that provides detailed guidance on the Committee’s work (see **Appendix II**).

See **Part IV, Chapter 4.2.2.2.** for ‘Basic Facts: The Committee Against Torture’.

The basic chronology for the individual complaint procedure of the Committee Against Torture is similar to that for the HRC and CERD. See **Part IV, Chapter 4.3.**

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

TABLE 21: 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 <i>amicus</i> 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

5. THE MECHANISMS AND PROCEDURES: REGIONAL

5.1. The European System

5.1.1. 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)

5.1.1.1. 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

5.1.1.2. 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

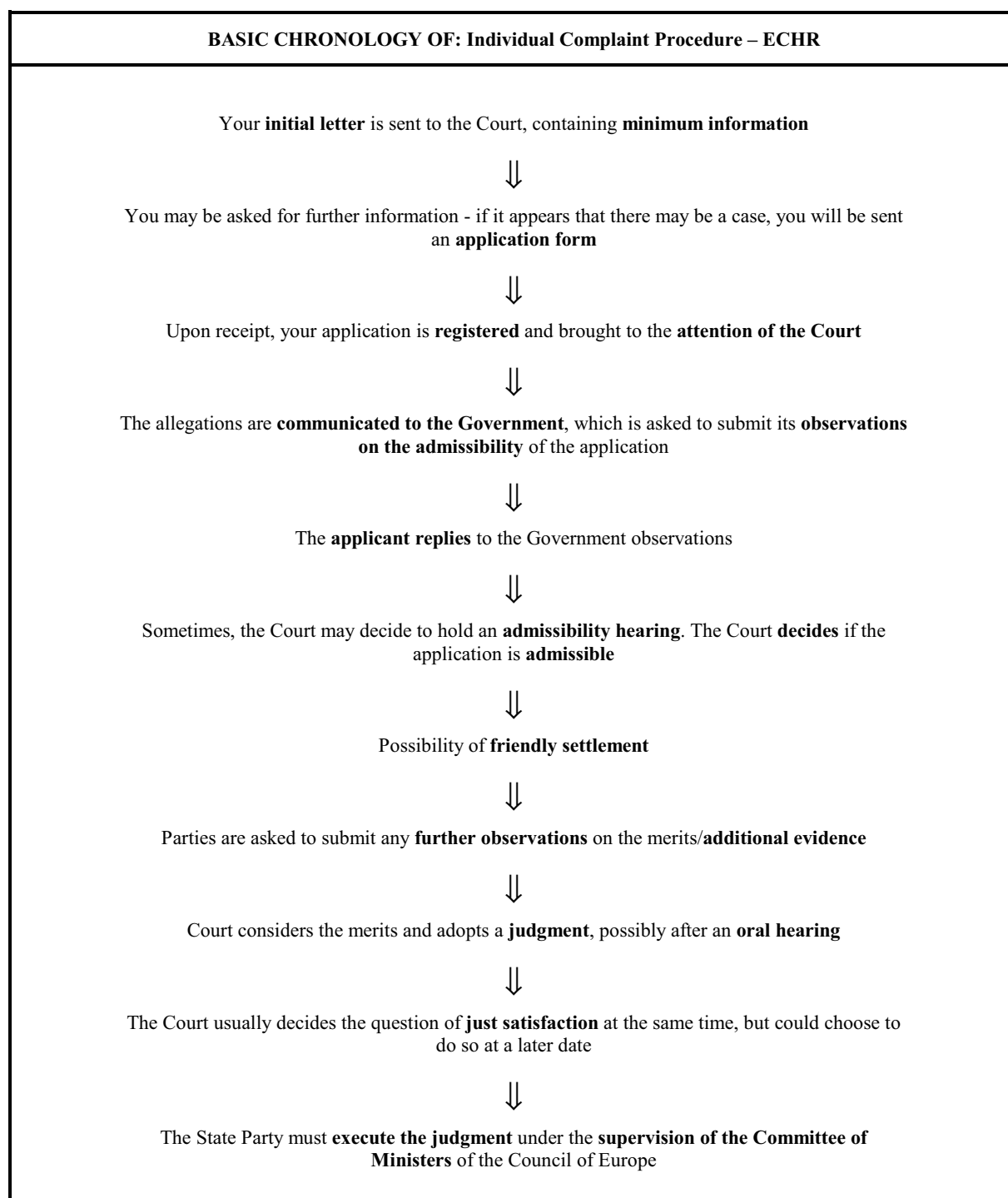


TABLE 24: PRACTICALITIES OF USING INDIVIDUAL COMPLAINT PROCEDURE: ECHR

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 where the victim cannot do so in person, e.g. where he or she has disappeared or is 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 <i>amicus</i> 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)

5.1.1.3. 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, at least, to 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)

5.1.2. The European Committee for the Prevention of Torture

TABLE 25: 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

If you aim to report a case of death, resulting from torture, to this Committee then we advise you to seek further detailed guidance from **The Torture Reporting Handbook** by Camille Giffard. For details of how to obtain a copy see **Appendix II**.

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 26: 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 27: 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 IV, 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 on Forced Disappearance of Persons petitions and communications can be processed by the the Commission in the usual way and in relation 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.

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

See **Part IV, 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 IV, 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, AND
- who has accepted the jurisdiction of the Court

5.2.2.1. What can you achieve by using this procedure?

The Inter-American Commission on Human Rights can:

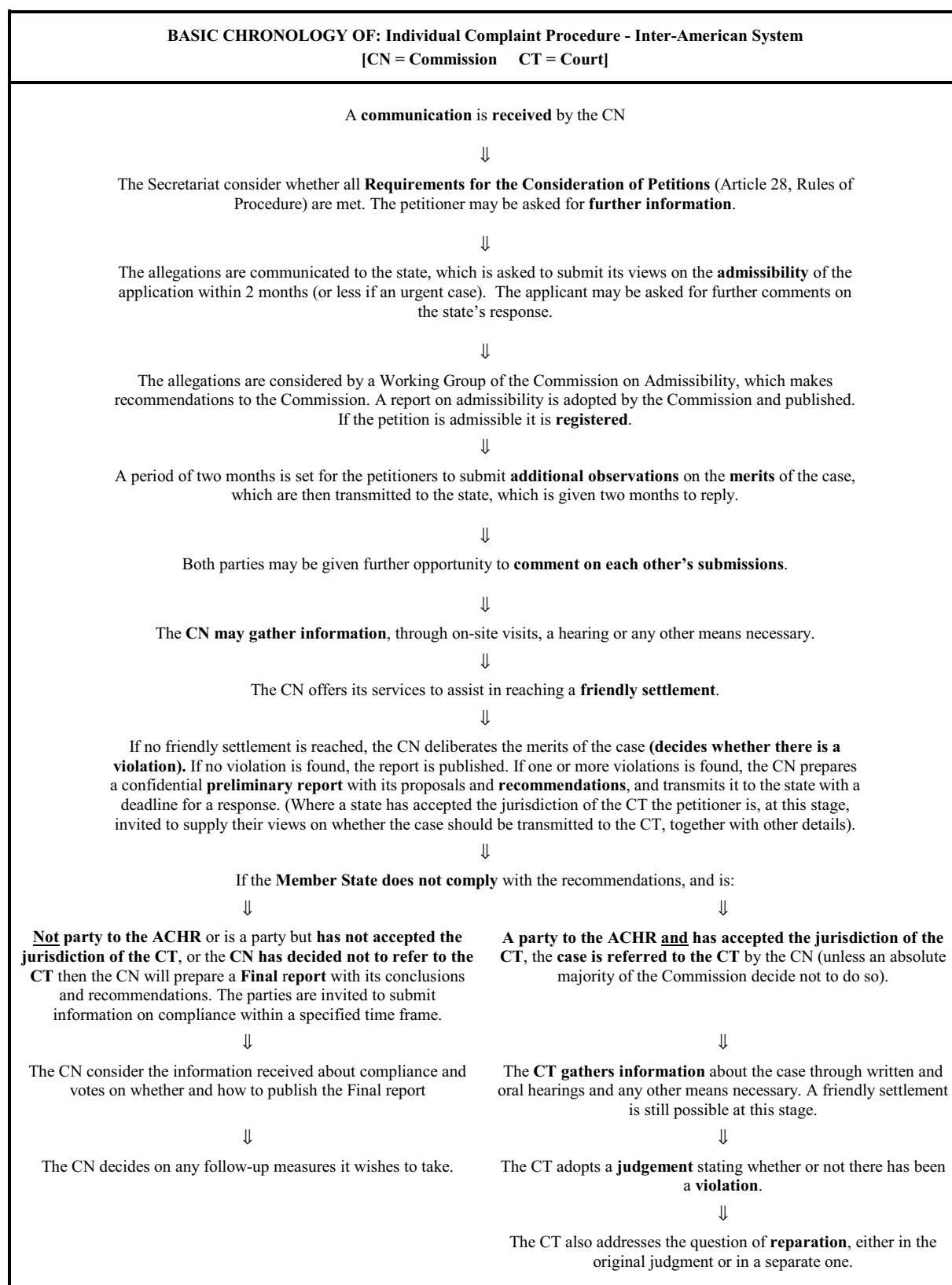
- Adopt conclusions in an individual case in the form of a report
- Make public its report where a state does not take adequate measures to comply with the conclusions
- Request that the government take precautionary measures in cases where irreparable harm to persons is likely
- Confidentially request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

PART IV – RESPONDING TO THE INFORMATION COLLECTED

TABLE 28: BASIC CHRONOLOGY OF INDIVIDUAL COMPLAINT PROCEDURE: INTER-AMERICAN SYSTEM



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 II, Chapter 3.2.3.** 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 II, Chapter 3.2.3.** 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 the Commission or a State Party

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)
- The Commission receives supervening information indicating the matter is inadmissible or out of order

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

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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.

