

UNCAT Implementation Tool 7/2019

PROCEDURES AND MECHANISMS TO HANDLE COMPLAINTS OF AND INVESTIGATIONS INTO TORTURE OR OTHER ILL-TREATMENT

Putting in place procedures to investigate allegations and to enable persons to lodge complaints of torture or other ill-treatment (Articles 12 and 13 of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)) helps States to prevent abuses and to combat impunity. Fair and effective procedures clarify the circumstances of any allegation, hold those responsible accountable, and provide reparations for harm suffered.

Complaints and investigation procedures are complementary and mutually reinforcing: they reaffirm the rule of law, strengthen the professionalism of public services and build trust in State institutions. They can also help to improve working conditions for government officials and protect them against wrongful or vexatious allegations. The information gathered can be an important learning opportunity and can assist officials, and others, to identify areas in need of reform which can inform future strategies to prevent torture and other ill-treatment.

This tool sets out the key guiding principles for complaints procedures and investigations of torture and other ill-treatment and includes examples drawn from various countries and contexts of laws, institutions, practices and procedures to inspire good practice.

“ [Complaints] mechanisms can not only allay tensions between persons deprived of their liberty and staff but also, by ensuring that complaints are taken seriously, contribute to building positive relationships.”

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Annual Report 2017



The CTI ‘[UNCAT Implementation Tools](#)’ are a series of practical tools designed to share good practices among States on the implementation of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT). They offer thematic guidance and ideas for State practitioners and policy-makers as they develop or revise context-specific strategies, mechanisms and procedures to prevent and punish torture and other forms of ill-treatment or punishment, and provide remedies for victims.

ESTABLISHMENT OF COMPLAINTS PROCEDURES



A wide number of States have put in place procedures to enable people to lodge complaints of torture and other ill-treatment with internal and external bodies. Internal complaints bodies and procedures can be found within a broad range of services such as in the police services; prisons; juvenile detention centres; immigration centres; military facilities; hospitals and institutions for the care of children, the elderly, the mentally ill or persons with disabilities. In addition, many States have established external bodies such as national human rights institutions or oversight bodies for particular institutions and services to also handle complaints of mistreatment.

Article 13 UNCAT

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. [...]

ELEMENTS OF EFFECTIVE COMPLAINTS PROCEDURES



Key elements for effective complaints procedures include:

Provided in law

Known and accessible

Prompt processing and keeping records of complaints

Special consideration for persons in situations of particular vulnerability

Provided in law

A generic right to complain against human rights violations is often guaranteed by States within their Constitution or legislation. In some national laws, explicit reference is made for victims and others to lodge complaints of torture or other ill-treatment. Victims of torture or ill-treatment in most States also have a right to file a criminal complaint with the police or other law enforcement authority.



Uganda: specific provision for the right to complain in anti-torture legislation

Article 11 of the 2012 Prevention and Prohibition of Torture Act provides any person alleging that an offence under the Act has been committed (whether the person is the victim of the offence or not) with a right to complain to the police, national human rights commission or any other relevant institution or body having jurisdiction over the offence. A prompt investigation into the complaint shall be conducted, and where there are substantial grounds to support the complaint, the police shall arrest and detain the person and accordingly charge the person with the offence he or she is alleged to have committed.



Viet Nam: Constitution guarantees the right to complain

Article 30 of the 2013 Constitution provides that citizens have the right to lodge complaints or denunciations about illegal acts of agencies, organisations or individuals with competent agencies, organisations or persons. Those suffering damages have the right to reparation in accordance with the law.

Known and accessible

A range of practical measures to ensure that the complaints procedures are widely known and accessible have been put in place by States. Such measures include producing user-friendly guides; posters fixed in prominent places; promoting 'hot lines' and toll-free numbers; ensuring the procedures are explained to individuals; and that forms are easy to use and readily accessible. Some States have found it useful to publish practical information on how to contact various complaints mechanisms on their government websites and promote them through social media. To allow complainants to access relevant procedures without fear of reprisals, States have also introduced practical measures to protect complainants as further highlighted below.

Many safeguards for persons arrested or deprived of their liberty, such as ensuring access to a lawyer, doctor, family members etc., and judicial and other oversight of detention, can also assist people to access complaint procedures (see [CTI Implementation tool 2/2017 Safeguards in the First Hours of Detention](#)). In particular a lawyer can help explain the complaint procedures and ensure that complaints meet any relevant requirements, as well as acting as a liaison between the authorities and the complainant. To facilitate this access some States have procedures to provide free legal advice for persons arrested or deprived of their liberty.



