



FREEDOM NOW

United Nations Mechanisms Manual:

**A Practical Guide to Submitting Individual Communications to
UN Mechanisms on Behalf of Prisoners of Conscience**

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I. INTRODUCTION

International human rights law has evolved as a collective effort to protect the needs and rights of individuals and communities all over the world; to help ensure that states respect certain rights of its citizens deemed paramount to the dignity of the individual and the needs of society.

International law has been enshrined through a series of instruments. These declarations and multilateral treaties recognize certain fundamental activities and rights to be exercised by the individual and without infringement or abuse by the state. Such laws impose duties and responsibilities upon state authorities to ensure full enjoyment of these rights by their citizens; to fail in this responsibility and to specifically violate an individual's rights is a violation of the law.

Among the most serious of violations of international law that can be committed by a state is the imprisonment of a human being without legitimate justification – arbitrary detention. That such an imprisonment would be motivated by a state's intention to punish or silence an individual's exercise of rights guaranteed under international law is unconscionable and dangerous to a free society. Unfortunately, the imprisonment of such individuals, known as prisoners of conscience (POCs), is a commonly observed violation of international law in many parts of the world and one resorted to often by governments in Central Asia to silence and punish dissent.

The purpose of this guidebook is to offer a working knowledge of those most basic protections under international law and provide tools that can be used to assert these rights and address the injustice that has been inflicted on POCs. Anyone can use the information contained in this guidebook whether you are the person detained, a human rights defender, an aggrieved family member, or an outraged citizen who wants to advocate for justice.

This guidebook provides instruction and guidance on using international law and accessing international mechanisms to seek redress for a POC. Because this manual is narrowly focused on international legal advocacy in relation to POCs, the manual does not attempt to describe or provide guidance on how advocates can pursue a broader advocacy campaigns on behalf of individual prisoners. International legal action is just one component of a much broader strategy that includes both political and public relations advocacy. Such advocacy initiatives may take the form of public awareness campaigns or engagement by international political leaders through public and private diplomacy. A most successful campaign will utilize each of these components and pursue a strategy that is tailored to both the individual detained and the country involved.

This manual takes a step-by-step approach, walking the reader through the process of petitioning international bodies – specifically bodies of the United Nations – regarding violations of international law in the case of an individual or group of POCs.

This manual begins in Section III with an introduction to the fundamental rights established under international law that are implicated when authorities of a state detain a POC. Section III first describes the fundamental substantive human rights to which every citizen is entitled and the practice of which forms the basis of a POC's imprisonment, such as the right to freedom of association and the right to take part in the political life of one's home country. It also includes a detailed analysis of the permissible limitations on some of these rights that governments are entitled to rely upon under international law (provisions that offending governments often invoke),

such as maintaining public order. Section III then sets-out the rights of a detained person, often referred to as “procedural rights” or “due process” rights that are most frequently violated in cases of POCs in Central Asia (and indeed throughout the world in criminal as well as politically-motivated cases). Such rights include the right to a fair trial by an impartial body, the presumption of innocence, and the assistance of legal counsel of one’s choosing.

Section IV of this guide provides information about the international mechanisms under the UN system that are available and relevant to cases of POCs – discussed in three categories: treaty bodies, hybrid mechanisms, and special rapporteurs. The specific mandate of each body is outlined and the procedures for submitting a complaint or petition are described. In this section, advice is provided on deciding which mechanism to use and what to expect from the mechanism. The contact details for each of the selected mechanisms can be found in the Annex.

In Section V, you will find detailed guidance on how to investigate an alleged case of a POC, prepare a case, and draft a complaint that you can then submit to one of the available international mechanisms. Making a strong case is essential to effective legal advocacy and asserting the rights of a POC under international law. This is often the most difficult component of international legal advocacy, especially for non-lawyers. This section walks the reader through the two essential components of any legal petition: the factual background and the legal analysis. In making arguments under international law, it is not enough to merely describe the facts or allege that a particular right has been violated. Instead, the communication must describe all of the relevant facts in a clear and concise way – which often involves considerable research and groundwork. Next, the petitioner must determine which laws apply and apply these laws to the facts of the case being submitted, coherently explaining how specific international rights have been violated. Because this type of writing is new for many activists, this section includes an example hypothetical case so that the reader can see how a factual background and legal analysis should be structured from start to finish.

In addition to the specific information provided in each section, there are tips and reminders throughout the manual that are intended to provide additional insight and highlight critical points to keep in mind. This manual is designed to serve as an initial resource for those individuals or organizations interested in submitting individual communications to a specific set of mechanisms—it is not an exhaustive discussion of all the mechanisms available under international law nor is it a complete description of the law. Indeed, UN bodies have developed considerable jurisprudence on issues under their mandates. This manual, however, should help the reader begin the process of thinking strategically about preparing and submitting a case that can then be incorporated in a broader advocacy strategy aimed at helping to compel the release of the individual POC.

II. ABOUT THE AUTHOR

Freedom Now is a non-profit, non-partisan organization that advocates on behalf of individual prisoners of conscience around the world through focused legal, political, and public relations advocacy.

Through *pro bono* international legal representation, Freedom Now pursues an advocacy strategy, tailored to each case or campaign, which includes representing individual prisoners before the international bodies described in this manual (in addition to various regional bodies). In so doing, we have developed considerable experience with both the laws and procedures used by these institutions. Coupled with this international legal work, Freedom Now uses political advocacy tools, such as public letter campaigns, publishing op-eds, and engaging with policy leaders, to press for the release of our clients. In executing our mandate, we coordinate closely with family members, domestic lawyers, and human rights groups in-country and abroad. We believe that by securing the release of individual change makers, their voices are returned to the public square where they are best positioned to lead their communities toward a democratic and inclusive society.

This manual was made possible with the generous support of the Open Society Foundations. To learn more about Freedom Now and to see examples of our cases and submissions to international institutions, please visit our website at www.freedom-now.org.

III. FUNDAMENTAL HUMAN RIGHTS LAW

A successful legal strategy on behalf of an individual POC requires knowledge of international human rights law. This section provides an introduction to the international standards applicable to cases of POCs and provides a foundation for the following section, which will outline how to compile a complaint to an international body and seek redress for a state's violations of those standards.

Human rights are basic rights and freedoms that all people are entitled to regardless of where they live. Human rights standards and principles are enshrined in a series of documents, including:

- The Universal Declaration of Human Rights (UDHR);
- The International Covenant on Civil and Political Rights (ICCPR); and
- The International Covenant on Economic, Social and Cultural Rights (ICESCR).

The Universal Declaration of Human Rights

The UDHR is a foundational document that lays out principles that all member states of the United Nations should aspire to protect. The UDHR recognizes two broad categories of human rights:

1. Civil and political rights: these protect individual liberties and due process rights.
2. Economic, social and, cultural rights: these rights require that the state take action to ensure that individuals enjoy the economic, social, and cultural benefits of society.

The UDHR is not a treaty. It was not opened for signature and ratification by states and therefore it is not technically legally binding on governments. Notwithstanding, it is generally accepted that the UDHR expresses internationally-agreed upon universal standards of human rights and possesses strong moral and political authority. Further, some of the provisions contained in the UDHR are considered binding as “customary international law” because many are included in binding treaties like the ICCPR and ICESCR, to which a majority of states are party.¹

International Human Rights Treaties

Following the adoption of the UDHR by the United Nations General Assembly, the United Nations later drafted documents that would be opened for signature and ratification by UN member states, and thus would be binding on those states that had become party. The ICCPR and ICESCR were created specifically as multilateral – binding – treaties that incorporated many of the principles first outlined in the UDHR. These treaties are much more extensive, however, and provide for specific rights to be enjoyed by all citizens of state parties and impose an affirmative duty on governments to respect these rights. As a result, where a state fails to uphold these rights for an individual, it violates the treaty and thus the law. The ICCPR commits its member states to respect the civil and political rights of individuals, which includes the right to humane treatment, freedom

¹ Customary international law is defined as “[i]nternational law that derives from the practice of states and is accepted by them as legally binding.” Black’s Law Dictionary 678 (8th ed. 2005). While customary international law is an important source for international norms, because all of the Central Asian governments have ratified treaties that protect civil and political rights, this manual focuses especially on treaty-based obligations.

of expression, freedom of religion, freedom of association, freedom of assembly, and the right to participate in the political process. The ISESCR commits its member states to ensure economic, social, and cultural rights – which include the right to health, education, and adequate standard of living.

In addition to the ICCPR and ICESCR, the UN has enacted a large number of treaties dealing with specific types of human rights violations. The major human rights treaties to be aware of are:

- The Convention on the Prevention and Punishment of the Crime of Genocide;
- The International Convention on the Elimination of All Forms of Racial Discrimination;
- The Convention on the Elimination of All Forms of Discrimination against Women;
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;
- The Convention on the Rights of the Child;
- The Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families;
- The Convention on the Rights of Persons With Disabilities; and
- The Convention for the Protection of All Persons From Enforced Disappearance.

Quick Tip: To monitor adherence to the ICCPR and ICESCR (and other treaties) and to serve as the authority on its meaning and provisions, “treaty bodies” were created under the auspices of the UN. The Human Rights Committee was established to monitor and interpret the ICCPR. It provides guidance and interpretative jurisprudence through case decisions and other documents (such as “General Comments”). These materials will provide much more detail than the summary descriptions provided in the below sections and should be consulted.

Other Sources

In addition to the UDHR and international human rights treaties, some UN bodies have adopted materials that further spell out international protections that can be useful to advocates. Although such documents are not legally binding on states, they express the consensus of experts and practitioners and are therefore persuasive. For example, in executing its mandate, the UN Working Group on Arbitrary Detention (UN Working Group) will expressly consider some non-binding UN documents, including:²

- The Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment;
- The Standard Minimum Rules for the Treatment of Prisoners;

² UN Working Group on Arbitrary Detention, *Fact Sheet No 26*, Annex IV at ¶ 7, available at <http://www.ohchr.org/Documents/Publications/FactSheet26en.pdf>.

- The United Nations Rules for the Protection of Juveniles Deprived of their Liberty; and
- The United Nations Standard Minimum Rules for the Administration of Juvenile Justice.

Fundamental Rights Under the ICCPR and UDHR

The sections below focus primarily on the ICCPR; this is because the ICCPR is a binding treaty that protects many of the civil and political rights that are violated when a government detains an individual POC. Corresponding provisions of the UDHR are also referenced. The ICCPR has been signed and ratified by all states in Central Asia and thus is binding law that imposes duties and responsibilities on the governments in the region. The rights protected under the ICCPR can be further broken down into “substantive” and “procedural” rights. Section B discusses relevant substantive rights protected by the ICCPR. Section C presents certain limitations states may invoke to curtail or limit the exercise of some substantive rights, such as expression and assembly. Section D discusses the procedural rights afforded by the ICCPR.

A. Individual Fundamental Freedoms (“Substantive Rights”)

As conceived in the UDHR and ICCPR, every individual is entitled to exercise certain basic rights, in keeping with the dignity of the individual above the collective needs of the state. These most basic rights, the exercise of which by an individual lies at the heart of any case of a POC, are:

- The right to liberty and security of person;
- The right to freedom from torture and other cruel, inhuman, or degrading treatment;
- The right to freedom of religion or belief;
- The right to freedom of expression;
- The right to freedom of assembly;
- The right to freedom of association; and
- The right to political participation.

1. The Right to Liberty and Security of Person (Prohibition of “Arbitrary Detention”)

Article 3 of the UDHR³ and Article 9 of the ICCPR⁴ guarantee everyone the right to liberty and security of person—in other words, these articles prohibit states from arbitrarily detaining

³ Universal Declaration of Human Rights, UN General Assembly, G.A. Res. 217A(III), U.N. Doc. A/810 (Dec. 10, 1948) [*hereinafter* UDHR]. Article 3 of the UDHR reads: Everyone has the right to life, liberty and security of person.

⁴ International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976 [*hereinafter* ICCPR]. Article 9 of the ICCPR reads, in part:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release.

individuals. The right to liberty and security of person is one of the most fundamental rights of an individual and is tied to many other substantive and procedural rights.