- Check that you supply all of the details and information needed to meet the “requirements for the Consideration of Petitions” (Article 28, Rules of Procedure of the Commission).
- 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 29: 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 States, either on own behalf or on behalf of a third person.
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/her family
Do you need legal representation?	Not necessarily but it is advisable.
Is financial assistance available?	No
Are <i>amicus</i> 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, 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; 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 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.

In 1999 the African Charter on the Rights and Welfare of the Child was adopted, also under the auspices of the OAU. It establishes a Committee to oversee its implementation and to interpret its provisions.

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 30: 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)

TABLE 31: BASIC FACTS: AFRICAN COMMITTEE OF EXPERTS ON THE RIGHTS AND WELFARE OF THE CHILD

BASIC FACTS ABOUT: The African Committee of Experts on the Rights and Welfare of the Child		
Origin:	How was it created?	By the entry into force of the African Charter on the Rights and Welfare of the Child, Nov 29 1999
	When did it become operational?	Due to meet April 29 th -2 nd May 2002
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 the rights and welfare of children as enshrined in the Charter
	Functions	<ul style="list-style-type: none"> • Examination of state reports (Article 43, ACRWC) • Monitoring (Article 42, ACRWC) • Fact-finding (Articles 42 and 45, ACRWC) • Receiving communications, including from states (Article 44, ACRWC) and from individuals and NGOs (automatic) (Article 44, ACRWC) • Standard setting (Article 42, ACRWC)

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 IV, 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. *The African Committee of Experts on the Rights and Welfare of the Child*

5.3.1.2.1. FUNCTIONS

The African Committee will be able to:

- examine periodic state reports (Article 43, ACRWC)
- undertake research and investigations, using any appropriate method of investigation including fact-finding visits into any matter falling within the ambit of the Charter (Article 45, ACRWC) and make recommendations into these

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

5.3.1.2.2. SPECIFIC TIPS

- It is unclear exactly when the Committee will first meet but, no doubt, it will initially seek to establish rules of procedure governing the submission of information. Keep an eye on the relevant web-sites and publications for news of developments. (see **Appendix II**)
- The Committee has a mandate to work in any way that seems appropriate to ensure effective implementation of the Charter and can receive information from a broad spectrum of organisations. In its early stages it may be influenced by helpful and constructive suggestions as to how this work can best be done.

5.3.1.3. *Special Rapporteur on Extra-Judicial Executions in Africa*

TABLE 32: BASIC FACTS: SPECIAL RAPPOREUR ON EXTRA-JUDICIAL EXECUTIONS IN AFRICA

BASIC FACTS ABOUT: The Special Rapporteur on Extra-Judicial Executions in Africa		
Origin:	How was it created?	By a decision of the Commission in 1994
	When did it become operational?	1995
Composition:	How many persons is it composed of?	1
	Are these persons independent experts or state representatives?	Independent expert (member of Commission)
Purpose:	General objective	To examine the occurrence of extra-judicial killings in Africa with a special focus on restitution and impunity
	Functions	<ul style="list-style-type: none"> • Monitoring • Fact-finding

The Special Rapporteur on Extra-Judicial Executions in Africa is able to exercise its functions in relation to all States Parties to the ACHPR.

The SR can:

- Engage in **monitoring** with a view to identifying problem areas and making recommendations
- 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 SR include:

- Gross and systematic violations amounting to crime against humanity or genocide
- Impunity for those responsible for unlawful killings
- Failure by states to perform any investigation into allegations of unlawful killings
- Failure to compensate victims and next of kin

5.3.1.4. *Special Rapporteur on Prisons and Condition of Detention in Africa*

TABLE 33: 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 situations 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

You may also wish to address your complaint to this mandate if you are dealing with a case of someone who has died in custody. For further detailed guidance see **The Torture Reporting Handbook** by Camille Giffard. (For details of how to obtain a copy see **Appendix II**)

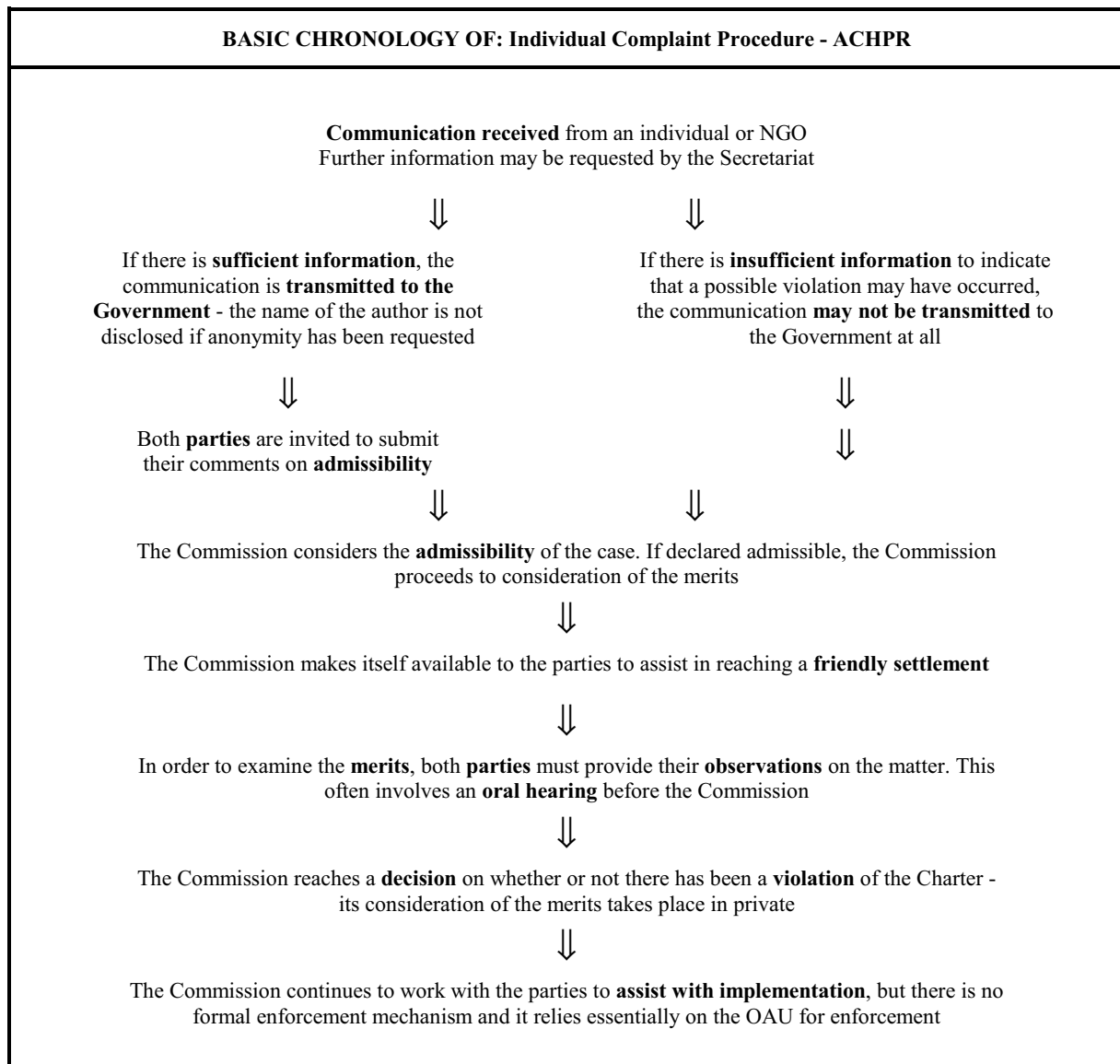
5.3.2. Complaint Procedures

5.3.2.1. *The African Commission on Human and Peoples' Rights*

TABLE 34: PRACTICALITIES OF USING INDIVIDUAL COMPLAINT PROCEDURE: ACHPR

PRACTICALITIES OF USING 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/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 <i>amicus</i> briefs accepted?	Any information that 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

TABLE 35: BASIC CHRONOLOGY OF INDIVIDUAL COMPLAINT PROCEDURE: ACHPR



5.3.2.2. 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

5.3.2.3. 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 whether the communication refers to serious or massive violations of human and peoples' rights.
- The exhaustion of domestic remedies is required if a domestic remedy is capable of offering the prospect of success and is also capable of redressing the complaint.
- 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 there is a 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.