Georgia: posters promoting complaints procedures

The Juvenile Justice Ombudsman has produced a series of posters aimed at explaining in an easy to understand way the rights of juveniles in detention centres, how to make a complaint, as well as the role of the Ombudsman. The posters also promote a toll-free number to report any complaints.



Kenya: a broad range of methods to make a complaint

As well as being able to submit complaints at a police station and by letter or email, the Internal Affairs Unit of the Kenyan police force has established a toll free number to call; an online complaints form; as well as a mobile application which people can download. This app enables persons to submit a complaint, to choose whether to remain anonymous, and to track the status of their complaint. It also gives people information on other ways to make a complaint. Information on the various means of lodging a complaint is also available on the website of the [Internal Affairs Unit](#). The Kenyan police force has also used Twitter to raise awareness of the different channels available to submit a complaint.



Sierra Leone: facilitating access to legal advice

In order to address a shortage of trained lawyers, particularly in rural parts of the country, a network of community-based paralegals, 'Timap for justice' (Timap) has been established in Sierra Leone. Timap provides free legal assistance to individuals and undertakes a range of legal services including providing assistance to victims to submit complaints and providing legal support throughout the complaints handling and investigation process.



United States of America: complaint forms readily available in prisons

Some prisons in the US have instituted a policy of making complaint forms freely available to prisoners in various common areas within facilities such as housing units and libraries. They can also be obtained through unit staff, or case workers. Some prisons have also put in place secure boxes located on prison grounds for prisoners to submit complaints without the requirement for contact with a member of staff.

Prompt processing and keeping records

To assist in recording and responding quickly to complaints, some complaints handling bodies have found it useful to establish case management procedures. This can include introducing centralised registers of complaints to help with managing cases and assist in identifying the measures that need to be taken in relation to a particular complaint. Data recorded from such systems can be used to inform policy and financial allocations for institutional or other improvements. Systematic recording of complaints (and collecting associated data)

can also help States with their periodic reporting to the UN Committee against Torture and other bodies (see [CTI Implementation Tool 3/2017 Reporting to the UN Committee against Torture](#)).

“ If you ran a business, complaints would be really important management information.”

Dame Anne Owers, National Chair of Independent Monitoring Boards, United Kingdom, speaking at a [CTI-Commonwealth event](#), London, April 2018



European Union: minimum standards on registering a complaint and the right to information

European Union [Directive 2012/29/EU](#) sets out minimum standards on the rights, support and protection that States should provide for victims of crime. According to the Directive, victims should receive a written acknowledgement of their complaint which should include the basic elements of the crime, the time and place, and any damage or harm caused by the crime. The acknowledgment should also include a file number and the time and place for reporting of the crime in order to serve as evidence that the crime has been reported. The Directive also establishes that victims have the right to be informed of the time and place of any trial resulting from the complaint and any appeals of a judgment in the case.



Ireland: prison case management system

In the Irish Prison Service, complaint post boxes are located throughout all prisoner accessible areas and the governor of the prison is responsible for ensuring that all complaint boxes are emptied on each working day and that all complaint forms are brought to a central location. Complaint forms are then assigned a reference number, date stamped and entered into the relevant complaints journal and on the Prisoner Information Management System (PIMS). All complaint forms are subsequently photocopied and a copy returned to the complainant in a sealed envelope by a prison officer not below the rank of Chief Officer.



Moldova: centralised register for police complaints

All complaints against police officers, involving any kind of misconduct, received by the Ministry of Internal Affairs are centrally registered by the Department of Information and then submitted to the relevant unit for action. All documented physical injuries of arrested persons are reported to the prosecution, and representatives of the Internal Investigation and Security Department conduct an initial examination into complaints of physical abuse to establish a prima facie case.



Tanzania: a computerised case management system

The Tanzanian national human rights institution, the Commission for Human Rights and Good Governance (CHRAGG), is mandated to receive complaints and has installed a computerised case management system in order to expedite the complaints handling process. Under this system the complaint documents and other records are to be stored in a database which can be reviewed by authorised staff in order to check the status of a complaint and to take appropriate action.