The Human Rights Committee – the UN body authorized to interpret and explain provisions of the ICCPR – has held that the prohibition of arbitrary detention not only covers criminal imprisonment, but includes other types of deprivation of liberty, including detention because of a mental illness, alleged drug addiction, or as part of immigration controls.⁵ The UN Working Group has recognized that “house arrest may be compared to deprivation of liberty provided that it is carried out in closed premises which the person is not allowed to leave.”⁶

Though a state has the authority to detain a person, it may do so only as provided for by law. A domestic law that permits the arrest of an individual must expressly – and with sufficient specificity – provide the grounds and circumstances of a lawful deprivation of liberty.⁷ This requires states to precisely define the conditions under which a deprivation of liberty is permissible and the necessary procedures for carrying it out. As an important safeguard, Article 9 requires states to provide a person deprived of his or her liberty the opportunity to seek meaningful judicial review of the arrest and initial detention in order to ensure that authorities have sufficient legal basis to hold an individual and pursue prosecution for a crime (“habeas corpus”).⁸

A detention may be rendered arbitrary under the ICCPR for a number of reasons. If a person is detained without charge under a specific law or no recognizable legal basis, then the detention is deemed arbitrary. The motivation of authorities in detaining someone must be to punish that person for the commission of a specific violation of law. Both the Human Rights Committee and the UN Working Group have instructed that a detention violates Article 9 if the authority’s motivation of the arrest of an individual is to punish that person for their exercise of a fundamental human right protected under international law.⁹ This means that a state may not criminalize the exercise of a fundamental human right (e.g. banning public speech under any circumstances and imprisoning someone for this offense). It also means that a state cannot fabricate charges on which to detain someone in order to mask a motivation to punish someone for their exercise of a

It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

⁵ General Comment No. 8, UN Human Rights Committee, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (July 12, 1996) at ¶ 1.

⁶ *Report of the Working Group on Arbitrary Detention (“Question of the Human Rights of All Persons Subjected to Any Form of Detention or Imprisonment”)*, U.N. Doc. E/CN.4/1993/24 (Jan. 12, 1993) at ¶ 20.

⁷ *Domukovsky v. Georgia*, UN Human Rights Committee, Communication No. 623/1995, 624/1995, 626/1995 & 627/1995 (Apr. 6, 1998) ¶ 18.2.

⁸ ICCPR *supra* note 4, at art. 9(4).

⁹ See *UN Human Rights Committee: Concluding Observations: Canada*, U.N. Doc. CCPR/C/CAN/CO/5 (Apr. 20, 2006) at ¶ 20 (“It notes the State party’s responses that none of the arrests in Montreal have been arbitrary since they were conducted on a legal basis. The Committee, however, recalls that arbitrary detention can also occur when the deprivation of liberty results from the exercise of the rights or freedoms guaranteed by the Covenant, in particular under articles 19 and 21”); *Turgunov v. Uzbekistan*, UN Working Group on Arbitrary Detention, Opinion No. 53/2011 at ¶¶ 47, 48, 50. See also *Report of the Working Group on Arbitrary Detention (“Revised Methods of Work of the Working Group”)*, U.N. Doc. A/HRC/16/14 (Jan. 19, 2011) at Annex ¶ 8(b) [*hereinafter Revised Methods of Work*].

fundamental right. Where there is sufficient basis in a case on which to conclude that charges are baseless, the trial neither fair nor impartial, and the individual had engaged in the exercise of a fundamental right, a finding of arbitrariness on the basis of a politically-motivated prosecution is appropriate.

A detention may also be rendered arbitrary and a violation of Article 9 if the government fails to adhere to minimum international standards of due process.)¹⁰ In such a case, the individual's imprisonment is illegal, however, that individual would not be considered a POC if it cannot be shown that authorities acted with an intent to punish for the exercise of a fundamental right.

Procedural violations that often contribute to a finding of arbitrariness, and thus a violation of Article 9, include:

- Arrest without a warrant;
- Failure to inform a detainee of the reasons for the arrest;
- Failure to inform a detainee about the charges;
- Failure to provide a detainee a public hearing by an impartial tribunal;
- Failure to provide adequate access to legal counsel; and
- *Incommunicado* detention.

2. The Right to Freedom from Torture and other Cruel, Inhuman, or Degrading Treatment

Article 5 of the UDHR and Article 7 of the ICCPR provide that “no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment.” The aim of Article 7 is to protect both the dignity and the physical and mental integrity of the individual.¹¹ No justification may be invoked to excuse a violation of Article 7 for any reason, including those based on public emergency or an order from a superior officer.¹² Moreover, when the government uses evidence obtained through torture or coercion, it also violates a detainee's procedural rights and will nullify any confession or evidence obtained (described in more detail in Section III.C below).

Although the ICCPR does not define “torture,” a widely accepted definition can be found in Article 1 of the Convention Against Torture, which defines torture as an act that:¹³

¹⁰ See *Marlem Carranza Alegre v. Peru*, UN Human Right Committee, Communication No. 1126/2002 (Oct. 28, 2005) at ¶ 7.3.

¹¹ General Comment No. 20, UN Human Rights Committee, U.N. Doc. HRI/GEN/1/Rev.1 at 30 (Mar. 10, 1992) at ¶ 2; Replaces General Comment No. 7, UN Human Rights Committee, U.N.Doc HRI/GEN/1/Rev.1 at 7 (1994) concerning prohibition of torture and cruel treatment or punishment.

¹² *Id.* at ¶ 3.

¹³ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1465 U.N.T.S. 85, entered into force June 26, 1987 [*hereinafter* CAT]. Article 1 of the Convention against Torture reads: “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 the person acting in an official capacity.”

1. Is intentional;
2. Causes severe physical or mental pain or suffering;
3. Is carried out by a public official; and
4. Seeks to achieve a specific purpose, such as obtaining information or punishing, intimidating, or coercing the victim.

Even if an incident under consideration does not meet all four of the above elements (and is therefore not “torture”), it may still violate international law. For purposes of demonstrating a violation of Article 7 of the ICCPR, it is enough to show that a government’s mistreatment of an individual constitutes cruel, inhuman, or degrading treatment. Various UN bodies have found a violation when a detainee was subjected to the following forms of mistreatment:¹⁴

- Deprivation of food;
- Placement in an overcrowded detention facility;
- Placement in a small cell;
- Failure to provide basic sanitary and medical attention;
- Threats of torture, rape, and death;
- *Incommunicado* detention or enforced disappearance;
- Beatings, electric shocks, or hanging by the hands; and
- Waterboarding or other forms of asphyxiation.

Domestic law must provide the victim with some mechanism for redressing torture or mistreatment.¹⁵ Competent authorities have an obligation to promptly and impartially investigate any complaint of torture or mistreatment and provide an effective remedy.¹⁶

In addition to the prohibition on torture and other mistreatment, states have a special duty to protect detainees under Article 10 of the ICCPR, which provides “[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”¹⁷ The Standard Minimum Rules for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment details a series of requirements related to nutritional food, sanitation, healthcare, accommodations, outside communication, and visits.¹⁸

¹⁴ See SARAH JOSEPH, KATIE MITCHELL, LINDA GYORKI & CARIN BENNIGER-BUDEL, SEEKING REMEDIES FOR TORTURE VICTIMS A HANDBOOK ON THE INDIVIDUAL COMPLAINTS PROCEDURES OF THE UN TREATY BODIES (World Organization Against Torture, 4th ed., 2006) at Part III, Jurisprudence of the Human Rights Committee, *available at* http://www.omct.org/files/2006/11/3979/handbook4_full_eng.pdf.

¹⁵ General Comment No. 20, *supra* note 11, at ¶ 14.

¹⁶ *Id.*

¹⁷ Article 10 of the ICCPR, *supra* note 4.

¹⁸ See generally Standard Minimum Rules for the Treatment of Prisoners, First UN Congress on the Prevention of Crime and the Treatment of Offenders (Aug. 30, 1955); Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UN General Assembly, G.A Res. 43/173, U.N. Doc. A/RES/43/173 (Dec. 9, 1988).

3. The Right to Freedom of Religion or Belief

Article 18 of the UDHR and Article 18(1) of the ICCPR provide for the right to freedom of religion and belief—including the individual “freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”¹⁹ It guarantees the basic freedom to adopt a religion or belief or to have none. The terms “religion” and “belief” are interpreted broadly and are not limited to traditional or institutional faith traditions.²⁰

Quick Tip: While the ICCPR does not explicitly refer to a right to conscientious objection, the Human Rights Committee has opined that such a right can be derived from Article 18 because the obligation to use lethal force may seriously conflict with the freedom of conscience and the right to practice one's religion or belief.²¹

The right to freedom of religion has two aspects: personal and public. In the personal sense, it refers to everyone's right to develop his/her beliefs or religious views without government interference. For example, changing one's religion or ceasing to believe altogether is a personal matter and the government must not interfere with it in any way.²² In the public sense, freedom of religion or belief refers to everyone's right to express his or her religious views or beliefs. For example, actions related to observing religious rituals, acts of worshipping, and religious instruction are public forms of religious practice. Because public religious expression may in some instances interfere with legitimate governmental interests, governments may lawfully regulate public religious practice in some ways. However, there are important safeguards that must be observed in limiting religious freedom (See Section III.B below for more a detailed discussion of permissible restrictions on fundamental rights).

Examples of pervasive limitations on the right to freedom of religion that have been observed in the Central Asian region include:

- Compulsion of believers or non-believers to adhere to a certain religious belief, to recant their religion or belief, or to convert;
- Restrictions of government services or benefits because of a person's religion or beliefs;
- Restrictions of access to political participation because of religion or belief;
- Restrictions on education or employment because of a person's religion or belief;
- Restrictions on manifesting one's religion or belief (*e.g.*, wearing a hijab or beard); and

¹⁹ Article 18(1) of the ICCPR, *supra* note 4, reads: “Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.”

²⁰ General Comment No. 22, UN Human Rights Committee, U.N. Doc. CCPR/C/21/Rev.1/Add.4 (July 30, 1993) at ¶ 2.

²¹ *Id.* at ¶ 11.

²² *Id.* at ¶ 5.

- Restrictions on establishing religious educational institutions and distributing religious literature.

4. The Right to Freedom of Opinion and Expression

Article 19 of the UDHR and Article 19(1) of the ICCPR²³ provide for the right to freedom of opinion, including opinions of a political, scientific, historic, moral or religious nature.²⁴ A State violates its obligations under Article 19(1) if it harasses, intimidates, or unlawfully detains an individual for holding a particular opinion.²⁵

Similarly, Article 19 of the UDHR and Article 19(2) of the ICCPR explicitly protect the right to express one's thoughts and opinions. Freedom of expression refers to the right to seek, receive and impart information and ideas through spoken, written, and non-verbal expression, such as sign language, images, and art.²⁶ It includes the expression and receipt of communications of every form of idea and opinion that can be conveyed to others.²⁷ This includes: political discourse; commentary on public affairs; discussion of human rights; journalism, cultural, and artistic expression; religious discourse; and even expression regarded as deeply offensive—provided it is in accordance with narrow restrictions under Articles 19(3) and 20 of the ICCPR.²⁸ An opinion can also be expressed through different media, such as books, newspapers, pamphlets, posters, and electronic materials.²⁹

Quick Tip: The right to freedom of expression especially protects the work of journalists, who must be allowed to gather information and disseminate news and ideas. The public has a corresponding right to receive this information free from government interference or censorship.³⁰

Examples of pervasive limitations on the right to freedom of expression that have been observed in the Central Asian region include:

- Retaliation against individuals or groups who are critical of government policies by subjecting them to arrest on fabricated charges, such as drug possession or extortion;

²³ Article 19 of the ICCPR, *supra* note 4, provides, in part:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

²⁴ General Comment No. 34, UN Human Rights Committee, U.N. Doc. CCPR/C/GC/34 (Sept. 12, 2011) at ¶ 9.

²⁵ *Id.* at ¶ 9.

²⁶ *Id.* at ¶ 12.