5.3.2.4. African Committee on the Rights and Welfare of the Child

At the current time the procedures for taking complaints have not been established by this body. It is clear that communications can be received from any person, group or non-governmental, by the OAU, by a Member State, or the UN, on ANY matter covered by the Charter. (Article 44)

The Charter states that every communication should contain the name and address of the author "which will be treated in confidence". (Article 44 (1))

5.4. Other Regions

There are currently no other regions that 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 36: 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 cooperate?	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 not 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

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TABLE 37: COMPARATIVE EVALUATION II - CRC, CEDAW, SR-CHR AND 1503 (GENERAL)

	CRC	CEDAW			SR-CHR		1503
	SR	SR	IP	IC	COM	FF	COM
To what extent is the mechanism suited to:							4
⇒ Drawing attention to a situation?							
• Is the procedure public?	Y	Y	N	N	N	N	N
• Are its findings public?	Y	Y	?	?	Y	Y	no, but the list of states considered is
• Can the mechanism carry out fact-finding visits?	N	N	Y	N	N	Y	yes, but does not usually do so
• 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	Y	Y	yes, but on a confidential basis
• Is a state <u>legally obliged</u> to comply with those recommendations ?	N	N	N	N	N	N	N
• Do states <u>usually</u> comply with them?	varies	varies	?	?	varies	often	varies
• Does the mechanism have a follow-up procedure?	next report	next report	Y	Y	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	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	Y	
• Is a state <u>legally obliged</u> to comply with those recommendations ?	-	-	N		N	N	
• Do states <u>usually</u> comply with them?	-	-	?		varies	Regularly	
• Does the mechanism have a follow-up procedure for individual cases?	N	N	Y		opportunity for source to comment on state reply	can continue dialogue	
• Are urgent measures available?	N	N	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?	-	-	?		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; ? = not yet known as the procedure is newly established; Y = Yes; N = No

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TABLE 38: 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

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TABLE 39: COMPARATIVE EVALUATION IV - ACNHR AND SREJEA (GENERAL)

	ACNHR			SREJEA	
	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	reports to ACHPR	reports to ACHPR
• Can the mechanism carry out fact-finding visits?	-	Y	in relation to groups of complaints	Y but rarely does so	Y but rarely does so
• Are the findings of such a visit known to the public?	-	usually, but there can be long delays	can be	reported to ACHPR	reported to ACHPR
⇒ 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	Y
• 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	no evidence	no evidence
• 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	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		power rarely exercised	power rarely exercised
• 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		no evidence	no evidence

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

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TABLE 40: COMPARATIVE EVALUATION IV - CAT, HRC AND CERD (INDIVIDUAL COMPLAINT PROCEDURE)

	CAT	HRC	CEDAW	CERD
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	potentially	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	indication of action necessary to restore compliance
• Are states <u>legally obliged</u> to comply with the final decision ?	N	N	N	N
• Do states <u>usually</u> comply with it?	usually	varies	no evidence	varies
• Is there any way of enforcing the decision?	no, but may ask to be informed of any steps taken	N	request to report on steps in future state reports	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	N	N
• Do states <u>usually</u> comply with them?	usually	Y	no evidence	Y

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

TABLE 41: 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

SUMMARY

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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; human rights proceedings in national courts; administrative proceedings; disciplinary proceedings; asylum claims or national human rights commissions.

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 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**
- **The Committee Against Torture**

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

- **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)**
- **The Convention on the Elimination of Discrimination Against Women (implemented by the Committee on the Elimination of Discrimination Against Women)**
- **The Convention Against Torture (implemented by the Committee Against Torture)**

5. THE MECHANISMS AND PROCEDURES: REGIONAL

EUROPE:

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 African Committee of Experts on the Rights and Welfare of the Child**
- **The Special Rapporteur on Extra-Judicial Executions in Africa**
- **The Special Rapporteur on Prisons and Conditions of Detention in Africa**

The relevant **complaint procedures** 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)**
- **The African Charter on the Rights and Welfare of the Child (implemented by the African Committee of Experts on the Rights and Welfare of the Child)**

PART V - WHERE CAN YOU SEEK FURTHER HELP?

1. Why You May Wish To Seek Further Help

2. Some Specific Sources of Help

2.1. International Committee of the Red Cross

2.2. UN High Commissioner for Refugees

2.3. Field missions and visits

2.4. International Fact-Finding Commission

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

2.6. Professional associations and networks

2.7. Internet

2.8. Lobbying

1. WHY YOU MAY WISH TO SEEK FURTHER HELP?

Formal procedures before international mechanisms, set up for the sole purpose of assessing whether or not states are enforcing their obligations under international law, are not the only form of help to which you may turn, in response to allegations of unlawful killings. 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 (which could even save his or her life), or which may otherwise be of significance to the international bodies, you should, at least, consider a course of action which does not necessarily involve you personally, but ensures that the information is not wasted. A possible solution would be to pass on the information to another organisation or group that may be in a better position to follow it up. There are also organisations to which you can turn in order to obtain support and guidance, and which may advise you about the best course of action.
- It is important to remember that, whether or not any formal procedure is being used to seek a remedy, it may well be that the best assistance you can provide to a victim, witness or a person, who was close to the victim, is support and rehabilitation. Again, there are organisations that specialise in this area that you may wish to contact.
- An extremely effective, and generally speedier, complement to using the formal procedures is lobbying, particularly of the UN High Commissioner for Human Rights, 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 42: POSSIBLE SOURCES OF HELP

TYPE OF HELP	POSSIBLE SOURCE (See Appendix II 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 support and rehabilitation of witnesses and family and friends of the deceased	<ul style="list-style-type: none"> • International and national rehabilitation NGOs • UN Voluntary Fund for the Victims of Torture (for relatives of those who have died as a result of torture)
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 • Organisation of African Unity • Organisation of American States • Council of Europe • European Union

2. SOME SPECIFIC SOURCES OF HELP

2.1. International Committee of the Red Cross

The International Committee of the Red Cross (ICRC) is a neutral, independent and impartial humanitarian organisation which acts primarily in the context of armed conflict, but also in situations of internal violence. Its headquarters are in Geneva, Switzerland, but it has field delegations in many countries where its activities are required. It acts as a neutral intermediary between parties to a conflict.

Amongst its many functions, it works to protect civilian populations and combatants no longer taking part in hostilities. By gathering information in the field and informing the parties of unlawful acts committed against the local population, the ICRC tries to bring such practices to a halt and to trigger appropriate remedial action. ICRC delegates take both direct action in the field and also draw up confidential reports to the appropriate authorities. The recommendations they make to both governmental authorities and armed groups can range from issues related to the conduct of hostilities, to preventing summary executions. These reports highlight rules of international humanitarian law which must be observed in order to protect civilians and combatants from the effects of violence and to encourage respect for basic human rights.

The ICRC may take the initiative of evacuating particularly vulnerable individuals from a dangerous area, reuniting separated family members, arranging for the exchange of family messages, and providing medical supplies, water and food for those in need. The ICRC also maintains a regular presence in areas where individuals or entire communities are at risk of being attacked. Its delegates stay in close contact with all potential perpetrators of violence - whether regular army troops, rebel fighting units, and security or police forces.

The ICRC also carries out visits to places of detention where persons are held in connection with the armed conflict or internal violence, examines the conditions of detention and treatment and interviews detainees about their experiences in detention. It seeks access to all places of detention where detainees falling within their field of activity are held, as well as the opportunity to interview the detainees themselves in private and without witnesses. In return, the ICRC maintains absolute confidentiality about what it observes during such visits. Because of its special mandate and methods of work, the ICRC is often able to gain access to places of detention, 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 populations, 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. As a general rule, the ICRC will tend to act more readily in cases indicating a pattern, than in individual cases.

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. They 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.

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.

2.4. International Fact-Finding Commission

This body is established by international law of armed conflict (Protocol I to the Geneva Convention) to investigate grave breaches of the Geneva Conventions and to ensure compliance with ILAC. The Commission consists of 15 independent individuals elected by those states which recognise the Commission as a legal body. For more information contact the ICRC (See **Appendix II**).

2.5. 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 that act as a central point of contact for a network of smaller national NGOs. In general, in order to apply to become part of a network, national NGOs will be asked to explain their objectives, working methods, etc., and should be able to show that both they, and their information, are reliable. See **Appendix II** for examples of such organisations.