Considerations for persons in situations of particular vulnerability

Torture and ill-treatment can occur in a range of settings and many States have put in place complaints procedures that take into account the special needs and circumstances of particular categories of victims such as children; persons with a disability; elderly people; persons who have been subjected to sexual or gender-based violence; and foreign nationals, including victims of trafficking.



Australia: facilitating complaints about mental health services

The Mental Health Complaints Commissioner in the state of Victoria is an independent, specialist body established under the Mental Health Act 2014 to safeguard the rights of persons with mental health issues and to resolve complaints about public mental health services in that state, including complaints regarding ill-treatment or torture. Persons wishing to make a complaint can contact the Commissioner through different means including by phone on a toll free number or by email. Interpreters are available free of charge and for people who are deaf or have hearing or speech support needs there is a National Relay Service which enables people to conduct real-time conversations through different channels of communication. The Commissioner also has a [model complaint form](#) on their website to complete online or download.



Hungary: assistance for the elderly, and others, to access complaints systems

In 2000, Hungary launched a patient advocacy system to ensure that residents within care homes for the elderly, as well as patients in hospitals and psychiatric institutions, are aware of their rights and could access complaints mechanisms. 'Patient Advocates' are lay people who receive training to conduct visits to care homes, hospitals and psychiatric institutions to meet with the residents, inform them of their rights and explore any complaints and concerns they may have. They can help individuals to make official complaints when necessary and provide support to them throughout the complaints process.



Paraguay: procedures to support complaints by children

The Paraguayan Children's and Adolescents' Code recognises the right of children to personally request any public body or official to take action that is within their competence, and to receive a timely reply. Within the Ombudsman Office, a 'Department for Children and Adolescents' has been created to intervene in cases involving the violation of the rights of children. The Department can act as the representative of children and investigate complaints submitted by or on behalf of children and is responsible for overseeing the observance of human rights in legal processes.



Rwanda: responding to gender-based violence

In 2005, the Rwanda National Police Force put in place mechanisms to better respond to allegations of gender-based violence. A specialised operational office was established at the National Police Headquarters in Kigali and designated 'Gender-Based Violence Focal Points' were created in all provinces and district police stations. In addition, motorbikes and other vehicles have been assigned to the initiative to ensure rapid responses to reports of gender-based violence cases and a toll-free hotline was set up to facilitate the reporting of incidents. Police officers have also received training on responding to gender-based violence, including psycho-social counselling.



Slovenia: information sheets available in a range of languages

In Slovenia the police inform arrested or detained persons of their rights, including how to make a complaint verbally and have also developed an information sheet which is available in 24 languages at police establishments. In addition, a specific information sheet for arrested or detained juveniles has been developed and is also available in several languages.

INVESTIGATIONS



Investigations into torture and other ill-treatment help to clarify the facts of an incident and identify suspects and witnesses. Depending on the nature of the investigation, they may also lay the groundwork for criminal prosecutions, and/or disciplinary or other sanctions and for the acknowledgment of any wrongdoing. Investigations can also provide remedies for the victim(s) and identify measures to prevent recurrence.

Article 12 UNCAT

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

“ 24. Stresses that an independent, competent domestic authority must promptly, effectively and impartially investigate all allegations of torture or other cruel, inhuman or degrading treatment or punishment, as well as wherever there is reasonable ground to believe that such an act has been committed [...]”

UNGA resolution [A/RES/72/163](#), *Torture and other cruel, inhuman or degrading treatment or punishment*. 19 December 2017

TYPES OF INVESTIGATIONS



Depending on the context and type of alleged mistreatment a range of investigations may be suitable, leading, where relevant, to criminal, disciplinary and/or civil actions against those responsible.

Criminal investigations aimed at holding perpetrators responsible for torture are to be undertaken irrespective of whether there is a complaint, and whenever there are reasonable grounds to believe torture or other serious forms of ill-treatment has taken place. Many States have found they are best equipped to investigate allegations of (conduct amounting to) torture if they have first criminalised torture in their domestic law (see [APT-CTI Guide to Anti-torture legislation](#)).

In addition to criminal investigations, States may provide for internal procedures to investigate concerns or complaints of abuses, resulting in disciplinary or other sanctions being taken directly against those responsible or where necessary referral of the matter to another appropriate body for further investigation and action.