²⁷ *Id.* at ¶ 11.

²⁸ *Id.*

²⁹ *Id.* at ¶ 12.

³⁰ *Id.* at ¶¶ 13-16. In 2007, the UN Human Rights Committee held that the refusal of the Uzbek authorities to register a newspaper was a denial not only of the editor's freedom of expression, but also the right of a reader of the paper to receive information and ideas. See *Mavlonov v. Uzbekistan*, UN Human Rights Committee, Communication No. 1334/2004 (Apr. 27, 2009) at ¶ 8.4.

- Using national security, anti-terrorism, or treason laws to punish peaceful dissent or criticism of the government;
- Censorship of materials that contain information critical of the government;
- Using defamation laws to persecute human rights defenders;
- Preventing human rights defenders from monitoring cases of individuals who are accused of terrorism charges;
- Imposing burdensome licensing and registration processes for local and international journalists and media outlets; and
- Instituting laws that punish individuals and civil society for communicating with foreign organizations and institutions.

5. The Right to Freedom of Assembly

Article 20 of the UDHR and Article 21 of the ICCPR provide for the right to freedom of assembly.³¹ This right enables individuals to gather for the purposes of expressing and promoting diverse political views and raising issues of common concern. As such, it is one of the foundations for a properly functioning democracy and is exercised through an individual's participation in, for example, meetings, protests, strikes, demonstrations, and other forms of peaceful assemblies.³²

Examples of pervasive and unlawful limitations on the right to freedom of assembly that have been observed in the Central Asian region include:

- Threatening, smearing, or prosecuting organizers and participants of peaceful demonstrations;
- Instituting travel restrictions against individuals, especially human rights defenders and independent journalists, who wish to participate in regional and international assemblies;
- Failing to protect participants of a demonstration from the attacks by opposing groups or government officials; and
- Failing to take measures to create favorable conditions for organizing peaceful assemblies.

6. The Right to Freedom of Association

Article 20 of the UDHR and Article 22 of the ICCPR provide for the right to freedom of association.³³ Like the right to freedom of assembly, this right is indispensable in any democratic

³¹ Article 21 of the ICCPR, *supra* note 4, reads:

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others

³² *Report of the Special Rapporteur on the Right to Freedom of Peaceful Assembly and of Association*, Maina Kiai, U.N. Doc. A/HRC/20/27 (May 21, 2012) at ¶ 24.

³³ Article 22 of the ICCPR, *supra* note 4, reads, in part:

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

society because of its interrelation with other fundamental rights, including the rights to free expression, assembly, and political participation.³⁴

The right to freedom of association has two dimensions.³⁵ In its individual dimension, it protects the right of individuals to associate with like-minded people or join groups to pursue a common interest. In its collective dimension, it refers to the group's right to form and carry out activities in accordance with its mission.³⁶ In perusing such aims, individuals may associate to advance interests that are political, social, cultural, religious, commercial, or related to human rights promotion.³⁷

Examples of pervasive limitations on the right to freedom of association that have been observed in the Central Asian region include:

- Retaliating against individuals who are members of certain organizations—particularly accusing them of criminal activity;
- Adopting ambiguous or discretionary standards regulating the registration of organizations and banning organizations on dubious grounds; and
- Imposing severe reporting rules, especially with regard to human rights organizations.

7. The Right to Political Participation

Article 21 of the UDHR and Article 25 of the ICCPR guarantee the right to political participation.³⁸ The right to participate in the public affairs of a country lies at the core of democratic protection and is composed of three main elements:³⁹

1. The right to take part in the conduct of public affairs;
2. The right to vote and to be elected; and
3. The right to have access to public service.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

³⁴ General Comment No. 25, UN Human Rights Committee, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (July 12, 1996) at ¶ 26.

³⁵ *Right to Freedom of Association: Human Rights Defenders Briefing Paper Series*, International Service for Human Rights (Apr. 2009) at 10 available at http://archived2013.ishr.ch/document-stuff/browse-documents/doc_download/344-hrd-briefing-papers-freedom-of-association.

³⁶ *Belyatsky v. Belarus*, UN Human Rights Committee, Communication No. 1296/2004 (July 24, 2007) at ¶ 7.2.

³⁷ MANFRED NOWAK, UN COVENANT ON CIVIL AND POLITICAL RIGHTS: CCPR COMMENTARY (N. P. Engel, 2nd rev. ed., 2005) at 497.

³⁸ Article 25 of the ICCPR, *supra* note 4, reads, in part:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 [non-discrimination] and without unreasonable restrictions: (a) To take part in the conduct of public affairs, directly or through freely chosen representatives; (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the elections; (c) To have access, on general terms of equality, to public service in his country

³⁹ General Comment No. 25, *supra* note 34, at ¶1.

The “conduct of public affairs” is a broad concept that relates to the exercise of political power.⁴⁰ It covers all aspects of public administration, including the formulation and implementation of policy at the international, national, regional, and local levels.⁴¹ The State should provide the means by which individual citizens exercise the right to participate in the conduct of public affairs through domestic legislation.⁴²

The right to vote through elections and referenda must be established by law and subject only to reasonable restrictions, such as setting a minimum age limit for the right to vote.⁴³

Examples of pervasive limitations on the right to political participation in the Central Asian region include:

- Arbitrarily detaining political opposition leaders;
- Interfering with an individual’s right to vote freely for any candidate of his or her choice;
- Failing to conduct free and fair elections on a periodic basis;
- Failing to prevent the intimidation or coercion of voters; and
- Excluding eligible individuals from running for election by imposing unreasonable or discriminatory requirements such as education, descent, or political affiliation.

B. Permissible Restrictions on Substantive Rights

Some of the rights discussed above are not absolute. Governments may curtail an individual’s enjoyment of these rights and otherwise impose certain restrictions on their exercise within a very limited margin. This section addresses the permissible restrictions that governments may impose on certain substantive rights that are protected under international law, including the rights to freedom of religion, expression, assembly, and association. While these limitations are not found in the UDHR, they are expressly provided for in the ICCPR.

Because these fundamental rights are so vital to democracy and inherent in the dignity of the individual, any permissible limitation on the exercise of these rights must be “narrow” or limited. The Human Rights Committee has emphasized the narrowness of these exceptions by noting that the government “must meet a strict test of justification.”⁴⁴ The restrictions must not threaten the underlying right itself.⁴⁵ Further, it is the government’s responsibility (or “burden”) to prove that the limitation is justified.⁴⁶ In reviewing particular limitations, the Human Rights Committee has adopted a three prong approach (each of which must be satisfied by the government):⁴⁷

⁴⁰ *Id.* at ¶ 5.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.* at ¶ 10.

⁴⁴ *Park v. Republic of Korea*, UN Human Rights Committee, Communication No. 628/1995 (Nov. 20, 1998) at ¶ 10.3.

⁴⁵ See General Comment No. 34, *supra* note 24, at ¶ 21. See also General Comment No. 22, *supra* note 20, at ¶ 8.

⁴⁶ General Comment No. 34, *supra* note 24, at ¶ 27.

⁴⁷ The UN Human Rights Committee’s most detailed guidance on the permissible limits to substantive rights relates to the right to freedom of expression under Article 19(3). As such, this section largely focuses on the Human Rights Committee’s free expression jurisprudence. A nearly identical standard has been adopted for freedom of association under Article 22(2). *Katsora v. Belarus*, UN Human Rights Committee, Communication No. 1383/2005 (Oct. 25,

1. Limitations must be provided by law;
2. Limitations must pursue a legitimate purpose; and
3. Limitations must be necessary to achieve a specific purpose.

To justify the detention of individuals on charges that relate to protected activity, authorities will often point to the permissible limitations or exceptions outlined in the ICCPR. For example, if the government charges a journalist with inciting terrorism in response to his or her articles criticizing the authorities, the government will likely claim that it may imprison the journalist on the basis of their written work to protect “national security.” In such circumstances—where the government acknowledges that the exercise of a basic right motivated the prosecution—it is important to proactively address the permissible restriction and explain why it does not apply in your case.

Quick Tip: Where a government relies on completely fabricated allegations, such as drug possession or extortion, it is less critical that you address the limitations outlined in this section. This is because the government is not excusing its actions through the exceptions; indeed it is not admitting to its real motivation, which is to curtail and punish the exercise of a fundamental right. Still, it is good practice to address the limitations and explain how they do not apply in a specific case so as to assert that individual’s right to full enjoyment of the right they exercised.

1. Limitations Must be Provided by Law

Limitations that are compliant with the ICCPR must be expressly written into law. This requires that the government, at a minimum, formally adopt any limitation on a fundamental right as part of the domestic law in a way that enables citizens to have notice of the limitation and act accordingly.⁴⁸ The limiting law must therefore be:⁴⁹

1. Consistent with the ICCPR;
2. Accessible to the public; and
3. Not arbitrary, unreasonable, ambiguous, or discretionary.

2. Limitations Must Pursue a Legitimate Purpose

In justifying a particular restriction, states are limited to those “legitimate purposes” that are specifically identified under the ICCPR. Because the language of each limiting clause varies

2010) at ¶ 8.2. The Human Rights Committee has also adopted a similar approach in addressing limitations on the right to freedom of religion. *See Sister Immaculate Joseph v. Sri Lanka*, UN Human Rights Committee, Communication No. 1249/2004 (Oct. 21, 2005) at ¶ 7.2. Further, while there is very little jurisprudence regarding limitations on freedom of association under Article 21, the language of the restriction itself tracks the provisions of Article 19(3) closely.

⁴⁸ General Comment No. 34, *supra* note 24, at ¶ 25.

⁴⁹ The Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, UN Commission on Human Rights, E/CN.4/1985/4 (Sept. 28, 1984) [*hereinafter* Siracusa Principles].

depending upon the substantive right involved, it is essential to understand which purposes are available to the government in a particular case. The ICCPR identifies a number of purposes that might be available, including:

- Protection of the fundamental rights and freedoms of others;
- Protection of the rights and reputations of others;
- Protection of public safety;
- Protection of national security or public order; and
- Protection of public health or morals.

Some of the above purposes are closely related to one another (e.g., public safety and national security) and can be grouped into three primary interests: (a) protection of the rights and reputations of others; (b) protection of national security, public order, and safety; and (c) protection of public health and morals.

a. Protection of the Rights and Reputations of Others

The rights of each person to exercise certain fundamental rights are limited by the rights and freedoms of others. The term “rights” in this context refers to basic human rights protected under the ICCPR.⁵⁰ The term “others” refers to “other persons individually or as members of a community.”⁵¹

While the interest in protecting the rights and reputations of others may be used to justify criminal defamation or slander prosecutions in some cases,⁵² the Human Rights Committee has held that “imprisonment is never an appropriate penalty.”⁵³ Despite this, governments often invoke this rationale in the context of political discourse or debate about public officials and institutions.⁵⁴ However, individuals must be allowed to “criticize or openly and publicly evaluate their Governments without fear of interference or punishment.”⁵⁵ For example, when a journalist reports about government corruption, his or her activities “fall squarely within the scope of the right to freedom of opinion and expression.”⁵⁶ Further, merely insulting a public figure is insufficient to justify the imposition of penalties.⁵⁷

Quick Tip: The work of journalists is afforded extra importance under the ICCPR because the Human Rights Committee has noted that a “free and uncensored press” is critical in a democratic society.⁵⁸

⁵⁰ General Comment No. 34, *supra* note 24, at ¶ 28.

⁵¹ *Id.*

⁵² NOWAK, *supra* note 37, at 462.

⁵³ General Comment No. 34, *supra* note 24, at ¶ 47.

⁵⁴ See *Id.* at ¶ 38.

⁵⁵ *Rafael Marques de Morais v. Angola*, UN Human Rights Committee, Communication No. 1128/2002 (May 29, 2005) at ¶ 6.7.

⁵⁶ *Ngueyn Hoang Hai et al. v. Viet Nam*, UN Working Group on Arbitrary Detention, Opinion No. 1/2009 (May 5, 2009) at ¶ 34.

⁵⁷ General Comment No. 34, *supra* note 24, at ¶ 38.