2.6. Professional associations or networks

You may find that you need advice or assistance on one particular aspect of your work that requires technical knowledge. In this respect you may find national and international professional associations of lawyers, doctors, forensic experts, or academics particularly useful to contact. They may well have individuals and/or committees working on particular issues like human rights or the development of forensic skills, which may be interested in your work and may be able to offer professional assistance.

If the associations in your country are weak or non-existent you could try to contact those working in other countries which may be more effective. (For addresses – see **Appendix II**)

2.7. Internet

Although we are aware that many readers of this handbook may not have regular or efficient access to the Internet we felt it worth emphasising the value of the Internet in human rights work. It has enormous potential to assist you, e.g.,

- It can be used to find out more about the standards and case law from the United Nations and other intergovernmental organisations
- You can obtain resources and advice about human rights work and guidance from the websites of NGOs, academics and the media
- You can find networks of organisations and individuals all working in human rights and you can make contact with people to ask their advice or obtain support
- You can use it to research cases and obtain to background material to strengthen allegations
- It can make it easier and cheaper to administer cases as you can email organisations with queries whilst you are preparing a case. This will improve your chances of submitting a case successfully first time

The Internet can be particularly useful if your country does not have a documentation centre or library where you can find useful and up to date human rights and legal materials.

See **Appendix II** for lists of websites.

2.8. 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 that will be able to help you and provide information on applying for permission to attend the sessions and how to make a written or oral submission. See **Appendix II** for contacts.

Other forums 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 V – WHERE CAN YOU SEEK FURTHER HELP?

1. WHY SEEK FURTHER HELP?

You may be reluctant to turn to the international mechanisms yourself, or need support and guidance, either for yourself or for friends or relatives of the victim or a witness. Where you do take action yourself, you may wish to strengthen or expedite the process through lobbying.

Organisations or bodies exist which may be able to **take action themselves on the basis of your information**, to provide you with **advice or support**, or to help with **victim support or rehabilitation**, while others may be receptive to **active lobbying**. Some specific sources of help include the International Committee of the Red Cross, UN High Commissioner for Refugees, inter-governmental field missions and visits, the International Fact-Finding Commission, international or national NGOs, and professional associations.

APPENDICES

- 1. Appendix I - List of Relevant Instruments**
- 2. Appendix II - Contact Details and Obtaining Further Information**
- 3. Appendix III - Standard Application Forms**
- 4. Appendix IV – International Law - Texts**
- 5. Appendix V - 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 unlawful killings to international bodies, or even 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. 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)

3. UNLAWFUL KILLINGS-SPECIFIC HUMAN RIGHTS INSTRUMENTS:

United Nations:

- Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions

4. INSTRUMENTS SPECIFIC TO DISAPPEARANCES AND CAPITAL PUNISHMENT**United Nations:**

- Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty
- Declaration on the Protection of All Persons from Enforced Disappearances

Organisation of American States:

- Inter-American Convention on the Forced Disappearance of Persons

5. 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

6. 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

7. 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

8. 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
- Optional Protocol to the 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

9. 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

10. INSTRUMENTS RELATING TO RELIGIOUS FREEDOM AND MINORITY RIGHTS:**United Nations:**

- Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief
- Declaration on Race and Racial Prejudice Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

11. INSTRUMENTS RELATING TO LAW ENFORCEMENT OFFICIALS:**United Nations:**

- Code of Conduct for Law Enforcement Officials
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials

Council of Europe:

- Declaration on the Police

12. INSTRUMENTS RELATING TO LAWYERS AND THE JUDICIARY:**United Nations:**

- Basic Principles on the Role of Lawyers
- Basic principles on the Role of Prosecutors
- Basic Principles on the Independence of the Judiciary

13. INSTRUMENTS RELATING TO THE MEDICAL PROFESSION:**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

Misc:

- See also the Principles on the Effective Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol) – drafted by an ad hoc coalition of professionals and human rights bodies and can be found in an Appendix to the 1999 Report of the Special Rapporteur on Torture (UN GA Doc A/54/426), 1 Oct 1999 on websites www.unhchr.ch or www.phrusa.org/research/istanbul_protocol

14. INSTRUMENTS RELATING TO REFUGEES, ASYLUM SEEKERS, STATELESS PERSONS & DISPLACED PERSONS:

United Nations:

- Convention relating to the Status of Stateless Persons
- Convention relating to the Status of Refugees
- Protocol relating to the Status of Refugees
- Declaration on the Human Rights of Individuals who are not Nationals of the Country in which They Live
- Representative of the Secretary-General on internally displaced persons (mechanism)

15. INSTRUMENTS RELATING TO HUMAN RIGHTS DEFENDERS:

United Nations:

- 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

16. INSTRUMENTS RELATING TO JOURNALISTS:

United Nations:

- Declaration on Fundamental Principles concerning the Contribution to the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racism, Apartheid and Incitement to War

17. INSTRUMENTS RELATING TO PEOPLE WITH MENTAL HEALTH PROBLEMS & OTHER FORMS OF MENTAL & PHYSICAL DISABILITY:

United Nations:

- Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care
- Declaration on the Rights of Disabled Persons
- Declaration on the Rights of Mentally Retarded Persons

18. OTHER RELEVANT INSTRUMENTS:

United Nations:

- 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
E-mail: achpr@achpr.gm

AFRICAN COMMITTEE ON THE WELFARE AND RIGHTS OF THE CHILD:

Kairaba Avenue, P.O. Box 673
Banjul, The Gambia
Telephone: +220-392962
Fax: +220-390764
E-mail: 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:

United Nations - Division for the Advancement of Women
2 UN Plaza, DC2-12th Floor
New York, NY 10017, USA
Telephone: +1 212 963 3000
Fax +1-212-963-3463
E-mail: daw@un.org
<http://www.un.org/womenwatch/daw/>

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 EXTRA-JUDICIAL EXECUTIONS 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 EXTRA-JUDICIAL, SUMMARY AND ARBITRARY EXECUTIONS (& ALL OTHER THEMATIC AND COUNTRY MECHANISMS):

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
 E-mail: 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
 E-mail: apt@apt.ch
<http://www.apt.ch/> (includes copies of many of their reports and studies)

FEDERATION INTERNATIONALE DES LIGUES DES DROITS DE L'HOMME (FIDH):

17 Passage de la Main d'Or
 75011 Paris, FRANCE
 Telephone : +33-1-43 55 25 18
 Fax : +33-1-43 55 18 80
 E-mail : fidh@csi.com
<http://www.fidh.imagnet.fr/>

WORLD ORGANISATION AGAINST TORTURE/ORGANISATION MONDIALE CONTRE LA TORTURE (OMCT):

International Secretariat
 PO Box 35 - 37 Rue de Varembe
 CH1211 Geneva CIC 20
 Switzerland
 Telephone: + 41-22-733 3140
 Fax: + 41-22-733 1051
 E-mail: omct@omct.org
<http://www.omct.org/>

Other International NGOs:**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/>

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 as contact details for national branches)

CEJIL:

1630 Connecticut Ave., NW, Suite 555
 Washington D.C. 20009 – 1053, U.S.A.
 Telephone + 1 202 319- 3000
 Fax + 1 202 319-3019
 E-mail cejil@igc.apc.org
<http://www.cejil.org/>
 For information about the Inter-American system.

CENTER FOR SUSTAINABLE HUMAN RIGHTS ACTION:

122 West 27th Street,
 10th Floor New York, NY 10001
 USA
 Telephone: + 1212-691-8020
 Fax: + 1253-390-0781
 E-mail: ceshra@ceshra.org
<http://www.ceshra.org>

FIACAT:

Fédération Internationale de l'ACAT
 27 rue de Maubeuge
 75009 PARIS
 France
 Telephone : +33-1-42 80 01 60
 Fax : +33-1-42 80 20 89
 E-mail : 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 COMMISSION OF JURISTS - CENTRE FOR THE INDEPENDENCE OF JUDGES AND LAWYERS (ICJ):

P.O. Box 216,
81A Avenue de Châtelaine,
1219 Geneva, Switzerland.
Telephone: +4122 979-3800
Fax: +4122 979-38-01
E-mail: info@icj.org
<http://www.icj.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 Varembé
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
<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
E-mail: phrusa@igc.apc.org
<http://www.phrusa.org/>

⇒ **Victim and witness support:**

ASSOCIATION FOR THE VICTIMS OF REPRESSION IN EXILE:

AVRE
125, re d'Avron
75020 Paris, FRANCE
Telephone: + 43 72 0777
Fax: + 43 72 21 87
E-mail contact@avre.org
<http://www.avre.org/>

INTERNATIONAL REHABILITATION COUNCIL FOR TORTURE VICTIMS (IRCT):

P.O. Box 2107
DK-1014 Copenhagen K
Denmark
Telephone: +45-33-76 06 00
Fax: +45-33-76 05 00
E-mail: irct@irct.org
http://www.irct.org

⇒ Professional Organisations:**INTERNATIONAL BAR ASSOCIATION
(IBA):**

271 Regent Street,
London, W1B 2AQ,
England
Telephone: +44 (0)20 7629 1206
Fax: +44 (0)20 7409 0456
<http://www.ibanet.org>

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.unhchr.ch> and click “Treaties.” Another useful human rights website for instruments AND case reports is that of the University of Minnesota, at <http://www1.umn.edu/humanrts/> and the Human Rights Internet on www.hri.ca and www.derechos.org - all 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 such as:

- 📖 “Basic Documents in International Law” Ian Brownlie (ed.) 4th edition, Clarendon Press, 1995.
- 📖 “Essential Texts on Human Rights for Police: A Compilation of International Instruments”, R. Crawshaw and L. Holmstrom, Kluwer, 2001.
- 📖 “Documents on the Laws of War”, Adam Roberts and Richard Guelff (eds.) 3rd edition, Oxford University Press, 2000.
- 📖 “International Criminal Law : a collection of international and European instruments” Christine van den Wyngaert (ed.) 2nd edition, Kluwer, 2000.