States have also mandated specific bodies to investigate human rights violations, including torture or other ill-treatment, such as national human rights institutions; parliamentary commissions; ombudsman's office; or other oversight bodies. Such civil investigations can help in identifying and documenting acts which may subsequently lead to criminal and/or administrative sanctions. The information gathered by such bodies can also help in highlighting the root causes of torture or other ill-treatment and suggest areas in need of reform.

In some States, as the mandate and activities of anti-corruption bodies are in many respects also aimed at or are at least in alignment with efforts to combat torture and other ill-treatment, States may consider establishing joint bodies.

A growing number of States emerging from periods of unrest or repression have established truth and reconciliation commissions or commissions of inquiry to hear testimonies and document the truth including regarding mass violations, such as torture. Such commissions may hear the testimony of a large number of victims and potential perpetrators and enable disclosure of the full extent of criminality during such periods. Some such commissions have precipitated criminal investigations and reparations and been helpful for the collection of evidence.



Chile: truth and reconciliation commissions

Following Chile's transition to democracy during the late 1980s and 1990s, Chile addressed past abuses, including torture, through the creation of their National Commission on Truth and Reconciliation and the National Commission on Political Imprisonment and Torture (Valech Commission), which have identified almost 30,000 survivors of political imprisonment and torture. As a result of the work of these commissions, many prosecutions have been brought against those responsible for past human rights violations. Chile has also provided victims and their relatives with redress, including compensatory pensions and free medical care under the so-called "PRAIS" programme to those qualified as victims by the Valech Commission.



Indonesia: investigations by a national human rights commission

In addition to any investigations that may be carried out by police or other bodies, the Indonesian national human rights commission, Komnas HAM, has a statutory mandate to carry out investigations into human rights violations, including torture. In accordance with the law governing its activities, during an investigation Komnas Ham has wide powers including: to call on complainants, victims and the accused to hear their statements; to survey incident locations and other locations as deemed necessary; and on approval of the Head of Court, to provide input into ongoing cases.



Malawi: a statutory body for complaints against healthcare professionals

The Medical Council of Malawi (MCM) is a statutory body mandated to consider complaints concerning health professionals, including complaints regarding abuse inflicted by health professionals. After considering a complaint the MCM can make an order to discipline a healthcare professional. This includes orders: to suspend the practitioner for a period of time; to impose conditions on their practice; to pay a penalty; and in serious cases, to deregister the healthcare professional and prevent them from working in healthcare. Any person who is unsatisfied with a decision of the MCM can appeal the decision by going to a High Court within 3 months of the decision.

Key elements for effective investigations:

- Prompt
- Thorough
- Impartial
- Participatory
- Reasoned result and publication of findings

A range of tools and practical measures have been developed at the national and international levels to help guide effective investigations into torture and other ill-treatment.

Effective case management

Some States have introduced case management systems and/or set out in law processing requirements, including time limits for investigations, to ensure that investigations are undertaken promptly, that physical evidence is secured before it may disappear, degrade or be disposed of, and to prevent interference with evidence, victims or witnesses.



Maldives: time limit to respond to internal prison complaints established by law

In the Maldives, all prisoners have the right to make complaints to the Director of Prisons. The Director is mandated by law to address the complaint and provide an answer within at least 5 days. If the complaint is about physical violence or any urgent matter the Director of Prisons is obligated to respond immediately. If the Director fails to provide a satisfactory answer or solution then the prisoner has the opportunity to file a complaint with the Inspector General of Prisons.



Northern Ireland: specialised teams to deal promptly with cases

The Police Ombudsman for Northern Ireland is an independent, impartial body for handling complaints of misconduct by police officers. In order to streamline the complaints process and ensure complaints are dealt with promptly, the Police Ombudsman has put in place an Initial Complaints and Investigations Team who can receive complaints over the phone, by email, via the website, or in person at their offices. This team can then refer the complaint to either the Core Investigations Team or in complex or difficult cases to the Significant Cases Investigation Team.



South Africa: police complaints handling process

The Independent Police Investigative Directorate (IPID) is a statutory body mandated to receive and consider complaints involving the police. The 2011 Independent Police Investigative Directorate Act sets out the mandate and functioning of the IPID, including the process for complaints handling. In accordance with this Act on receipt or referral of a complaint the IPID must, within seven days, register the complaint in a computer-based register and the complainant must, within the same period, be informed in writing and, if practicable, by telephone, that his or her complaint has been received and that his or her complaint is being investigated by an identified investigator, including the name and contact details of the investigator.