⁵⁸ In discussing freedom of expression and the media, the UN Human Rights Committee noted that “[a] free, uncensored and unhindered press or media is essential in any society to ensure freedom of opinion and expression

b. Protection of National Security, Public Order, and Safety

Protection of national security, public order, and safety are important values in any society. For example, in the context of freedom of expression, assembly, and association, the following types of actions can be limited because they pose a genuine threat:⁵⁹

- Incitement to violent overthrow of the government;
- Advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility, or violence; and
- Propaganda of war.

Similarly, in the context of freedom of religion or belief, preaching hatred, discrimination, hostility or violence toward others is not protected and a state may limit or prohibit such expression.⁶⁰

However, it is not compatible with the ICCPR to use treason laws to punish independent journalist and human rights activists for publicizing information that is of legitimate public interest.⁶¹ The Human Rights Committee has specifically noted that counter-terror charges, such as encouraging terrorism, must be “clearly defined to ensure that they do not lead to unnecessary or disproportionate interference” with fundamental rights.⁶² Similarly, the following types of actions, although at times provocative to some, are protected from limitations and cannot be restricted even in the name of national security:⁶³

- Criticizing, insulting, or embarrassing the government or its agencies, officials, ideology, or policies;
- Demonstrating against government policies;
- Forming groups to express opinions critical of the government;
- Forming opposition parties;
- Disseminating information of legitimate public interest;
- Propagation of non-violent change of government policy or the government itself; and
- Revealing government wrongdoings.

c. Protection of Public Health and Morals

Public health may be invoked as a justification for limiting certain rights, permitting a state to take necessary measures to prevent a serious threat to the health of the population. For example, a government would be justified in limiting freedom of movement to prevent the spread of serious disease.⁶⁴ Therefore, authorities may legitimately prevent a person who has a contagious illness

and the enjoyment of other Covenant rights. It constitutes one of the cornerstones of a democratic society.” General Comment No. 34, *supra* note 24, at ¶ 13

⁵⁹ See Article 20 of the ICCPR, *supra* note 4.

⁶⁰ See Article 20(2) of the ICCPR, *supra* note 4.

⁶¹ General Comment No. 34, *supra* note 24, at ¶ 30.

⁶² *Id.* at ¶ 46.

⁶³ See generally, *Id.* at ¶¶ 37-49.

⁶⁴ NOWAK, *supra* note 37.

from leaving a hospital before recovering. However, a government's restrictions on movement must be specifically targeted to address the disease.⁶⁵

Public morals differ widely between communities. Because of this, a margin of discretion is given to states to limit certain rights using the justification of protecting public morals.⁶⁶ However, in order to justify a limitation, a state must demonstrate that the limitation is essential to the maintenance of respect for the fundamental values of the community,⁶⁷ and limitations must not be based on principles deriving exclusively from a single tradition.⁶⁸ It is important to protect the freedom of minority groups, so restrictions may not be applied in a manner which promotes prejudice or intolerance.⁶⁹ States must still observe non-discrimination requirements, and blasphemy or insult laws are generally incompatible with the ICCPR except where they amount to advocating religious hatred or violence. Similarly, public morals may not be invoked to shield religious leaders from criticism.⁷⁰

3. Limitations Must be Necessary to Achieve the Specific Purpose

Whenever a state refers to one of the legitimate purposes discussed above for limiting rights under ICCPR, it must also demonstrate the necessity of that limitation by establishing a direct connection between the right and the threat.⁷¹ The principle of necessity is composed of the following main elements:⁷²

1. There must be a “pressing” or “substantial need” for imposing restrictions;
2. There must be a rational connection between achieving one of the legitimate purposes and the restrictive measures imposed;
3. The restrictions used must be the least intrusive measures; and
4. The restrictions must be proportional, which implies that the benefit of protecting one of the legitimate purposes must be greater than the harm caused to a right itself.

The laws authorizing restrictions must be interpreted strictly (which means the interpretation must not jeopardize the right itself), must use the least intrusive means (which only in rare cases would justify detention), and must not give unlimited discretion to the government officials.⁷³

In placing limitations on relevant rights under national security, public order, and safety grounds, the State bears the burden of showing that the restriction is “necessary to avert a real and not only

⁶⁵ *Id.*

⁶⁶ *Hertzberg et al v Finland*, UN Human Rights Committee, Opinion No. 61/1979 (Apr. 2, 1982) at ¶ 10.3.

⁶⁷ Siracusa Principles, *supra* note 49, at ¶ 27.

⁶⁸ General Comment No. 34, *supra* note 24, at ¶ 32.

⁶⁹ Individual opinion by Opsahl, Lallah and Tarnopolsky in *Hertzberg et al v Finland*, *supra* note 66.

⁷⁰ General Comment No. 34, *supra* note 24, at ¶ 48.

⁷¹ *Id.* at ¶ 35.

⁷² *Restricting Freedom of Expression: Standards and Principles, Background Paper for Meeting Hosted by the UN Special Rapporteur on Freedom of Opinion and Expression*, Center for Law and Democracy at 18-19; *see also* NOWAK, *supra* note 37.

⁷³ General Comment No. 34, *supra* note 24, at ¶ 25.

hypothetical danger to national security or democratic order, and that less intrusive measures would be insufficient to achieve the same purpose.”⁷⁴

C. Procedural Rights

In addition to the substantive rights discussed above, international law provides for rights to fair process. This section discusses the procedural rights of criminal defendants under international law. “Procedural rights” refer to the procedures that the government must follow in carrying out its law-enforcement functions. These rights are there to protect criminal defendants as well as those being unfairly targeted for their exercise of substantive rights.

The specific procedural protections afforded to criminal defendants are largely contained in Article 10 of the UDHR and Articles 9 and 14 of the ICCPR. These fair trial rights are an essential component of the principle of the rule of law. As such, states may not deviate from the fundamental principles of a fair trial – including the presumption of innocence – even during public emergencies (although authorities may limit some procedural rights in such circumstances).⁷⁵ A government’s failure to guarantee minimum procedural rights to individuals in its custody may render the detention of an individual arbitrary under international law (even where they may be accused of a legitimate crime and there is no assertion of politically-motivated prosecution). These rights include:

- The right to equality and equal access;
- The right to a fair hearing;
- The right to a public hearing;
- The right to be presumed innocent;
- The right to assistance of legal counsel;
- The right to be promptly informed of reasons for arrest, detention, and charges;
- The right to be promptly brought before a judicial authority;
- The right to be tried without undue delay;
- The right to examine the witnesses;
- The prohibition of coerced testimony; and
- The right to have the conviction reviewed by a higher tribunal.

1. The Right to Equality and Equal Access

Article 14(1) of the ICCPR provides that all persons must be equal before the court. Article 14(3) provides that persons have minimal guarantees of fair trial rights in full equality.

Equal access to the court and equality before the law are among the most important principles and rights guaranteed under international law. The first guarantees that all persons must be given equal access to the court without any discrimination on the basis of race, color, sex, language, religion, or political opinion. The second principle requires that the State provide the same procedural rights

⁷⁴ *Jeong-Eun Lee v. Republic of Korea*, UN Human Rights Committee, Communication No. 1119/2002 (July 20, 2005) at ¶ 7.2.

⁷⁵ General Comment No. 32, UN Human Rights Committee, U.N. Doc. CCPR/C/GC/32 (Aug. 23, 2007) at ¶ 6.

to all parties unless distinctions are based on law and can be justified on objective and reasonable grounds – often referred to as “equality of arms.”⁷⁶ This principle is violated if, for example, only the prosecutor is allowed to appeal a certain decision or cross-examine witnesses.⁷⁷

2. The Right to a Fair Hearing

Article 14(1) of the ICCPR provides that everyone is entitled to a fair hearing. A “fair hearing” may be described as a trial conducted by competent, independent, and impartial tribunal established by law.⁷⁸ Furthermore, fairness requires the absence of any direct or indirect influence, pressure, intimidation, or intrusion from any side and for whatever motive.⁷⁹ For example, a hearing is not fair or independent if the court openly supports one party over another.⁸⁰ Similarly, this right is violated where the court fails “to control [a] hostile atmosphere and pressure created by the public in the court room,” which might negatively affect a defense attorney’s ability to properly defend his or her client.⁸¹

The requirement of competence mandates that the tribunal be established by law. The law must provide for the court’s jurisdiction and define its mandate and rules of procedure.⁸²

The requirement of independence refers to the “independence of the judiciary from political interference by the executive branch and legislature.”⁸³ It requires “the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.”⁸⁴

Therefore, to meet the requirement of independence, the court must ensure observance of an individual’s substantive and procedural rights.

The requirement of impartiality is closely related to the requirement of independence. The Human Rights Committee has stated that the notion of impartiality “implies that judges must not harbor preconceptions about the matter put before them, and that they must not act in ways that promote the interests of one of the parties.”⁸⁵ A “reasonableness standard” is applied to determine if a court has met the obligation of impartiality—that it, the court must appear to a reasonable observer to be impartial.⁸⁶ If, for example, the court failed to prevent or remedy serious procedural and substantive mistakes—such as failing to consider or address witness testimony favorable to the defendant—this would indicate the court’s bias to a reasonable observer.

⁷⁶ *Id.* at ¶ 13.

⁷⁷ *Id.*

⁷⁸ *Id.* at ¶ 3.

⁷⁹ *Id.* at ¶ 25.

⁸⁰ *Id.*

⁸¹ *Gridin v. Russian Federation*, UN Human Rights Committee, Communication No. 770/1997 (July 20, 2000) at ¶ 8.2.

⁸² *What is a Fair Trial: A Basic Guide to Legal Standards and Practice*, Lawyers Committee for Human Rights (March 2000) at 14 available at https://www.humanrightsfirst.org/wp-content/uploads/pdf/fair_trial.pdf.

⁸³ General Comment No. 32, *supra* note 75 at ¶ 19.

⁸⁴ Basic Principles on the Independence of the Judiciary, Seventh UN Congress on the Prevention of Crime and the Treatment of Offenders (Sept. 6, 1985) at ¶ 6.

⁸⁵ *Karttunen v. Finland*, UN Human Rights Committee, Communication No. 387/1989 (Oct. 23, 1992) at ¶ 7.2.

⁸⁶ General Comment No. 32, *supra* note 75 at ¶ 21.

3. The Right to a Public Hearing

Article 14(1) of the ICCPR provides that everyone is entitled to a public hearing. The right to a public hearing means that an accused has the right to an open hearing attended by the public. In general, a hearing must be open to everyone, including members of the press, and relatives of the accused.⁸⁷ Courts are under an obligation to make information about the time and venue of the hearing available and provide adequate time and facilities for attendance by interested members of the public.⁸⁸

Article 14(1) does provide that in special circumstances a court may limit public access to criminal proceedings, including cases where publicity would threaten public order or national security.⁸⁹ However, like the narrow limitations on the substantive rights outlined in Section III.B above, the government must justify any limitation based on the narrow exceptions. Indeed, the Human Rights Committee has stressed that the “the publicity of hearings ensures the transparency of proceedings and thus provides an important safeguard in the interest of the individual and of society at large.”⁹⁰

4. The Right to Be Presumed Innocent

Article 14(2) of the ICCPR states that those persons accused of committing a crime shall be presumed innocent. Presumption of innocence means that the prosecution is responsible for proving the state’s charges against the accused. During the criminal trial, the defendant must enjoy the benefit of doubt and should be considered innocent until he or she is proven guilty.⁹¹ It is important to note that the presumption of innocence must be maintained not only during a criminal trial, but also during the pre-trial investigation. Therefore, all public authorities are under an obligation to “refrain from prejudging the outcome of a trial,” which includes refraining from making statements about the guilt or innocence of the accused.⁹²

5. The Right to Assistance of Legal Counsel

Articles 14(3)(b) of the ICCPR protects the right to have adequate time and facilities to communicate with a lawyer of one’s own choosing. Access to a lawyer is one of the most important protections within the right to due process of law. The right of access to counsel includes:⁹³

⁸⁷ General Comment No. 32, *supra* note 75 at ¶ 29. See also General Comment No. 13, UN Human Rights Committee, U.N. Doc. HRUI/GEN/1/Rev.1 at 14 (1994) at ¶ 6 (replaced by General Comment No. 32).