In all cases, do not forget to check if and when the state in question has ratified the treaty, and if it has made any reservations to it.

- Where can you find out more about documenting and investigating unlawful killings?

📖 “The Minnesota Protocol and Manual on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions” contains detailed provisions concerning autopsies and the examination of dead bodies. It is available through the OHCHR: (1991) UN Pub. Sales No. E.91.IV.1 (doc. ST/CSDHA/12).

📖 “The Istanbul Protocol and Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment” contains 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. The Protocol is available from the OHCHR and on its website.

📖 Groome, Dermot “The Handbook of Human Rights Investigations” Human Rights Press, 2001, (E-mail: Human-Rights-Press@hotmail.com) is full of useful detail on how to document human rights violations.

- 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, or that of the University of Pretoria Human Rights Centre <http://www.up.ac.za/chr/>

Alternatively, you could write to the organisation, contact another NGO or try to find them in a library. There are texts summarising the case law and comments of the courts or reporting it:

- 📖 “Law of the European Convention on Human Rights”, D. J. Harris, M. O’Boyle and C. Warbrick, Butterworths, 1995.
- 📖 Journals such as the ‘Human Rights Law Journal’ & ‘Human Rights Law Review’.

- Where can you find the **Torture Reporting Handbook** by Camille Giffard?

This handbook is also published by the Human Rights Centre at the University of Essex. It is available free of charge from the Human Rights Centre, University of Essex, Wivenhoe Park, Colchester, CO4 3SQ, U.K. Telephone +44 1206 872558, fax + 44 1206 873627. E-mail: hrc@essex.ac.uk.

Alternatively the complete document is available on <http://www.sx.ac.uk/torturehandbook/> or <http://www.essex.ac.uk/torturehandbook/>

- For further information on international human rights mechanisms see:

- 📖 “Guide to International Human Rights Practice”, Hurst Hannum, 3rd edition, Transnational Publishers, Ardsley, New York, 1999.
- 📖 “The Future of UN Human Rights Treaty Monitoring”, Philip Alston and James Crawford (eds.), Cambridge University Press, 2000.

- For more detailed information on international law relating to the right to life see:

- 📖 “Disappearances and Political Killings, Human Rights Crisis of the 1990s: A Manual for Action” Amnesty International, 1994.
- 📖 “The Right to Life in International Law” B. G. Ramcharan, Martinus Nijhoff, 1985.
- 📖 “The Treatment of Prisoners Under International Law”, Nigel S. Rodley, 2nd edition, Oxford Press, 1999, (Chapter 6).

- For more detailed information on the international law of armed conflicts see:

📖 Rogers, A.P.V “Law on the Battlefield”, Manchester University Press, 1996.
Or contact the ICRC or see their website – details above.

- For further information about the ICC and international criminal law see:

Websites:

International Criminal Court homepage: <http://www.un.org/law/icc/>

NGO Coalition for an ICC: website has links to all regional members and co-ordinators see www.igc.org/icc

International Criminal Justice Resource Centre, c/o Merrimack County Attorney’s Office, 4 Court Street, Concord, NH 03301, USA Telephone + 1 603-228-0529 FAX +1 603-226-4447. E-mail: info@internationaljustice.org Website: <http://www.internationaljustice.org/>

Or see,

- 📖 “International Criminal Law & Human Rights” Claire de Than and Edwin Shorts, Sweet & Maxwell, 2001.

3. APPENDIX III - STANDARD APPLICATION FORMS

PLEASE NOTE: Communications are considered even when they are not submitted in the form of a questionnaire.

MODEL QUESTIONNAIRE OF THE SPECIAL RAPPORTEUR ON EXTRA-JUDICIAL, SUMMARY, OR ARBITRARY EXECUTIONS

General Information:

The Special Rapporteur undertakes action in the following cases:

- (a) Violations of the right to life in connection with the death penalty. The Special Rapporteur intervenes when capital punishment is imposed after an unfair trial, or in case of a breach of the right to appeal or the right to seek pardon or commutation of sentence. S/he also intervenes if the convicted is a minor, a mentally retarded or insane person, a pregnant woman or a recent mother;
- (b) Death threats and fear of imminent extra-judicial executions by state officials, paramilitary groups, private individuals or groups co-operating with or tolerated by the Government, as well as unidentified persons who may be linked to the categories mentioned above;
- (c) Deaths in custody owing to torture, neglect or the use of force, or life-threatening conditions of detention;
- (d) Deaths owing to the use of force by law enforcement officials, or persons acting in direct or indirect compliance with the state, when the use of force is inconsistent with the criteria of absolute necessity and proportionality;
- (e) Deaths owing to attacks by security forces of the state, by paramilitary groups, death squads or other private forces cooperating with or tolerated by the government;
- (f) Violations of the right to life during armed conflicts, especially of the civilian population, contrary to humanitarian law;
- (g) Expulsion or refoulement of persons to a country where their lives are in danger;
- (h) Genocide;
- (i) Breach of the obligation to investigate alleged violations of the right to life and to bring those responsible to justice;
- (j) Breach of the obligation to provide adequate compensation to victims of violations of the right to life.

Address:

Reports of extra-judicial, summary or arbitrary executions may be transmitted to the following address:

Special Rapporteur on Extra-Judicial, Summary, or Arbitrary Executions

c/o OHCHR-UNOG, 1211 Geneva 10, Switzerland

Fax: (+41 22) 917 90 06

or E-mailed to: webadmin.hchr@unog.ch

Note: If any information contained in the questionnaire should be kept confidential please mark "CONFIDENTIAL" beside the relevant entry. Do not hesitate to attach additional sheets, if the space provided is not sufficient.

I. Identity of the person concerned:

Note: if more than one person is concerned, please fill out separate questionnaires for each person

1. Family name:
2. First name:
3. Sex: __ male __ female
4. Birth date or age:
5. Nationality(ies):

6. Civil status (single, married, etc.):

7. Identity document

Number:

Issued by:

Date of issue:

8. Profession and/or activity:

(e.g. trade union, political, religious, humanitarian/solidarity/human rights, etc.)

9. Address of usual residence

10. Is there a link to other cases/ persons? Please specify:

II. Information regarding the incident:

1. Date:

2. Place:

3. Time:

The nature of the incident:

Please describe the circumstances of the incident, including the following categories:

(a) death penalty, or fair trial guarantees, please detail (unfair laws or proceedings, charges, eventual appeals, execution is imminent, etc.)

(b) imminent violation of the right to life is feared (death threats, imminent expulsion or refoulement leading to a life-threatening situation, etc.), please detail

(c) others (death in custody, death during an armed conflict, death due to excessive use of force by law enforcement officials, death due to attacks by security forces of state, paramilitary or private forces, breach of obligation to investigate, etc.)

III. Forces believed to be responsible for the incident:

(a) if the perpetrators are believed to be state agents, please specify (military, police, persons in uniform or civilian clothes, agents of security services, unit to which they belong, rank and functions, etc.) and indicate why they are believed to be responsible; be as precise as possible:

(b) if an identification as state agents is not possible, why do you believe that government authorities, or persons linked to them, are responsible for the incident?

(c) if there are witnesses to the incident, indicate their names. If they wish to remain anonymous, indicate if they are relatives, by-passers, etc.; if there is evidence, please specify:

IV. Steps taken by the victim or his/her family:

(a) Indicate if complaints have been filed, **when**, by **whom**, and before **which organ**.

(b) Other steps taken:

V. Steps taken by the authorities:

(a) Indicate whether or not there have been investigations by the state authorities; if so, what kind of investigations? Progress and status of these investigations; which other measures have been taken (e.g. autopsy)?

(b) in case of complaints by the victim or its family, how have the organs dealt with them? What is the outcome of those proceedings?