Ensuring impartiality

States use a range of measures to ensure investigations into torture or other ill-treatment are carried out impartially and with integrity. On the legal side, some States have express provisions in their domestic legislation which embeds the principle of impartiality in law. Practical measures include making arrangements that investigators are procedurally and personally independent from the agency and individuals under investigation, for example by establishing autonomous divisions or units within services to handle complaints; or establishing external oversight bodies with responsibility for investigating complaints.



Lebanon: anti-torture law lays down safeguards against conflicts of interest

In 2016, Lebanon adopted legislation to implement UNCAT and OPCAT, establishing the National Commission for Human Rights which includes a specialised committee for the prevention of torture. As a safeguard against conflicts of interest, the law requires that members of the Commission and the prevention of torture committee will not be allowed to hold certain public offices simultaneously or within two years of leaving office.



Mongolia: changes to the Criminal Code to strengthen impartiality

To respond to concerns of a lack of impartiality with past investigations into complaints against the police, the revised 2017 Criminal Code provides that investigations into complaints of misconduct by the police will be led by the Prosecutor's Office or the Anti-Corruption Agency. The Prosecutor's Office will decide on a case by case basis which authority will be best placed to investigate.



Netherlands: an autonomous police investigation unit

The National Police Internal Investigations Department (Rijksrecherche) is a specialised investigation unit of the Dutch police with responsibility for handling complaints about the conduct of the police and other public servants. The Police Act of 1993 governs the functions of the Rijksrecherche and recognises its staff as “special police officers”. It has a mandate to investigate specific complaints, including cases involving injury or death of an individual in prison or a police station or following the use of a firearm. In order to maintain independence from the Dutch National Police, the Department is under the authority of the Public Prosecution Service.

Clear information on investigation procedures

Some investigatory bodies have established clear procedures and guidelines to keep the relevant parties informed of progress and the outcome of an investigation. Sometimes this is a requirement set out in national legislation. Transparency and effective communication can help build confidence in the investigating body and State institutions generally.



Canada: guidelines for information to give to complainants

In the state of Ontario, Canada, the Office of the Independent Police Review Director (OIPRD) receives, manages and oversees all complaints about police. The OIPRD has established clear guidelines on its complaints handling process to help inform complainants. These guidelines state that the investigator is expected to tell the complainant:

- How the complaint will be investigated
- What cooperation is required from the complainant
- How a decision will be reached
- What action will be taken at the end of the investigation

Where the OIPRD conducts its own investigation, a copy of the investigative report, along with the Director’s findings, are sent to the complainant and the chief of police at the end of the investigation.



Jamaica: updates on status of investigations established in law

The Independent Commission of Investigations (INDECOM) is a Commission of Parliament established by the 2010 INDECOM Act. INDECOM is a civilian staffed state agency tasked to undertake investigations concerning actions by members of the Security Forces and other State agents that result in death or injury to persons or the abuse of the rights of persons; and for connected matters. The Act governing the mandate of INDECOM proscribes that during the course of an investigation INDECOM shall inform the complainant and the official concerned and members of the public about the status of the investigation at 60 day intervals. Reports on the investigation must be submitted to Parliament at six monthly intervals.



New Zealand: procedures to keep complainants informed

The Corrections Act 2004 established the Office of the Inspectorate for prisons as a dedicated inspection and complaints resolution body. The Inspectorate is headed by a Chief Inspector and has a team of inspectors. According to the established procedure if an inspector carries out an investigation into a complaint they will keep the complainant informed along the way and inform them of the outcome. If the person who complained is in prison, they will usually be kept up to date by email and/or telephone contact through prison management.

Gathering and using medical evidence

Medical evidence can play an important role, together with other evidence, in documenting torture or other ill-treatment. The *Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (The Istanbul Protocol)* provides guidance on gathering and the use of medical evidence. It is a practical tool containing detailed information and useful templates to help document any physical or psychological evidence of torture and other ill-treatment.