⁸⁸ Human Rights in the Administration of Justice, Chapter 7, “The Right to a Public Hearing.”

⁸⁹ The full limitation of Article 14(1) provides that:

The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interests of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

⁹⁰ General Comment No. 32, *supra* note 75 at ¶ 28.

⁹¹ *Id.* at ¶ 30.

⁹² *Id.*

⁹³ See generally General Comment No. 32, *supra* note 75.

- The right to have prompt access to a qualified lawyer of one’s own choosing;
- The right to have sufficient time and facilities to communicate with a lawyer in full confidentiality;
- The right to benefit from free qualified legal service provided by the government;
- The right to have access to all documents and evidence, including materials that the prosecution plans to offer in court against the accused; and
- The lawyer’s right to be free from intimidation, hindrance, and harassment for representing his client.

Similarly, Article 14(3)(d) of the ICCPR provides that everyone shall be entitled to the following minimum guarantees of the right to legal assistance:

[T]o defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.

6. The Right to Be Promptly Informed of Reasons for Arrest, Detention, and Charges

Article 9(2) of the ICCPR provides that “anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.” This can be done either orally or in writing, provided that the accused understands the charge.⁹⁴ Thus, Article 9(2) establishes a two-step notification process:⁹⁵

1. At the moment of arrest, authorities must inform the detained person of the reasons for the arrest and detention; and
2. Within a short period of time after the arrest, authorities must inform the detainee of the charges being brought against him or her.

The information about the reasons for the arrest and the charges brought against a detainee must also be sufficiently detailed. Authorities must record the following information and provide it to the detainee (or a legal representative) in a form and within the time established by law:⁹⁶

- Reasons for the arrest;
- Time of the arrest;
- Identity of the officers present and concerned; and
- Precise information about the place of custody.

Article 14(3) of the ICCPR further provides that everyone has the right to be promptly informed of the nature and cause of the charge against them. The Human Rights Committee has stated that one

⁹⁴ *Id.* at ¶ 31.

⁹⁵ NOWAK, *supra* note 37.

⁹⁶ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, UN General Assembly, G.A. Res. 43/173, U.N. Doc. A/RES/43/173 (Dec. 9, 1988) at principle 12.

of the main reasons for the requirement of providing prompt information about a criminal charge is “to enable a detained individual to request a prompt decision on the lawfulness of his or her detention by a competent judicial authority.”⁹⁷ The promptness element requires that the “information be given as soon as the person concerned is formally charged with a criminal offense under the domestic law.”⁹⁸ Information about the charges also must be specific. Vague references to alleged criminal actions that lack detail, such as a “threat to national security,” “provocative behavior,” or “engagement in subversive activities,” are not sufficient.⁹⁹

7. The Right to Be Promptly Brought Before a Judicial Authority (“Habeas Corpus”)

Article 9(3) of the ICCPR provides that “anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power” so that an independent officer of the law may review the legitimacy of the charges and the pre-trial detention. Any form of detention must be under the control of a judicial authority.¹⁰⁰ Although there is no firm definition of “promptly,” the ICCPR does state that each detention must be evaluated on a “case-by-case-basis” and the time between the arrest and bringing before a judicial authority “should not exceed a few days.”¹⁰¹ Delays of as little as 72 hours have been found to violate the promptness requirement.¹⁰²

Quick Tip (Bail): Pretrial detention should not be the general rule.¹⁰³ Rather, unless the State can demonstrate that there is a likelihood that the accused would abscond or destroy evidence, influence witnesses or flee from the jurisdiction of the State, the accused should be released subject to guarantees to appear for trial. The mere conjecture of the State party that the accused might leave its jurisdiction if released on bail does not justify an exception.¹⁰⁴

8. The Right to Be Tried Without Undue Delay

Under Article 9(3) of the ICCPR, the State is under an obligation to ensure that anyone arrested on a criminal charge is brought to trial within a reasonable period of time. What constitutes “a reasonable time” is not specifically defined. Similarly, Article 14(3)(c) of the ICCPR provides that the accused has a right to be tried “without undue delay.” The rationale is to avoid keeping the accused in a state of uncertainty about the outcome of the charges. Undue delay must be avoided at all stages of the criminal proceedings, from the commencement to the end of the trial, as well as

⁹⁷ Human Rights in the Administration of Justice, Chapter 5.

⁹⁸ General Comment No. 32, *supra* note 75 at ¶ 31.

⁹⁹ *Carballal v. Uruguay*, UN Human Rights Committee, Communication No. 33/1978 (Mar. 27, 1981) at ¶¶ 12-13.

¹⁰⁰ *Kulomin v. Hungary*, UN Human Rights Committee, Communication No. 521/1992 (Mar. 22, 1996) at ¶ 11.2.

¹⁰¹ *Stephens v. Jamaica*, UN Human Rights Committee, Communication No. 373/1989 (Oct. 18, 1995) at ¶ 9.6.

¹⁰² *UN Human Rights Committee: Concluding Observations: Uzbekistan*, U.N. Doc. CCPR/A/CO/71/UZB (Apr. 26, 2001), at ¶ 12; *UN Human Rights Committee: Concluding Observations: Ukraine*, U.N. Doc. CCPR/CO/73/UKR (Nov. 12, 2001), at ¶ 17.

¹⁰³ ICCPR, *supra* note 4, at art. 9(3).

¹⁰⁴ *Hill v. Spain*, UN Human Rights Committee, Communication No. 526/1993 (Apr. 2, 1997) at ¶ 12.3.

the issuance of the judgment.¹⁰⁵ The Human Rights Committee has found a violation of the right to be tried without undue delay when 24 months elapsed between the arrest and trial.¹⁰⁶ In another case, it found a violation after 31 months between the conviction and appeal.¹⁰⁷

Because the right to be tried without undue delay constitutes “minimum standards” that governments must comply with,¹⁰⁸ governments cannot use excuses, such as economic hardships and lack of resources, as an excuse for delay.¹⁰⁹ If a delay took place, it is the government’s burden to demonstrate that the complexity of the case justified it.¹¹⁰

9. The Right to Examine Witnesses

Article 14(3)(e) of the ICCPR provides for the right of the accused to examine and cross-examine witnesses. This means that the parties must have an equal opportunity to introduce and examine witnesses and is closely related to the “equality of arms” principle under Article 14(1). While this requirement does not grant the defendant an “unlimited” right to demand the attendance of any and all witnesses he or she may demand, the ICCPR does protect the right of defendants to call relevant witnesses and challenge witnesses for the government – including police officers – on an equal basis.¹¹¹

10. The Prohibition on Coerced Testimony

Article 15 of the Convention Against Torture prohibits the use of testimony that was obtained through torture.¹¹² Similarly, Article 14(3)(g) of the ICCPR prohibits compelling a person to testify against himself or to confess guilt. Forms of coercion may include:

- Infliction of torture or ill-treatment;
- Intimidation; or
- Promises of leniency.

Any evidence obtained by such means must be inadmissible at trial. The law should wholly prohibit evidence provided by means of such methods and by any other form of compulsion.¹¹³

11. The Right to Have the Conviction Reviewed by a Higher Tribunal

Article 14(5) provides for the right to have one’s conviction reviewed by a higher court. The aim of this right is to protect an individual’s right to appeal his or her criminal sentence or conviction.

¹⁰⁵ General Comment No. 32, *supra* note 75, at ¶ 35.

¹⁰⁶ *C. Smart v. Trinidad and Tobago*, UN Human Rights Committee, Communication No. 672/1995 (July 29, 1998) ¶ 10.2.

¹⁰⁷ *C. McLawrence v. Jamaica*, UN Human Rights Committee, Communication No. 702/1996 (July 18, 1997) at ¶ 5.11.

¹⁰⁸ *B. Lubuto v. Zambia*, UN Human Rights Committee, Communication No. 390/1990 (Oct. 31, 1995) ¶ 7.3.

¹⁰⁹ *Id.* at ¶ 7.3.

¹¹⁰ *E. Pratt and I. Morgan v. Jamaica*, UN Human Rights Committee, Communications Nos. 210/1986 and 225/1987 (Apr. 6, 1989) at ¶ 13.3.

¹¹¹ General Comment No. 32, *supra* note 75, at ¶¶ 23, 39.

¹¹² CAT, *supra* note 13.

¹¹³ *See Id.* at art. 15; General Comment No. 20, *supra* note 11, at ¶ 12.

It requires a different court with appropriate jurisdiction review the conviction substantively—both on the basis of the sufficiency of the evidence and the applicable law—as well as the appropriateness of the conviction and sentence.¹¹⁴ While the ICCPR does not require that the appellate court conduct a full retrial or “hearing,” a review limited to the formal or legal aspects of the conviction with no consideration of the facts is not sufficient.¹¹⁵ Further, the right to appeal “can only be exercised effectively if the convicted person is entitled to have access to a duly reasoned, written judgment” and other documents like trial transcripts.”¹¹⁶

IV. International Human Rights Mechanisms

When state authorities harm the rights of its citizens or fail to protect those rights, and other domestic remedies are insufficient or unavailable, as is often the case in politically-motivated prosecutions, one has available to them international bodies from which to seek redress on an individual case. There are a number of UN and regional bodies available - some legally binding, others not but no less helpful in advocacy. Although a favorable decision by one of these bodies may not result in the immediate release of a POC (for reasons described below), these mechanisms remain an important component of international advocacy. Human rights advocates often petition these bodies as part of a broader advocacy strategy aimed at pressuring governments to release POCs or others imprisoned without a fair trial.¹¹⁷

In this section, UN bodies that are relevant for the cases of POCs are presented. Although there are a number of regional bodies outside of the UN system that consider similar cases, such as the European Court of Human Rights that includes Russia and Azerbaijan in its jurisdiction,¹¹⁸ the countries of Central Asia are not party to any regional mechanism and at this time no such alternative mechanism exists.

Along with a description of each body (or mechanism) is a discussion of the advantages and disadvantages of using each one. Major factors to consider when choosing which venue to submit to are: jurisdiction and admissibility, urgency, and goal. Helpfully, each of the bodies detailed below accept individual communications electronically via email.

Submitting Individual Complaints:

This section and manual provides advice and guidance on how to make individual submissions on behalf of a POC. Who may submit these individual cases, when they may be submitted, and what information must be submitted vary depending on the particular body. Each of these considerations will be explained in greater detail below.

¹¹⁴ General Comment No. 32, *supra* note 75, at ¶ 48.

¹¹⁵ *Id.*

¹¹⁶ *Id.* at ¶ 49.

¹¹⁷ For more information about incorporating international legal advocacy in to broader campaigns, see Jared Genser & Margaret Winterkorn-Meikle, *The Intersection of Politics and International Law: The United Nations Working Group on Arbitrary Detention in Theory and Practice*, 38 Colum. Hum. Rts. L. Rev. 691 (2008).

¹¹⁸ Other regional mechanisms include the Inter-American Commission on Human Rights (<http://www.oas.org/en/iachr/>) and the African Commission on Human and Peoples’ Rights (<http://www.african-court.org/en/>).

Quick Tip: Many of the UN mechanisms that consider individual petitions or communications also accept periodic reports from human rights activists and organizations. Generally, the purpose of these reports is for the author to describe the human rights situation in the country and to provide detailed information about the ways that the country is failing to meet its obligations under international law. These reporting procedures only occur every few years for specific countries, thus this procedure is less helpful for activists focused on urgent individual cases. Nevertheless, submitting the reports for the record is a very useful opportunity to compile a number of cases or present a pattern of human rights violations, such as the arbitrary detention of journalists or human rights defenders. One of the most widely utilized reporting procedures is the Universal Periodic Review procedure of the UN Human Rights Council. ¹¹⁹

Specificity of Information and Credibility

Submissions to international mechanisms will be deemed as credible as the source and the information provided. Thus, in preparing a submission, it is important to tell the mechanism where the information came from and to cite to authoritative reports and statements from international bodies (such as other UN mechanisms) or reputable human rights organizations.