VI. Identity of the person submitting the case:

1. Family name:

2. First name(s)

3. Status: individual, group, non-governmental organization, inter-governmental agency, government. Please specify:

4. Address (telephone, fax, E-mail):

5. Please state whether you want your identity to be kept confidential:

Date:

Signature of author:

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 – INTERNATIONAL LAW TEXTS

Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions Recommended by Economic and Social Council resolution 1989/65 of 24 May 1989*

Prevention

1. Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions.

2. In order to prevent extra-legal, arbitrary and summary executions, Governments shall ensure strict control, including a clear chain of command over all officials responsible for apprehension, arrest, detention, custody and imprisonment, as well as those officials authorized by law to use force and firearms.

3. Governments shall prohibit orders from superior officers or public authorities authorizing or inciting other persons to carry out any such extralegal, arbitrary or summary executions. All persons shall have the right and the duty to defy such orders. Training of law enforcement officials shall emphasize the above provisions.

4. Effective protection through judicial or other means shall be guaranteed to individuals and groups who are in danger of extra-legal, arbitrary or summary executions, including those who receive death threats.

5. No one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become a victim of extra-legal, arbitrary or summary execution in that country.

6. Governments shall ensure that persons deprived of their liberty are held in officially recognized places of custody, and that accurate information on their custody and whereabouts, including transfers, is made promptly available to their relatives and lawyer or other persons of confidence.

7. Qualified inspectors, including medical personnel, or an equivalent independent authority, shall conduct inspections in places of custody on a regular basis, and be empowered to undertake unannounced inspections on their own initiative, with full guarantees of independence in the exercise of this function. The inspectors shall have unrestricted access to all persons in such places of custody, as well as to all their records.

8. Governments shall make every effort to prevent extra-legal, arbitrary and summary executions through measures such as diplomatic intercession, improved access of complainants to intergovernmental and judicial

Such executions shall not be carried out under any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity or by a person acting at the instigation, or with the consent or acquiescence of such person, and situations in which deaths occur in custody. This prohibition shall prevail over decrees issued by governmental authority.

bodies, and public denunciation. Intergovernmental mechanisms shall be used to investigate reports of any such executions and to take effective action against such practices.

Governments, including those of countries where extra-legal, arbitrary and summary executions are reasonably suspected to occur, shall cooperate fully in international investigations on the subject.

Investigation

9. There shall be thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries. The purpose of the investigation shall be to determine the cause, manner and time of death, the person responsible, and any pattern or practice which may have brought about that death. It shall include an adequate autopsy, collection and analysis of all physical and documentary evidence and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.

10. The investigative authority shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige officials allegedly involved in any such executions to appear and testify. The same shall apply to any witness. To this end, they shall be entitled to issue summonses to witnesses, including the officials allegedly involved and to demand the production of evidence.

11. In cases in which the established investigative procedures are inadequate because of lack of expertise or impartiality, because of the importance of the matter or because of the apparent existence of a pattern of abuse, and in cases where there are complaints from the family of the victim about these inadequacies or other substantial

reasons, Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.

12. The body of the deceased person shall not be disposed of until an adequate autopsy is conducted by a physician, who shall, if possible, be an expert in forensic pathology. Those conducting the autopsy shall have the right of access to all investigative data, to the place where the body was discovered, and to the place where the death is thought to have occurred. If the body has been buried and it later appears that an investigation is required, the body shall be promptly and competently exhumed for an autopsy. If skeletal remains are discovered, they should be carefully exhumed and studied according to systematic anthropological techniques.

13. The body of the deceased shall be available to those conducting the autopsy for a sufficient amount of time to enable a thorough investigation to be carried out. The autopsy shall, at a minimum, attempt to establish the identity of the deceased and the cause and manner of death. The time and place of death shall also be determined to the extent possible. Detailed colour photographs of the deceased shall be included in the autopsy report in order to document and support the findings of the investigation. The autopsy report must describe any and all injuries to the deceased including any evidence of torture.

14. In order to ensure objective results, those conducting the autopsy must be able to function impartially and independently of any potentially implicated persons or organizations or entities.

15. Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation. Those potentially implicated in extra-legal, arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as over those conducting investigations.

16. Families of the deceased and their legal representatives shall be informed of, and have access to, any hearing as well as to all information relevant to the investigation, and shall be entitled to present other evidence. The family of the deceased shall have the right to insist that a medical or other qualified representative be present at the autopsy. When the identity of a deceased

person has been determined, a notification of death shall be posted, and the family or relatives of the deceased shall be informed immediately. The body of the deceased shall be returned to them upon completion of the investigation.

17. A written report shall be made within a reasonable period of time on the methods and findings of such investigations. The report shall be made public immediately and shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. The report shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based, and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The Government shall, within a reasonable period of time, either reply to the report of the investigation, or indicate the steps to be taken in response to it.

Legal proceedings

18. Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or cooperate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed.

19. Without prejudice to principle 3 above, an order from a superior officer or a public authority may not be invoked as a justification for extra-legal, arbitrary or summary executions. Superiors, officers or other public officials may be held responsible for acts committed by officials under their authority if they had a reasonable opportunity to prevent such acts. In no circumstances, including a state of war, siege or other public emergency, shall blanket immunity from prosecution be granted to any person allegedly involved in extra-legal, arbitrary or summary executions.

20. The families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time.

* In resolution 1989/65, paragraph 1, the Economic and Social Council recommended that the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions should be taken into account and respected by Governments within the framework of their national legislation and practices.

Code of Conduct for Law Enforcement Officials
Adopted by General Assembly resolution 34/169 of 17 December 1979

Article 1

Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

Commentary:

- (a) The term "law enforcement officials", includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention.
- (b) In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services.
- (c) Service to the community is intended to include particularly the rendition of services of assistance to those members of the community who by reason of personal, economic, social or other emergencies are in need of immediate aid.
- (d) This provision is intended to cover not only all violent, predatory and harmful acts, but extends to the full range of prohibitions under penal statutes. It extends to conduct by persons not capable of incurring criminal liability.

Article 2

In the performance of their duty, law enforcement officials shall respect and protect human dignity and maintain and uphold the human rights of all persons.

Commentary:

- (a) The human rights in question are identified and protected by national and international law. Among the relevant international instruments are the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, the International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Convention on the Prevention and Punishment of the Crime of Genocide, the Standard Minimum Rules for the Treatment of Prisoners and the Vienna Convention on Consular Relations.
- (b) National commentaries to this provision should indicate regional or national provisions identifying and protecting these rights.

Article 3

Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

Commentary:

- (a) This provision emphasizes that the use of force by law enforcement officials should be exceptional; while it implies that law enforcement officials may be authorized to use force as is reasonably necessary under the circumstances for the prevention of crime or in effecting or assisting in the lawful arrest of offenders or suspected offenders, no force going beyond that may be used.
- (b) National law ordinarily restricts the use of force by law enforcement officials in accordance with a principle of proportionality. It is to be understood that such national principles of proportionality are to be respected in the interpretation of this provision. In no case should this provision be interpreted to authorize the use of force which is disproportionate to the legitimate objective to be achieved.
- (c) The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender. In every instance in which a firearm is discharged, a report should be made promptly to the competent authorities.

Article 4

Matters of a confidential nature in the possession of law enforcement officials shall be kept confidential, unless the performance of duty or the needs of justice strictly require otherwise.

Commentary:

By the nature of their duties, law enforcement officials obtain information which may relate to private lives or be potentially harmful to the interests, and especially the reputation, of others. Great care should be exercised in safeguarding and using such information, which should be disclosed only in the performance of duty or to serve the needs of justice. Any disclosure of such information for other purposes is wholly improper.

Article 5

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.

Commentary:

- (a) This prohibition derives from the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly, according to which: "[Such an act

is] an offence to human dignity and shall be condemned as a denial of the purposes of the Charter of the United Nations and as a violation of the human rights and fundamental freedoms proclaimed in the Universal Declaration of Human Rights [and other international human rights instruments]."

(b) The Declaration defines torture as follows: ". . . torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted by or at the instigation of a public official on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he has committed or is suspected of having committed, or intimidating him or other persons. It does not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions to the extent consistent with the Standard Minimum Rules for the Treatment of Prisoners."

(c) The term "cruel, inhuman or degrading treatment or punishment" has not been defined by the General Assembly but should be interpreted so as to extend the widest possible protection against abuses, whether physical or mental.

Article 6

Law enforcement officials shall ensure the full protection of the health of persons in their custody and, in particular, shall take immediate action to secure medical attention whenever required.

Commentary:

(a) "Medical attention", which refers to services rendered by any medical personnel, including certified medical practitioners and paramedics, shall be secured when needed or requested.

(b) While the medical personnel are likely to be attached to the law enforcement operation, law enforcement officials must take into account the judgement of such personnel when they recommend providing the person in custody with appropriate treatment through, or in consultation with, medical personnel from outside the law enforcement operation.