Among States, specific training on using the Istanbul Protocol has been provided to law enforcement officers, healthcare professionals, judges and others. In some States such training is provided by or in cooperation with professional bodies or civil society organisations. Although access to specialised personnel and equipment for forensic examinations may be limited in many States, other more commonly available measures such as a clinical examination, X-rays, blood tests, oral evidence, and photographs remain invaluable tools which can provide important information. In some States due to the shortage of healthcare professionals trained in forensic examinations, civil society organisations assist in providing the necessary expertise and training to document violations and assist victims.



Guatemala: procedures and handbook adopted based on the Istanbul Protocol

In November 2018, the National Institute of Forensic Sciences has adopted a number of procedures relating to the handling of suspected cases of torture, as well as a handbook on specialised psychological evaluations, which incorporate provisions of the Istanbul Protocol. The National Institute has also developed guidelines for the examination of victims of sexual assault. The guidelines are supplemented by appendices containing forms on informed consent for examinations and related procedures, and to document evidence.



Kyrgyz Republic: partnership with civil society to improve the documentation of torture by healthcare professionals

In response to a visit by the UN Special Rapporteur on Torture in 2011, the Kyrgyzstan Ministry of Health, working together with other state entities and civil society organisations, initiated a project to train healthcare professionals and develop national clinical guidance for doctors based on the Istanbul Protocol. As part of this process of reform new, standardised medical forms have been developed for healthcare professionals to complete during their examinations to be able to document possible cases of torture and other ill-treatment.



Philippines: access to and content of medical reports set out in law

Section 12 of the 2009 Anti-torture Act establishes the right of person detained to a medical examination. Drawing on the Istanbul Protocol, the law also sets out the process for preparing for a medical examination and the content of medical reports. The law states that the physical examination and/or psychological evaluation of the victim shall be contained in a medical report, duly signed by the attending physician, which shall include in detail the person's medical history and findings, and which shall be attached to the custodial investigation report.

Reasoned report and publication of findings

National investigative bodies in many countries have developed procedures on how to prepare and publish findings. Some bodies publish thematic reports based on their findings which can include recommendations and data to assist in structural reforms or in developing strategies to address the causes of torture and other ill-treatment.

Reports that set out the methodology, evidence and findings of an investigation and the reasons why the particular conclusions were reached are useful for a number of purposes: to inform the parties involved of the outcome, the next steps, if any, that will be taken, and the body with responsibility for any further action. Even when a complaint of torture or ill-treatment is not upheld by an investigation, a report is still important, not least to help to explain the reasons why the complaint was not further pursued, and to demonstrate that the investigation has been properly conducted. Such transparency helps to strengthen confidence in the investigatory body and State institutions, and in turn, reduces the number of onward complaints of irregularities in investigations.



Argentina: producing thematic reports and recommendations

In 2013, the Office of the Prosecutor for Institutional Violence (PROCUVIN) was established to launch criminal proceedings, lead investigations and prosecute crimes involving the use of institutional violence. The Office is mandated to receive complaints and can refer them to the relevant prosecutor; to carry out its own preliminary investigations; and collaborate in the investigation of acts of institutional violence, among other functions. As well as reports on the conclusion of its own investigations, PROCUVIN has also published various thematic reports based on its investigative and other work in order to inform strategies for institutional reform including for the prevention of torture and other ill-treatment.



England and Wales: a comprehensive reporting process

In England and Wales, at the end of an investigation by the Independent Office for Police Conduct (IOPC), the investigator will produce a final report setting out their findings which is sent to the police force and given to interested parties; reports are also published on the IOPC website. Where appropriate, the reports also explain any outcomes for those involved – for example, what happened if there was a disciplinary hearing. Reports may also include 'learning recommendations' setting out whether particular action could be taken to help prevent a similar matter happening again. Legally the force or organisation the recommendation is directed towards must provide a response to the IOPC on the learning recommendations within 56 days. An extension can be requested. If the investigation considers that a criminal offence may have been committed, the IOPC will pass the report to the Crown Prosecution Service (CPS). The CPS is then responsible for deciding whether the person should be prosecuted. Where an inquest will be held, the IOPC provides the report and evidence to the Coroner.

VICTIM AND WITNESS PROTECTION



Many States have introduced a range of practical measures to protect victims and witnesses, as well as for investigators at risk, before, during and after an investigation and prosecution. Adopting measures to protect people from reprisals, intimidation, harassment or other risks associated with making a complaint or being involved in an investigation is fundamental for a number of reasons:

- they protect the safety of individuals;
- they minimise interference in proceedings and limit the withdrawal of key evidence;
- they build confidence in complaints and investigations procedures; and
- they combat impunity and corruption.

