

MODULE 11

Introduction

This module covers the writing of human rights claims on behalf of individuals and against States before international and regional treaty bodies. Some of this advice can also be used to assist in writing complaints at the domestic level.

An individual complaint offers an opportunity for victims to file a claim against a State with the relevant regional or international bodies alleging violations of their rights.

Structure

Each international or regional body has specific requirements for filing individual claims and the way in which such claims must be structured. It is therefore important to check the specific body's website and rules of procedure to identify these requirements.

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

- *Information.* Details about the author or a victim submitting the claim. This section includes information on who the victim is (first, middle, and last names), date of birth, nationality, occupation, contact information, and ethnic or religious background if relevant to the claim. It also contains information on the legal representative of the author, and the State party against which the complaint is being filed.
- *Summary of the claim.* This provides an overview of the violations the victims suffered and the request, making it easier to follow the full claim.
- *Facts of the case.* This section will explain the acts that led to the violations, including by whom, where the abuse occurred, and what injuries the victims have suffered, with footnotes to the supporting evidence.
- *Admissibility.* This section explains how you exhausted local remedies, or the reason why those could not be exhausted (see *Module 8: Forum Choice*). You must also show that the claim is filed within reasonable time and within the time limit provided by the rules of procedure of the specific human rights organ. Finally, you should show that the specific State has agreed to the body's jurisdiction to hear individual complaints.
- *Violations.* The survivor explains what rights under the specific treaty were violated and the impact of these violations on the complainant.
- *Remedies.* This sets out what remedies or redress the victim is seeking to address the human rights violations they have endured (see *Module 9: Reparations* and *Module 10: Compensation*).

- *Conclusion.* This is a clear statement of what you request the human rights body to decide, including the violations that you are asking the body to find, and the remedies you are requesting in the case.
- *List of supporting documents.* The last section includes any supporting documents relevant to the case, including medical-legal reports, reports from the United Nations or civil society, witness or victim statements, documents to support financial claims, and any other relevant documents.

Summary of the claim

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

Facts of the case

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

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

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

The complaint should address the question of safeguards against torture, including access to the competent judicial authorities. It should indicate, for example, whether the victim's detention was registered properly by the authorities, whether the person had access to a lawyer or was able to contact a relative, or whether the victim was brought in front of a judge or other competent authority. If so, how long after the detention did the victim see the judge? If the victim was not presented before a judge, why was this and how long was the individual detained without access to judicial review? Did the State carry out any investigations and if so, what was the outcome?

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

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

Admissibility

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

The complainant must show that the State against whom the complaint is launched consented to the jurisdiction of the human rights body to accept an individual complaint and the violations occurred after the State consented (except in the case of continuous violations). Further, the rights violated must be rights prescribed under the specific treaty and the complaint must be filed within a reasonable time frame after the exhaustion of domestic remedies. For instance, the Human Rights Committee notes that individuals must file complaints within 5 years after the exhaustion of domestic remedies, while the Inter-American Commission and other treaty bodies require the complaint to be filed within 6 months. Finally, some bodies require that the complaint must not have been filed with any other international body to be considered.

The regional and UN bodies all require that before submitting a complaint, the victim must exhaust domestic remedies. This requirement means that the victim must have first used those judicial and administrative remedies available at the national level that are effective to address the specific violation. However, there are exceptions to this requirement if the victim can show that the domestic remedies are unavailable, the proceedings are unduly delayed, or that such proceedings would not yield a result as the remedies are ineffective (see *Module 8: Forum Choice*).

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

Violations

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

This section should address the legal standards applicable to establish violations of these rights and how the facts of the case meet these standards. The standards should refer to the regional and international bodies' jurisprudence on the specific right – and in particular the

jurisprudence of the body before which the claim is made. It can refer to customary international law, other treaties, rules, decisions, guidelines, and literature on the matter. Most treaty bodies have online databases which should enable you to access the relevant standards free of charge. A few also have digests recapitulating issues of procedure and substance by reference to the relevant case law.

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

Remedies

This section outlines what redress the victim is seeking for the violations. International law provides for five types of remedies: restitution, rehabilitation, guarantees of non-repetition, satisfaction, and compensation (see *Module 9: Reparation*).

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

Conclusion

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

List of supporting documents

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

Structure and legal writing

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

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

Do not repeat yourself.

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

Use headings and sub-headings to separate the sections and sub-sections. It makes the document easier to read and follow.

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

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

Further Reading

The Open Society Justice Initiative has published a Practice Note on [Legal Writing for Human Rights Claims](#), which provides practical guidance on how to prepare a claim.