Quick Tip: In some circumstances it may be unsafe to identify an individual source of information (especially where the government has a history of targeting human rights defenders and journalists). If this is the case, it is important to keep the identity of the source confidential and to simply cite to a “source” and support the source’s claims with publicly available information.

Types of United Nations Mechanisms

Within the UN system, there are a number of different types of mechanisms that accept individual communications from victims, NGOs, and human rights activists. Deciding which international body to petition involves a number of competing considerations. The mandates of these UN mechanisms generally fall into one of three categories: treaty bodies, hybrid mechanisms, and special rapporteurs.

| Type of Mechanism | Advantages | Disadvantages |
|-------------------|---|---|
| Treaty Bodies | <ul style="list-style-type: none"> • Issue decisions that are binding under international law • Governments often respond to individual petitions and may take the procedure more | <ul style="list-style-type: none"> • Can take years before an opinion is issued • Higher standards for evidence and burden of proof • Must have exhausted domestic |

¹¹⁹ For more information about the UPR process, visit <http://www.upr-info.org/>.

| | | |
|---------------------|--|--|
| | <p>seriously</p> <ul style="list-style-type: none"> • Follow-up procedures | <p>remedies (appeals)</p> <ul style="list-style-type: none"> • Government must have accepted jurisdiction • Must have authorization to submit on behalf of victim |
| Hybrid Mechanisms | <ul style="list-style-type: none"> • Individual petitions move forward much more quickly • Can be utilized for violations occurring in any country • Does not require exhaustion of domestic remedies • Lower standards for evidence and burden of proof | <ul style="list-style-type: none"> • Decisions are non-binding under international law • No established follow-up procedures |
| Special Rapporteurs | <ul style="list-style-type: none"> • Communications forwarded to governments within days or weeks • Very few admissibility requirements (possible to use procedures to gather information about a case) | <ul style="list-style-type: none"> • Does not issue opinions in individual cases • Governments may fail to respond or refuse to participate in the process • No formal follow-up procedures |

A. Treaty Bodies

Treaty bodies are bodies established under multilateral agreements or treaties to monitor compliance by the states that are party to the agreement. In general, these bodies are composed of independent experts who work closely with a staff in the UN Secretariat offices in Geneva. These bodies are an authoritative voice on the provisions of law contained within the treaties. As part of their mandate, they issue interpretations called “General Comments” about specific provisions of the treaties they oversee and they consider individual allegations of violations by member states.

The seven UN treaty bodies that currently consider individual communications are:

1. The Human Rights Committee;
2. The Committee on the Elimination of Discrimination Against Women;
3. The Committee Against Torture;
4. The Committee on the Elimination of Racial Discrimination;
5. The Committee on Enforced Disappearances;
6. The Committee on Economic, Social, and Cultural Rights; and
7. The Committee on the Rights of Persons with Disabilities

1. Factors to Consider When Submitting to a Treaty Body

a. Admissibility Requirements

Because treaty bodies are empowered through the treaties they monitor and enforce, and thus have binding authority, they have significantly higher standards or “admissibility requirements” for

individual submissions than that of other UN mechanisms.

In order to submit an individual communication, certain criteria must be met for the case to be considered. Generally, if any of the admissibility criteria are not met, the communication will be rejected by the treaty body (even if there has been a human rights violation). As a result, it is essential that petitioners make sure that all of the admissibility criteria are met *before* the case is submitted so that it is not rejected on procedural grounds. Individual submissions must state clearly how the submission meets the body’s admissibility criteria.

While great care must be taken to ensure that *all* admissibility criteria specific to each body are met before submitting an individual case to a particular treaty body, a number of specific requirements are common to most treaty bodies and can pose challenges for activists and detainees seeking to submit a case under the individual communication procedure. These common admissibility factors are jurisdiction, exhaustion, authorization, and concurrent submissions.

Jurisdiction: Because treaty bodies rely upon a specific grant of authority through an international agreement, the government in question must have expressly accepted the body’s jurisdiction. The below graph shows which Central Asian states have recognized the jurisdiction of the UN treaty bodies:¹²⁰

| | ICCPR ¹²¹ | CEDAW ¹²² | CAT ₁₂₃ | CERD ₁₂₄ | CED ¹²⁵ | CESCR ¹²⁶ | CRPD ¹²⁷ |
|--------------|----------------------|----------------------|--------------------|---------------------|--------------------|----------------------|---------------------|
| Kazakhstan | X | X | X | X | | | X |
| Kyrgyzstan | X | X | | | | | |
| Tajikistan | X | | | | | | |
| Turkmenistan | X | X | | | | | X |
| Uzbekistan | X | | | | | | |

Exhaustion: Most treaty bodies require that the petitioner “exhaust domestic remedies”—or pursue all available local judicial procedures and appeals—before the case can be considered. While this does not require that petitioners file multiple supervisory or discretionary (“*nadzor*”) appeals,¹²⁸ it does mean that the detainee will generally not be

¹²⁰ For a current summary of the status of ratification for each UN human rights treaty, see <https://treaties.un.org/Pages/ParticipationStatus.aspx>.

¹²¹ See Optional Protocol to the International Covenant on Civil and Political Rights, 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976.

¹²² See Optional Protocol to the Convention to Eliminate All Forms of Discrimination Against Women, 2131 U.N.T.S. 83, *entered into force* Dec. 22, 2000.

¹²³ See CAT, *supra* note 13 (Art 22 notification).

¹²⁴ See Convention on the Elimination of All Forms of Racial Discrimination, 660 U.N.T.S. 195, *entered into force* Jan. 4, 1969 (Art 14 notification).

¹²⁵ See International Convention for the Protection of All Persons from Enforced Disappearance, 2715 U.N.T.S., *entered into force* Dec. 23, 2010 (Art 31 notification).

¹²⁶ See Optional Protocol to the International Covenant on Economic, Cultural and Social Rights, C.N.869.2009 Treaties 34, *entered into force* May 5, 2013.

¹²⁷ See Optional Protocol Convention on the Rights of Persons with Disabilities, Doc.A/61/611, *entered into force* May 3, 2008.

¹²⁸ Because the *Nadzor* supervisory review procedure common in post-Soviet states is an entirely discretionary form of

able to submit the case to a treaty body until after the judicial proceedings and appeals process have been completed.

It is important to show that each human rights violation alleged in the communication to the treaty body was also raised during the domestic proceedings. It is not enough to raise human rights abuses only at the international level—each violation must be raised at each step. For example, if the victim was tortured during the interrogation, the petition should document that the mistreatment was raised during the trial and throughout the appeals process. However, if you cannot show that the violation was raised during the domestic proceedings, you can still argue that one of the exceptions apply (for example, you might argue that the appeals process was unduly prolonged or did not offer an objective prospect of success).¹²⁹

Authorization: In order to submit an individual complaint to a treaty body, the individual or organization making the submission will need the express permission of the victim or a close family member. If this is not possible, petitioning a treaty body is generally not an option.

Concurrent Submissions: Most treaty bodies will reject a case if it is already under consideration by another international body of inquiry. This includes other regional mechanisms as well as other non-treaty bodies within the UN system. For example, if an individual case currently pending before a treaty body, such as the Committee Against Torture or a non-treaty body mechanism, such as the UN Working Group, it cannot be considered simultaneously by the Human Rights Committee. However, in some circumstances, it may be possible to submit the case to one body, and then submit the case to another body after a decision in the first instance has been made. Not all bodies are treated equally for the purposes of this rule. While this rule may preclude a submission to multiple UN bodies at the same time, a number of the below mechanisms do not fall under this rule—including the special rapporteurs, the UNESCO Committee on Conventions and Recommendations, and the UN Working Group on Enforced and Involuntary Disappearances.

b. Other Factors to Consider

In addition to the admissibility requirements, advocates must also consider a number of other factors in deciding whether it is best to submit the case to a treaty body (instead of a hybrid mechanism or special procedure). These factors include the binding nature of the opinion, the relative length of time it takes for a case to move forward to completion, whether the advocates have access to sufficient information, and the follow-up procedure available to the petitioners.

Nature of the Opinion: Because treaty bodies derive their authority directly from a treaty, their opinions in individual cases are considered “binding” under international law.

review, the Human Rights Committee has found that petitioners need not exhaust such remedies before submitting an individual complaint. See e.g. *Umarov v. Uzbekistan*, UN Human Rights Committee, Communication No. 1449/2006 (Oct. 19, 2010) at ¶ 7.3.

¹²⁹ The jurisprudence of the treaty bodies regarding the exhaustion requirement and its exceptions is extensive. As such, if you believe that one of the exceptions applies, it is important to explain why your case falls within the standard established by that body with specific reference to the appropriate case law.

Although the decisions are not “self-enforcing” (that is, the treaty bodies cannot force governments to comply), the findings of treaty bodies are considered more authoritative than quasi-judicial mechanisms or the special rapporteurs.

Timing: Treaty bodies are not fast moving bodies. This is due mostly to a large backlog of cases and lack of resources. It can take years to obtain an opinion from a treaty body like the Human Rights Committee. As such, the procedure is not well suited to individuals who are seeking a determination more quickly. However, where there is a serious threat to the health or life of an individual, a petitioner may be able to seek certain “interim measures” while the case is pending.

Access to Information: Treaty bodies generally have a higher standard for the amount and quality of the information that the petitioner must provide. As such, where the petitioners have only limited information about the case (for example, the circumstances of the arrest, nature of the charges, conduct of the trial, etc.), a treaty body may not be the most suitable option.

Quick Tip: The treaty bodies accept communications in any UN language (Arabic, Chinese, English, French, Russian, and Spanish); however, it is generally understood that petitions submitted in English or Spanish often move through the process most quickly.

Follow-up Procedures: After an opinion is rendered by a treaty body, there are generally established follow-up procedures for the petitioners to pursue if the government fails to comply with the treaty body’s opinion. If the government fails to comply with the treaty body’s opinion, it is essential to proactively pursue the follow-up procedures.

2. The Human Rights Committee

a. Mandate:

The Human Rights Committee is an 18-member treaty body based in Geneva that was created to monitor member state compliance with the provisions of the ICCPR. In order to submit an individual complaint, you must first make certain that the state is party to the First Optional Protocol of the ICCPR. All governments in the Central Asian region have signed the Protocol and therefore recognize the authority of the Human Rights Committee to consider individual cases.

b. Submitting to the Committee

The First Optional Protocol to the ICCPR and Fact Sheet No. 7 establish a number of admissibility criteria that must *all* be met before the Committee will consider an individual complaint:¹³⁰

¹³⁰ The Optional Protocol to the ICCPR is available at <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCCPR1.aspx>. Fact Sheet No. 7 is available at <http://www.ohchr.org/Documents/Publications/FactSheet7Rev.1en.pdf>.

1. The case must not be simultaneously under investigation by another procedure of international investigation or settlement;
2. The individual must have exhausted all available domestic remedies;
3. The complaint must be in writing, signed by the author, and describe (in chronological order) all the facts upon which the complaint is based;
4. The case must be submitted with the consent of the victim;
5. The communication must state why the outlined facts constitute a violation of the victim's rights under the ICCPR;
6. The petitioner should include copies of all the important documents, such as the relevant laws and proof that the victim exhausted domestic remedies; and
7. The communication should explain what steps have been taken to meet the above admissibility criteria.

The Human Rights Committee (like many other international mechanisms) has developed extensive case law regarding its admissibility requirements. This is particularly true for the first two admissibility requirements (concurrent cases and exhaustion of remedies). It is wise to consult the Committee's jurisprudence on these requirements.¹³¹

Quick Tip: In addition to outlining some of the admissibility criteria, Fact Sheet No. 7 also provides additional helpful advice. For example, it suggests that in cases where the government might argue that one of the admissibility criteria are not met, it is important to explain why you believe the Committee's requirements have been satisfied by the materials provided.

c. Standard Procedure

A model complaint form can be found on the Human Rights Committee's website under the "complaints procedure" tab.¹³² This form will guide you on exactly what information should be compiled and included in the submission.