Sometimes protection safeguards are set out in domestic legislation and some States have adopted specific crimes covering the harassment or intimidation of victims and witnesses. Other measures may be specified in a range of regulations, policies or rules of procedure for complaints and investigative bodies. Such measures include:

- enabling complaints to be submitted confidentially;
- relocation or suspension of those under investigation;
- interviewing people in private and in confidence;
- anonymising data of the people visited or interviewed in any public records, or upon request; and
- conducting follow up visits to act as a deterrent and verify the safety of individuals.

Good practice also covers measures to assist persons in providing testimony in any hearings. Such measures include holding hearings closed to the public; the use of pseudonyms; expunging names and other information that may identify the victims or witnesses from public records; enabling testimony to be given through the use of a screen, curtain or two-way mirror, or via closed-circuit television or other audio-visual link, or the use of image or voice distortion.

For the most serious cases where the lives of victims, witnesses or their families are at risk, a number of States have established formal witness protection programmes, providing for relocation and a change of identity of those at risk.

Article 13, UNCAT

[...] Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his [or her] complaint or any evidence given.

Colombia: witness protection programmes to respond to differing levels of risk

In Colombia, the Office of the Attorney General has an obligation to provide protection for witnesses, victims and other parties to criminal proceedings. In accordance with Law No. 418 of 1997, three distinct witness protection programmes have been developed to respond to differing levels of risk for victims and witness. Applications to be placed under these programmes are made to the Office of the Attorney General. The first programme provides witnesses with information and recommendations for their own safety; the second provides limited monitoring of witnesses' situations; and the third relates to the most serious cases and includes a change of identity and covers victims, witnesses, parties to proceedings and officials of the Office of the Attorney General.



Cyprus: procedures for prisoners to submit complaints confidentially

To protect prisoners making a complaint, a number of practical measures have been put in place. Prisoners can communicate a complaint to the Prison’s management via locked complaints boxes available in each Block for the director, without involving any member of staff in the process. Alternatively if prisoners fear that further abuse will take place following the submission of a complaint through the internal procedures, there are two similar locked boxes for complaints to the Ombudsman and the Council of Prisons, to which only the officers of those bodies have access.



Germany: personal data protection procedures in place

Germany has procedures established in law to provide protection to witnesses. The 1998 Witness Protection Act sets out key provisions including a requirement that the personal data of witnesses is confidential at all stages of criminal proceedings. This has been supplemented by the 2001 Act to Harmonize the Protection of Witnesses at Risk, which also establishes that the personal data of protected witnesses is to be kept confidential within witness protection units and other government and non-state agencies. The files on protected witnesses are maintained by the protection units and are not included in the investigation files, but they are made available to the prosecution on request.



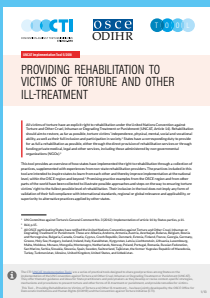
Hong Kong SAR, China: a wide range of protection measures available for victims

The Hong Kong Police Force has developed a Victim of Crime Charter setting out the rights of victims and guidance for the handling of criminal investigations. Procedures to protect against reprisals include: the right to request consideration of the use of a one-way viewing facility at an identification parade; the use of screens during trials when testimony is being given; enabling victims or witnesses to enter/leave court via special passages; and the use of video-recorded testimony to be given as evidence in court. In serious cases, persons can also request to be considered for inclusion in the Witness Protection Programme.



Timor-Leste: protection procedures set out in Criminal Procedure Code

In Timor-Leste, Article 57(3) of the Criminal Procedure Code prohibits police and court officers against whom an allegation has been made to contact the victim and there is a procedure to enable officers to be suspended during an investigation into suspected acts of torture or ill-treatment.



This tool is to be read in conjunction with OSCE-CTI, [UNCAT Implementation Tool 5/2018 Providing rehabilitation to victims and survivors of torture and other ill-treatment.](#)

COMPLAINTS PROCEDURES: THINGS TO CONSIDER



1.

Is there a general right to lodge a complaint for a human rights violation, or in relation to a criminal offence, established under the Constitution or in relevant legislation? Are there specific provisions relating to complaints alleging torture or other ill-treatment?