(c) It is understood that law enforcement officials shall also secure medical attention for victims of violations of law or of accidents occurring in the course of violations of law.

Article 7

Law enforcement officials shall not commit any act of corruption. They shall also rigorously oppose and combat all such acts.

Commentary:

(a) Any act of corruption, in the same way as any other abuse of authority, is incompatible with the profession of law enforcement officials. The law must be enforced fully with respect to any law enforcement official who commits an act of corruption, as Governments cannot expect to enforce the law among their citizens if they cannot, or will not, enforce the law against their own agents and within their agencies.

(b) While the definition of corruption must be subject to national law, it should be understood to encompass the commission or omission of an act in the performance of or in connection with one's duties, in response to gifts, promises or incentives demanded or accepted, or the wrongful receipt of these once the act has been committed or omitted.

(c) The expression "act of corruption" referred to above should be understood to encompass attempted corruption.

Article 8

Law enforcement officials shall respect the law and the present Code. They shall also, to the best of their capability, prevent and rigorously oppose any violations of them.

Law enforcement officials who have reason to believe that a violation of the present Code has occurred or is about to occur shall report the matter to their superior authorities and, where necessary, to other appropriate authorities or organs vested with reviewing or remedial power.

Commentary:

(a) This Code shall be observed whenever it has been incorporated into national legislation or practice. If legislation or practice contains stricter provisions than those of the present Code, those stricter provisions shall be observed.

(b) The article seeks to preserve the balance between the need for internal discipline of the agency on which public safety is largely dependent, on the one hand, and the need for dealing with violations of basic human rights, on the other. Law enforcement officials shall report violations within the chain of command and take other lawful action outside the chain of command only when no other remedies are available or effective. It is understood that law enforcement officials shall not suffer administrative or other penalties because they have reported that a violation of this Code has occurred or is about to occur.

(c) The term "appropriate authorities or organs vested with reviewing or remedial power" refers to any authority or organ existing under national law, whether internal to the law enforcement agency or independent thereof, with statutory, customary or other power to review grievances and complaints arising out of violations within the purview of this Code.

(d) In some countries, the mass media may be regarded as performing complaint review functions similar to those described in subparagraph (c) above. Law enforcement officials may, therefore, be justified if, as a last resort and in accordance with the laws and customs of their own countries and with the provisions of article 4 of the present Code, they bring violations to the attention of public opinion through the mass media.

(e) Law enforcement officials who comply with the provisions of this Code deserve the respect, the full support and the co-operation of the community and of the law enforcement agency in which they serve, as well as the law enforcement profession.

**Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of
Offenders, Havana, Cuba, 27 August to 7 September 1990.**

Whereas the work of law enforcement officials * is a social service of great importance and there is, therefore, a need to maintain and, whenever necessary, to improve the working conditions and status of these officials,
Whereas a threat to the life and safety of law enforcement officials must be seen as a threat to the stability of society as a whole,

Whereas law enforcement officials have a vital role in the protection of the right to life, liberty and security of the person, as guaranteed in the Universal Declaration of Human Rights and reaffirmed in the International Covenant on Civil and Political Rights,

Whereas the Standard Minimum Rules for the Treatment of Prisoners provide for the circumstances in which prison officials may use force in the course of their duties,

Whereas article 3 of the Code of Conduct for Law Enforcement Officials provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty,

Whereas the preparatory meeting for the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Varenna, Italy, agreed on elements to be considered in the course of further work on restraints on the use of force and firearms by law enforcement officials,

Whereas the Seventh Congress, in its resolution 14, inter alia, emphasizes that the use of force and firearms by law enforcement officials should be commensurate with due respect for human rights,

Whereas the Economic and Social Council, in its resolution 1986/10, section IX, of 21 May 1986, invited Member States to pay particular attention in the implementation of the Code to the use of force and firearms by law enforcement officials, and the General Assembly, in its resolution 41/149 of 4 December 1986, inter alia, welcomed this recommendation made by the Council,

Whereas it is appropriate that, with due regard to their personal safety, consideration be given to the role of law enforcement officials in relation to the administration of justice, to the protection of the right to life, liberty and security of the person, to their responsibility to maintain public safety and social peace and to the importance of their qualifications, training and conduct,

The basic principles set forth below, which have been formulated to assist Member States in their task of ensuring and promoting the proper role of law enforcement officials, should be taken into account and respected by Governments within the framework of their national legislation and practice, and be brought to the attention of law enforcement officials as well as other persons, such as judges, prosecutors, lawyers, members of the executive branch and the legislature, and the public.

General provisions

1. Governments and law enforcement agencies shall adopt and implement rules and regulations on the use of force and firearms against persons by law enforcement officials. In developing such rules and regulations, Governments and law enforcement agencies shall keep the ethical issues associated with the use of force and firearms constantly under review.

2. Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms. These should include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. For the same purpose, it should also be possible for law enforcement officials to be equipped with self-defensive equipment such as shields, helmets, bullet-proof vests and bullet-proof means of transportation, in order to decrease the need to use weapons of any kind.

3. The development and deployment of non-lethal incapacitating weapons should be carefully evaluated in order to minimize the risk of endangering uninvolved persons, and the use of such weapons should be carefully controlled.

4. Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.

5. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

- (a) Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved;
- (b) Minimize damage and injury, and respect and preserve human life;
- (c) Ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment;
- (d) Ensure that relatives or close friends of the injured or affected person are notified at the earliest possible moment.

6. Where injury or death is caused by the use of force and firearms by law enforcement officials, they shall report the incident promptly to their superiors, in accordance with principle 22.

7. Governments shall ensure that arbitrary or abusive use of force and firearms by law enforcement officials is punished as a criminal offence under their law.

8. Exceptional circumstances such as internal political instability or any other public emergency may not be invoked to justify any departure from these basic principles.

Special provisions

9. Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.

10. In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.

11. Rules and regulations on the use of firearms by law enforcement officials should include guidelines that:

- (a) Specify the circumstances under which law enforcement officials are authorized to carry firearms and prescribe the types of firearms and ammunition permitted;
- (b) Ensure that firearms are used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm;
- (c) Prohibit the use of those firearms and ammunition that cause unwarranted injury or present an unwarranted risk;
- (d) Regulate the control, storage and issuing of firearms, including procedures for ensuring that law enforcement officials are accountable for the firearms and ammunition issued to them;
- (e) Provide for warnings to be given, if appropriate, when firearms are to be discharged;
- (f) Provide for a system of reporting whenever law enforcement officials use firearms in the performance of their duty.

Policing unlawful assemblies

12. As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.

13. In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.

14. In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.

Policing persons in custody or detention

15. Law enforcement officials, in their relations with persons in custody or detention, shall not use force, except when strictly necessary for the maintenance of security and order within the institution, or when personal safety is threatened.

16. Law enforcement officials, in their relations with persons in custody or detention, shall not use firearms, except in self-defence or in the defence of others against the immediate threat of death or serious injury, or when strictly necessary to prevent the escape of a person in custody or detention presenting the danger referred to in principle 9.

17. The preceding principles are without prejudice to the rights, duties and responsibilities of prison officials, as set out in the Standard Minimum Rules for the Treatment of Prisoners, particularly rules 33, 34 and 54.

Qualifications, training and counselling

18. Governments and law enforcement agencies shall ensure that all law enforcement officials are selected by proper screening procedures, have appropriate moral, psychological and physical qualities for the effective exercise of their functions and receive continuous and thorough professional training. Their continued fitness to perform these functions should be subject to periodic review.

19. Governments and law enforcement agencies shall ensure that all law enforcement officials are provided with training and are tested in accordance with appropriate proficiency standards in the use of force. Those law enforcement officials who are required to carry firearms should be authorized to do so only upon completion of special training in their use.

20. In the training of law enforcement officials, Governments and law enforcement agencies shall give special attention to issues of police ethics and human rights, especially in the investigative process, to alternatives to the use of force and firearms, including the peaceful settlement of conflicts, the understanding of crowd behaviour, and the methods of persuasion, negotiation and mediation, as well as to technical means, with a view to limiting the use of force and firearms. Law enforcement agencies should review their training programmes and operational procedures in the light of particular incidents.

21. Governments and law enforcement agencies shall make stress counselling available to law enforcement officials who are involved in situations where force and firearms are used.

Reporting and review procedures

22. Governments and law enforcement agencies shall establish effective reporting and review procedures for all incidents referred to in principles 6 and 11 (f). For incidents reported pursuant to these principles, Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances. In cases of death and serious injury or other grave consequences, a detailed report shall be sent promptly to the competent authorities responsible for administrative review and judicial control.

23. Persons affected by the use of force and firearms or their legal representatives shall have access to an independent process, including a judicial process. In the event of the death of such persons, this provision shall apply to their dependants accordingly.