Upon receiving the communication, the Committee first considers the admissibility of the case. The government then has six months after receiving the complaint to comment about the admissibility of the case. If the government responds, then the applicant (also called the "source") has two months to submit a reply. In cases where the government does not respond, the Committee makes a decision based on the information provided by the source.

The Human Rights Committee does not have an appeal procedure for its decisions. When the Committee finds a violation, it invites the government to report within three months on the steps it has taken to comply with the decision of the Committee. The Committee's decision will often include specific recommendations directed to the government party, such as the release of an

¹³¹ A helpful database is made available by the Netherlands Institute of Human Rights at <http://sim.law.uu.nl/SIM/CaseLaw/CCPRcase.nsf/CommNo?OpenView>.

¹³² The Committee's website is available at <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx>.

individual in detention or the payment of compensation.

d. Urgent Action Procedure

In certain cases, the Committee is authorized to call for urgent action where there is a threat of irreparable harm to the victim. In such cases, the Committee may—without yet deciding if there has been a violation of the ICCPR—contact the government to determine whether interim measures may be required before the case is substantively considered. In making such a request, you should provide as much information as possible about the victim’s current situation and why it is life-threatening or how it will cause irreparable harm. The situations that might warrant urgent action include: torture and cruel, inhuman or degrading treatment, chronic illness that requires medical attention, *incommunicado* detention, enforced disappearances, and the like.

B. Hybrid Mechanisms

Hybrid mechanisms share some of the characteristics of treaty bodies, in that they consider individual communications alleging human rights violations and render opinions on each case. However, they are not a product of a specific treaty - instead, they are created by existing UN institutions (like the Human Rights Council) to address a particular problem as opposed to a body of law. These hybrid mechanisms are often composed of experts pulled across the five global regions and have formalized individual communication procedures. Technically speaking, they do not produce binding opinions; however, their speed and flexibility offer an attractive alternative to the more formal treaty bodies.

The hybrid mechanisms relevant to cases of arbitrary detention include:

- The UN Working Group on Arbitrary Detention;
- The UN Working Group on Enforced and Involuntary Disappearances; and
- The UNESCO Committee on Conventions and Recommendations.

1. Factors to Consider When Submitting to a Hybrid Mechanism

a. Admissibility Requirements

The admissibility requirements for hybrid bodies are generally less stringent than for treaty bodies. It is always important to understand the specific requirements of each hybrid mechanism before submitting an individual complaint; however, these general observations show how some of the criteria differ significantly from what is required by the treaty bodies.

Jurisdiction: Because the mandate of hybrid mechanisms does not attach to a specific treaty, submissions to them need not allege a violation of any specific treaty. Instead, these bodies will apply the principles of the Universal Declaration of Human Rights to alleged human rights violations. Thus, the state need not be party to a specific treaty. However, citing to the ICCPR is always a good idea, because it offers more specific protections that are binding on Central Asian countries.

Exhaustion: There is no strict requirement that domestic remedies be exhausted before a case can be submitted to the hybrid mechanisms.

Authorization: Generally, obtaining specific authorization from the victim or a family member is preferable before submitting to hybrid mechanisms. However, the authorization rules for the hybrid mechanisms differ, and it is possible to submit to some of them as an interested NGO.

Concurrent Cases: Whether or not a hybrid mechanism will consider a case that is also under consideration by another body differs among the mechanisms. Some mechanisms (like the UNESCO Committee on Conventions and Recommendations) allow multiple proceedings, while other bodies (like the UN Working Group on Arbitrary Detention) do not.

b. Other Factors to Consider

Nature of the Opinion: A critical difference between the treaty and hybrid procedures is the nature of the opinions that they adopt in individual cases. While the opinions of treaty bodies are binding under international law, the findings of the hybrid mechanisms are not. They do, however, carry a certain amount of weight because they are issued by independent UN experts. Further, while they are not technically binding, these opinions can be nonetheless useful tools for human rights activists seeking an individual's release.

Timing: One of the primary advantages to submitting an individual communication to a hybrid mechanism is the relatively fast pace of the process. For example, once a case is submitted to the UN Working Group on Arbitrary Detention, an opinion can often be obtained in under one year.

Access to Information: The evidentiary requirements for submissions to hybrid mechanisms are less strict than those for treaty bodies. However, it is generally a good practice to include as much relevant information as possible. It is also important to provide supporting documentation for any claims made in the petition.

2. UN Working Group on Arbitrary Detention

a. Mandate

The UN Working Group on Arbitrary Detention (Working Group) is a hybrid mechanism composed of five experts from different UN regions. It was created and is overseen by the UN Human Rights Council (formerly the UN Commission on Human Rights). Among other responsibilities, the Working Group accepts individual communications and renders opinions deciding whether the detention of a specific individual (or set of individuals) is arbitrary under international law.

b. Submitting a Case to the Working Group on Arbitrary Detention

The procedures for submitting individual complaints to the Working Group are set out in Fact Sheet No. 26 and the Working Group's Revised Methods of Work.¹³³ Generally, detainees or their representatives (including family members, lawyers, or NGOs) may submit a petition to the Working Group alleging that the individual is being wrongfully detained. The detainee must be currently under some form of detention (including administrative detention, imprisonment, or house arrest). The Working Group will not consider cases where the individual has already been released.

In reviewing a case, the Working Group makes a determination as to whether an individual's detention is arbitrary by considering it under five possible categories. As such, it is important to indicate how one or more of the following categories apply to the individual case and why.

Category I: When it is impossible for the government to invoke any legal basis under domestic law for detaining the individual (such as when the person is kept in detention after the completion of his or her sentence or where the individual is detained without charge or authorizing legislation).

Category II: When the deprivation of liberty results from the exercise of human rights (such as freedom of expression, association, and religion) that are protected under the applicable provisions of the ICCPR (Articles 12, 18, 19, 21, 22, 25, 26, and 27) and UDHR (Articles 7, 13, 14, 18, 19, 20, and 21).

Category III: When the government fails to observe international norms related to due process and the right to a fair trial.

Category IV: When asylum seekers, immigrants, or refugees are detained for prolonged periods of time without the possibility of administrative or judicial relief.

Category V: When the detention is because of discrimination based on birth, nationality, ethnicity, class, gender, sexual orientation, disability, or political or other opinion.

The Working Group on Arbitrary Detention has developed considerable case law on the above categories. A searchable database of cases is available at <http://www.unwgadatabase.org/un/>.

c. Individual Communication Procedure

A detainee or representative may initiate an individual complaint by requesting an "opinion" of the Working Group on a specific case. A model questionnaire is available on the Working Group's website.¹³⁴ Although only basic information is requested by the Working Group for a case to be considered, it is important to include all of the relevant facts and international legal standards in the individual communication. For more on drafting legal arguments, see Section V below.

¹³³ Fact Sheet No. 26 is available at <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx> and the Working Group's Revised Methods of Work are available at <http://www1.umn.edu/humanrts/wgad/2011report.pdf>.

¹³⁴ The Working Group's website is available at <http://www.ohchr.org/EN/Issues/Detention/Pages/WGADIndex.aspx>.

After receiving the individual communication, the Secretariat of the Working Group will forward a summary of the allegations to the offending government. The government is given 60 days to provide a response to the allegations (though it may request an extension of up to one additional month). Once the government has provided its observations, the petitioner will be given an opportunity to submit additional comments on the information provided by the government. Based on these communications, the members of the Working Group will meet to consider the case and render an opinion.

Quick Tip: Generally, once the opinion is sent to the petitioner, it is not made public by the Working Group for a number of months. This allows the petitioner to release the opinion publicly, thereby potentially generating media interest in the case.

In addition to providing the government and petitioner with copies of its opinion, the Working Group will include the full opinion in its annual report to the UN Human Rights Council. There are no specific follow-up procedures in the Working Group's mandate. As such, it is important to proactively update the Working Group regarding any changes in the detainee's situation (such as increased restrictions on communicating with family members) and whether the government has taken any actions to comply with the opinion (such as releasing the detainee).

d. Urgent Action Procedure

The urgent action procedure of the Working Group is a humanitarian mechanism available where there is a time-sensitive, serious threat to the detainee's life, health, or physical or psychological integrity.

An urgent action request should provide as much information as possible detailing why government's treatment of the victim creates a life-threatening situation. This might include information about the types of torture and cruel, inhuman, or degrading treatment the victim endured; health conditions that require urgent medical attention; the detainee's access to family or lawyers; the conditions of the prison; or any other factors that might threaten his or her wellbeing.

Quick Tip: When requesting both an urgent action and an opinion, it is best to separate the two requests and explain separately why an urgent action is warranted and why the detention is arbitrary.

3. UN Working Group on Enforced or Involuntary Disappearances

a. Mandate

The Working Group on Enforced or Involuntary Disappearances (WGEID) is a hybrid mechanism that deals with cases involving individuals who have been disappeared (detained by government authorities or their agents who fail acknowledge the detention or disclose the victim's fate or

whereabouts). It acts as a channel of communication between the families or representatives of the disappeared persons and the government.

b. Submitting to the Working Group

The procedures for submitting a communication are described in the WGEID's Revised Methods of Work.¹³⁵ In particular, communications must include specific pieces of information, including:

- Full name of the disappeared person and, if possible, age, gender, nationality, and occupation;
- Date and place of disappearance or abduction (or date and place where the disappeared person was last seen or observed in government custody);
- Parties (acting on behalf of or with the support of the Government) that are believed to have carried out the arrest or are believed to be detaining the disappeared person; and
- Steps taken by the family to determine the fate or whereabouts of the disappeared person, including any efforts to pursue domestic remedies and any result.

The WGEID accepts information on specific cases from reliable sources (such as family members, governments, and NGOs). However, if the source is someone other than a family member, the source must have the direct consent of the family to bring the case before the WGEID.

c. Complaint Procedure

A model complaint form is available on the WGEID's website under the "How to report a case of disappearance" tab.¹³⁶

The procedure for an individual communication will differ depending on when the source provides information about the disappearance to the WGEID. If the individual communication is received by the WGEID within three months of the victim's disappearance, the Chair-Rapporteur of the WGEID will ensure that the admissibility requirements are met and then forward the case to the government within two days with the request that the government conduct an investigation and report its findings to the WGEID (Urgent Procedure). If the communication is received by the WGEID more than three months after the disappearance occurred, then the case is reviewed by the entire WGEID during the next session (which occur roughly every four months). If the WGEID determines that the admissibility requirements are met, the case is forwarded to the government for investigation and comment (Standard Procedure).

Under both the Urgent and Standard Procedures, a case is initiated. However, unlike the Working Group on Arbitrary Detention, the Working Group on Enforced and Involuntary Disappearances will not issue a written opinion. Instead, its mandate is to facilitate dialogue between the source and the government until the case is ultimately "clarified" (which occurs when the whereabouts of the disappeared person are made known or where the source fails to respond to a government

¹³⁵ The Working Group's Revised Methods of Work are available at http://www.ohchr.org/Documents/Issues/Disappearances/Methods_of_work2011.pdf.

¹³⁶ The Working Group's website is available at <http://www.ohchr.org/EN/Issues/Disappearances/Pages/Procedures.aspx>.

communication for six months). The result is a series of communications between the disappeared person's representatives and the government until the case is ultimately resolved.

d. Urgent Action Procedure

Separate from the Urgent and Standard Procedures (which result in a case before the WGEID), activists may also file for an Urgent Action Request. While this procedure does not result in the initiation of a "case," it may be submitted where there are credible allegations that a person has been disappeared—or is at risk of being disappeared—even if the above admissibility requirements are not met.

When an Urgent Action Request is filed, the Chair-Rapporteur will transmit the allegations to the government seeking an investigation and additional information. Although such a request does not result in the opening of a case, if the WGEID finds that the admissibility requirements have been met by the information provided, it may initiate a case on its own under the individual complaint procedure (using either the urgent or standard timeline). Further, in cases of intimidation, persecution, or reprisal against the relatives of disappeared persons, witnesses to disappearances or their families, human rights defenders, or individuals concerned with disappearances, the WGEID will transmit a communication to the government and request that it take steps to protect the fundamental rights of the threatened individuals.