2.

Is torture criminalised as a separate offence under national law? Is torture subject to penalties reflecting the gravity of the crime of torture?

3.

Upon admission to a place where liberty may be deprived, are individuals informed about complaints mechanisms and how to use them? How are they informed? Is information available in a language and manner they understand? Could user friendly information such as brochures, pictorial representation, posters, video, websites, and/or social media be used to raise awareness of the right to complain and the associated process?

4.

What are the means by which persons can lodge complaints? Do these take into account the specific needs of particular persons, such as children, victims of sexual or gender-based violence, persons experiencing trauma or other psychological needs, persons with disabilities, persons with literacy or language challenges?

5.

Do those involved in the complaints handling process receive training on how to deal with victims and witnesses of torture or ill-treatment?

6.

How are complaints recorded? Is a copy of the complaint and details of who to contact to enquire about progress given to the complainant and/or his/her lawyer?

7.

Is there a system and/or guidelines in place to ensure that complaints are dealt with efficiently and within reasonable timeframes?

8.

What safeguards and procedures are in place to enable submitting complaints safely and without fear of reprisals? Does the State have a system of victim or witness protection?

9.

Can the complaints system record data for the purposes of generating statistics, including disaggregated by sex, age and other pertinent characteristics? How is personal data protected?

INVESTIGATIONS INTO TORTURE OR OTHER ILL-TREATMENT: THINGS TO CONSIDER



1.

Is there a body or entity with a mandate covering investigations into torture and other ill-treatment, or independent units within departments? Are they procedurally independent from the institution and individuals accused of wrongdoing or misconduct, to ensure arm's length and impartial investigations?

2.

Are there procedural guidelines for carrying out investigations? Are these procedures known to investigators, to the complainant, those against whom a complaint is made and others involved in the process? Are they publicly available and widely disseminated – website, (social) media etc.?

3.

Are there procedures in place to inform the complainants, witnesses and other individuals concerned with the investigation of the nature of the proceedings, why their evidence is being sought, and how any evidence may be used? Do these procedures require investigators or other designated officials to explain to victims and witnesses which aspects of the investigation will be made public and which will remain confidential, and the procedures, if available, for requesting a confidential hearing?

4.

Are there procedures to allow the complainants, witnesses and the accused to be kept informed of progress with the investigation and all key hearings and rules regulating providing testimony and other evidence?

5.

What are the powers and mandate of the investigators? Are these set out in law or regulations, and publicly available? Do investigators have access to and are they able to examine all the necessary information; access the place or premise where the act allegedly took place; able to interview persons of their choosing in private; and have access to all relevant documents?

6.

Are forensic medical examinations available? Do they follow good practice as set out in the Istanbul Protocol? Are those in charge of investigations trained in the use of the Istanbul Protocol/ other methods of investigating human rights violations?

7.

From the earliest stage of the procedure, is the alleged victim of torture provided with access to rehabilitation services?

8.

What procedures are in place to protect individuals and/or their families from reprisals, intimidation, harassment or other threats? Is there a procedure to suspend or remove from active service those against whom a complaint is made? Does the State have a system of victim or witness protection?

9.

Is a final report of the investigation prepared and submitted to the accused as well as the complainant and other relevant persons? Are there guidelines or standardised templates for the content of such reports?

10.

Where investigations conclude that a crime may have been committed, are such cases transferred for criminal prosecution for torture and other related offences? Are there guidelines on the procedural and substantive questions regarding transfers for prosecution?

Additional resources:

- [UN Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#), GA resolution 55/89, 4 December 2000
- [UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions](#), 24 May 1989
- [UN Standard Minimum Rules for the Treatment of Prisoners \(the Nelson Mandela Rules\)](#), 17 December 2015: Rules 54- 57 (on complaints) and Rules 71 – 72 (on investigations)
- [Penal Reform International and OSCE/ODIHR, Guidance Document on the Nelson Mandela Rules](#), Chapter 1.5 (on complaints) and 3.3. (on investigations)
- [OHCHR, APF and APT, An Operational Guide for National Human Rights Institutions](#), Chapter 4 on Investigating allegations of torture, May 2010
- [International Committee of the Red Cross, Guidelines for Investigating Deaths in Custody](#), 21 November 2013



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