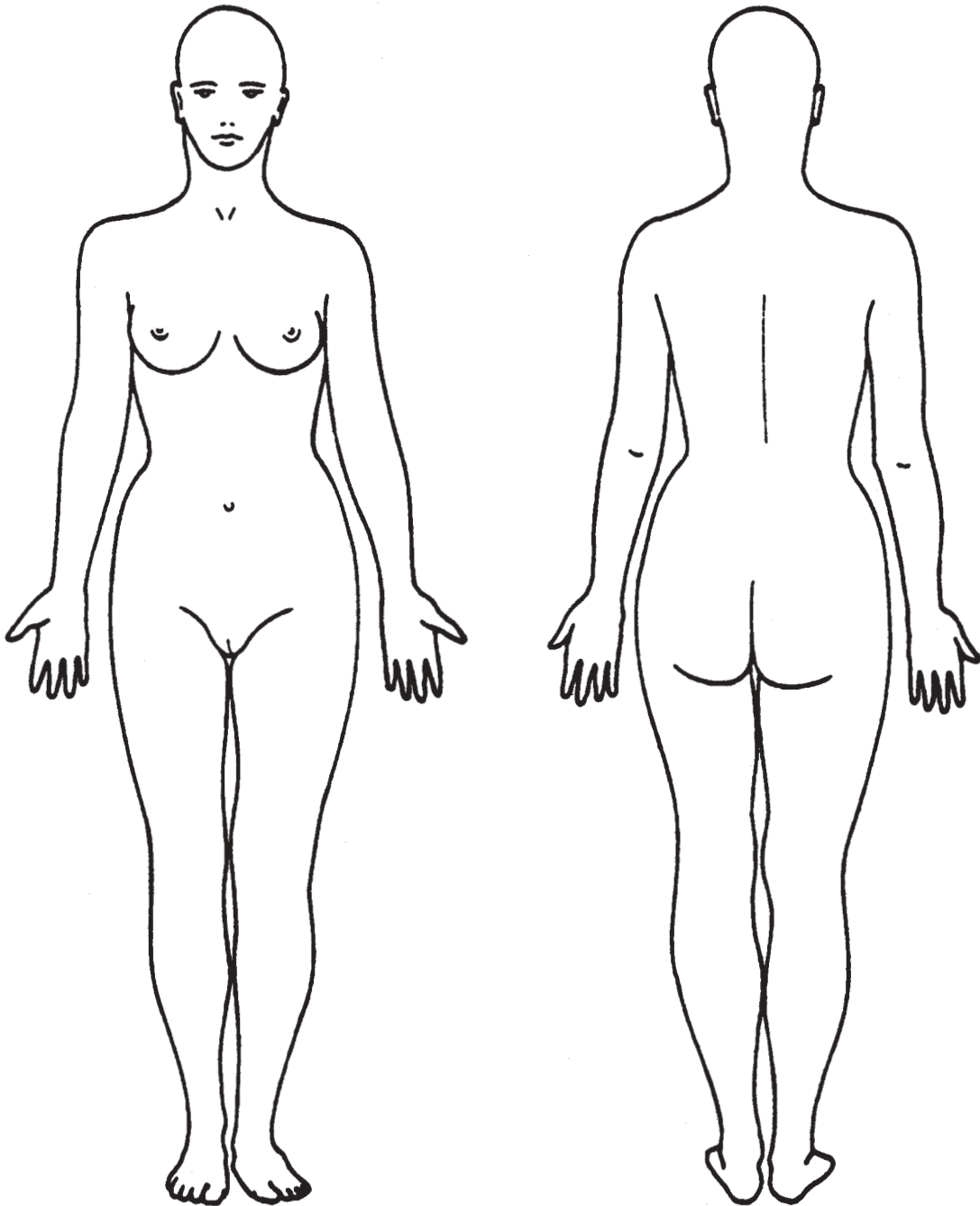
24. Governments and law enforcement agencies shall ensure that superior officers are held responsible if they know, or should have known, that law enforcement officials under their command are resorting, or have resorted, to the unlawful use of force and firearms, and they did not take all measures in their power to prevent, suppress or report such use.

25. Governments and law enforcement agencies shall ensure that no criminal or disciplinary sanction is imposed on law enforcement officials who, in compliance with the Code of Conduct for Law Enforcement Officials and these basic principles, refuse to carry out an order to use force and firearms, or who report such use by other officials.

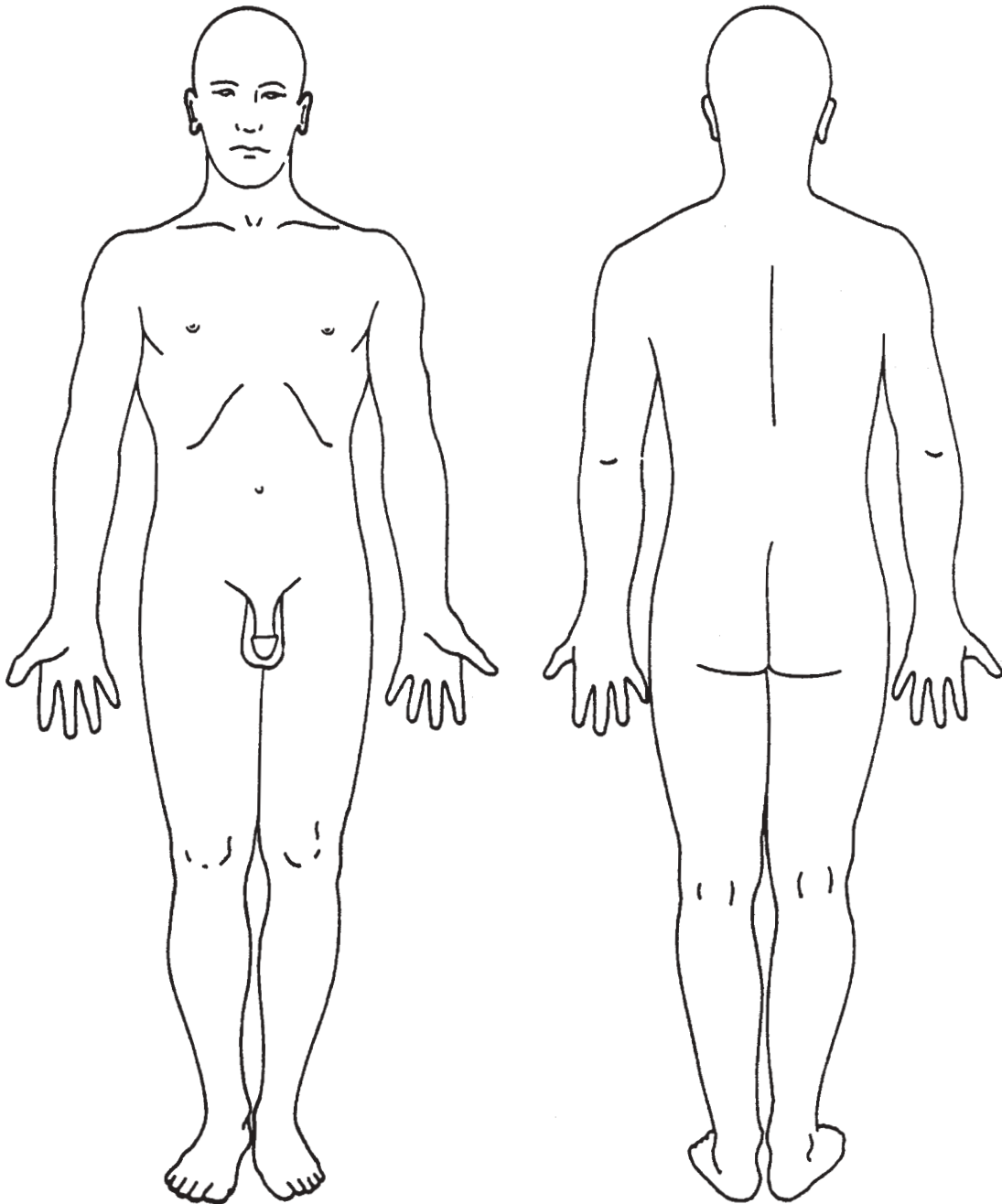
26. Obedience to superior orders shall be no defence if law enforcement officials knew that an order to use force and firearms resulting in the death or serious injury of a person was manifestly unlawful and had a reasonable opportunity to refuse to follow it. In any case, responsibility also rests on the superiors who gave the unlawful orders.

Note:

* In accordance with the commentary to article 1 of the Code of Conduct for Law Enforcement Officials, the term "law enforcement officials" includes all officers of the law, whether appointed or elected, who exercise police powers, especially the powers of arrest or detention. In countries where police powers are exercised by military authorities, whether uniformed or not, or by State security forces, the definition of law enforcement officials shall be regarded as including officers of such services.

5. APPENDIX V - BODY DIAGRAMS**FEMALE - FRONT AND BACK**

MALE - FRONT AND BACK



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