4. UNESCO Committee on Conventions and Recommendations

a. Mandate

The UNESCO Committee on Conventions and Recommendations created a hybrid complaint procedure that is authorized by the Executive Board of UNESCO to facilitate dialogue regarding individual human rights abuses. The Committee's jurisdiction is limited to considering abuses that fall within the UNESCO mandate—including the right to information and freedom of expression, the right to education, and the right to share in scientific advancement and participate in the cultural life of a country.

b. Submitting to the Committee on Conventions and Recommendations

Individuals, groups of individuals, and NGOs may submit communications to UNESCO regarding human rights violations if they are themselves victims or have reliable knowledge of the violations. The specific requirements for submitting individual communications to the Committee are found in the authorizing UNESCO resolution, 104 EX/Decision 3.3, and the Committee's 104 Procedure Factsheet.¹³⁷

Because any petition must identify the violation of a right within UNESCO's competence (expression, information, education, science, or culture), it is essential to explain how the violation is linked to the exercise of these rights. Generally, UNESCO requires as a matter of practice that

¹³⁷ UNESCO's 104 Decision is available at http://portal.unesco.org/en/ev.php-URL_ID=15249&URL_DO=DO_TOPIC&URL_SECTION=201.html. The Committee's Fact Sheet is available at http://portal.unesco.org/en/files/19096/13324060071Brochure_CR_2012_en.pdf/Brochure%2BCR%2B2012%2Ben.pdf.

the petitioner show that the persecution occurred because of the victim's work as an educator, student, scientist, writer, or artist. The work of journalists is also protected by UNESCO's mandate, but where the victim is a blogger, it will be important to prove that the victim's work was in fact journalism (and not just participation in online social media).

In order to meet the admissibility requirements of the 104 Procedure, the communication:

1. Must not be anonymous (that is, it must identify the author);
2. Must allege a violation of a right that falls within UNESCO's competence;
3. Must contain relevant evidence and not be based on information obtained solely from mass-media reports (such as newspapers, television, or the internet);
4. Must not be abusive or otherwise incompatible with the UDHR;
5. Must be submitted after a reasonable amount of time for the facts to become known;
6. Must not relate to a matter already settled under principles of the UDHR; and
7. Must indicate what measures have been taken to exhaust domestic remedies.

c. Standard Procedure

The procedure begins when the petitioner submits an initial letter to the Director-General of UNESCO (sent to the Director of the Office of International Standards and Legal Affairs). This short letter must outline the basic facts of the case, indicate what human rights have been violated, and be in one of the UNESCO working languages (English or French). Once UNESCO determines that the case may fall within the Committee's jurisdiction, the petitioner will receive a case number and a standard form to be completed and returned to the Committee.

After the completed form is received by UNESCO, the Director-General will transmit a letter to the government regarding the alleged violations and a copy of the communication. The government is then given three months to comment on the admissibility or merits (substance) of the petition.

Individual communications are considered by the Committee twice per year. After the Committee determines that the case is admissible, it examines the merits of the petition. The Committee may then adopt a confidential report containing its findings and recommendations.

The entire UNESCO process is confidential. This includes the fact that the individual communication has been submitted and any action that is obtained. As such, it is very important to avoid publicizing these submissions (or the case could be rejected). However, while the petitioner may not disclose information about the communication, the government will know the identity of the petitioner.

C. Special Rapporteurs

Like the hybrid mechanisms, the special rapporteurs obtain their mandate from the fact that they are created by a UN institution—the Human Rights Council. Unlike the treaty bodies and hybrid bodies, however, they do not issue opinions or judgments. A special rapporteur is a single representative rather than a body. However, a rapporteur often has UN-supported staff. The

individual complaint procedure for these mechanisms is much less formal than for the hybrid mechanisms. The mandate of each rapporteur must be periodically renewed and is limited to a specific human rights issue or region.

Some of the most relevant special procedures for the issue of arbitrary detention in Central Asia include:

- The Special Rapporteur on Torture;
- The Special Rapporteur on the Situation of Human Rights Defenders;
- The Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression;
- The Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association;
- The Special Rapporteur on Freedom of Religion or Belief; and
- The Special Rapporteur on the Independence of Judges and Lawyers;

1. Factors to Consider When Submitting to a Special Rapporteur

a. Admissibility Requirements

Generally, these special procedures have the lowest requirements for submitting individual complaints. Often, criteria such as jurisdiction, authorization, and exhaustion do not apply. Submitting information to a special rapporteur will not interfere with ongoing cases before a treaty body or hybrid mechanism. Further, information may be submitted to special rapporteurs about any country, regardless of whether the government has signed relevant treaties (such as the ICCPR or the Convention Against Torture).

b. Nature of the Opinion

Special rapporteurs do not issue formal opinions regarding individual detentions. They do, however, communicate with the governments in question after receiving individual communications. In addition to occasional press statements, the special procedures also publish annual reports about their engagement with the governments in question and make visits to the country.

c. Timing

Like the hybrid mechanisms, the special rapporteurs tend to engage governments quickly after receiving individual communications. However, this engagement is not always transparent and follow-up may not occur.

d. Access to Information

Special rapporteurs have the lowest requirements for the amount and quality of information required for an individual communication. Because of this, these procedures are well suited for cases where there is limited information about a particular violation. They are also good options in

cases that require urgent attention and documentation by the UN.

2. UN Special Rapporteur on Torture

a. Mandate

The UN Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment is authorized under Human Rights Council Resolution 16/23 to receive information from individuals, NGOs, and governments regarding alleged cases of torture or other cruel, inhuman treatment or punishment.

b. Submitting to the Special Rapporteur

The Special Rapporteur may take action where there is credible information suggesting that an individual is at risk of mistreatment by government officials (or with their consent or acquiescence). Such mistreatment may include:

- Torture, corporal punishment, or excessive use of force;
- Prolonged detention without access to family or legal counsel (“incommunicado”) or solitary confinement;
- Denial of adequate medical treatment or nutrition;
- Detention conditions that are “torturous;” or
- Imminent deportation to a country where the detainee may be tortured.

c. Urgent Action Procedure

A questionnaire is available on the Special Rapporteur’s website under the “urgent appeals” tab.¹³⁸ According to the Special Rapporteur’s Methods of Work,¹³⁹ he or she will consider a number of factors in evaluating the credibility of a communication, including:

- The previous reliability of the source;
- The consistency of the information (internally and with respect to other available information);
- The existence of credible reports (from national and international bodies); and
- The existence of relevant domestic legislation.

The Special Rapporteur will then forward the allegations to the government and request that the government investigate and take steps to protect the individual threatened with mistreatment. If the Special Rapporteur receives a response from the government, the government’s observations are provided to the source.

¹³⁸ The Special Rapporteur’s website is available at <http://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/model.aspx>.

¹³⁹ The Special Rapporteur’s Methods of Work are available at <http://www.ohchr.org/Documents/Issues/SRTorture/methodwork.pdf>.

3. UN Special Rapporteur on Freedom of Expression

a. Mandate

The Special Rapporteur on the Promotion and Protection of the Rights to Freedom of Opinion and Expression is authorized under Human Rights Commission Resolution 1993/45 and Human Rights Council Resolution 16/4 to gather information regarding violations of the right to freedom of opinion and expression as protected by the UDHR and ICCPR.

b. Submitting to the Special Rapporteur

The Special Rapporteur receives information regarding violations of the right to freedom of opinion or expression from individuals, NGOs, and governments. Such violations may be targeted at individuals exercising or seeking to promote the exercise of free expression, and may include:

- Discrimination;
- Threats or the use of violence;
- Harassment, persecution, or intimidation; or
- Detention or imprisonment.

While everyone is entitled to the right to freedom of opinion or expression, the Special Rapporteur treats the persecution of journalists as especially important.

c. Urgent Action Procedure

A model questionnaire that must be completed is available on the Special Rapporteur's website at the "Individual complaints-model questionnaire" link (on the "guidelines for the submission of information to the Special Rapporteur" page).¹⁴⁰

4. UN Special Rapporteur on the Situation of Human Rights Defenders

a. Mandate

The Special Rapporteur on the Situation of Human Rights Defenders is authorized under Human Rights Commission Resolution 2003/64 and Human Rights Council Resolution 16/5 to investigate, make recommendations, and receive information regarding the situation of human rights defenders from the human rights defenders themselves, NGOs, the media, and other UN agencies.

b. Submitting to the Special Rapporteur

The Special Rapporteur's mandate includes the protection of human rights defenders and their right to promote human rights. As such, where a government persecutes a human rights defender or otherwise prevents that individual from acting as a human rights defender, information regarding the violation may be submitted to the Special Rapporteur.

¹⁴⁰ The site is available at <http://www.ohchr.org/EN/Issues/FreedomOpinion/Pages/OpinionQuestionnaire.aspx>.

c. Urgent Action Procedure

Instructions for submitting information to the Special Rapporteur and a sample letter are available on the Special Rapporteur's website (under the "Submitting Complaints" tab).¹⁴¹

As with submissions to other Special Rapporteurs, it is essential to include as much relevant information and documentation as possible. In particular, it is important to include:

- The source's name (this will be kept confidential);
- Details about the victim (name, birthday, place of birth, occupation, etc.);
- How the victim was working as a human rights defender;
- A chronological description of the violation (including who committed the violation, where, when, etc.);
- Any witnesses or actions taken by the authorities; and
- Link to human rights activity: it is essential that the communication describe why the author believes that the violation is a response to the victim's work as a human rights defender (and not motivated by some other factor).

After the Special Rapporteur determines that the information falls within the mandate and attempts to verify the reliability of the information, his or her office will raise the information with the government and request that the government investigate and report back with its findings. These communications will remain confidential until they are made public in the Special Rapporteur's annual report to the Human Rights Council.

In circumstances where the violation is ongoing or about to occur, the Special Rapporteur will transmit an "Urgent Communication" to the government as quickly as possible. Where the Special Rapporteur receives information regarding a violation that occurred long ago or where the urgency of the situation has otherwise ended (for example, where a human rights defender has been killed), an "Allegation Letter" is instead forwarded to the government.

V. STRUCTURING YOUR SUBMISSION

Once you decide to which mechanism you will submit your case, it is time to start preparing the legal brief that you will submit, sometimes referred to as a "petition" or "communication." Many mechanisms provide a sample or "questionnaire" requesting basic identifying information that must be completed. In addition to providing basic information, you should also prepare a more expansive case brief that is composed of two main sections: (1) the statement of facts and (2) the legal analysis.

In this section, we will first guide you through how to prepare and draft a statement of facts for such a brief. Next, we will discuss how to build a legal argument. Finally, we present an example case using hypothetical facts that will demonstrate what a final legal brief should look like.

¹⁴¹ The site is available at <http://www.ohchr.org/EN/Issues/SRHRDefenders/Pages/Complaints.aspx>.

A. Statement of Facts

The Statement of Facts is a critical section of your submission. You cannot start working on the legal section without having presented sufficient facts. The process of stating the relevant facts can be broken down into two parts: collection and presentation. The collection of information involves researching on your own and working with your contacts to gather as much information as possible about the case and the human rights that have been violated. It is essential to provide detailed information about the individual or individuals who have been harmed by government authorities and background on the broader human rights situation in the country.

How to Start:

- Gather all relevant information that addresses the “who,” “when,” “where,” and “how” of the case. More specifically, gather information about every aspect of the case, including who the person is, the nature of his or her work, what he or she was working on at the time of arrest, any history of harassment by government officials, and details about the person’s arrest, detention, and trial.
- Examine the charges (and any convictions) made against the individual in the domestic court.
- If you are assisting someone else, then you should contact all individuals and organizations that might have information. Individuals may include family members of the detained person, a local independent lawyer (if there is one), and local human rights defenders.
- Consider reaching out to international NGOs, such as Human Rights Watch and Amnesty International, for information they may have collected.

Quick Tip: During the fact gathering stage it is helpful to familiarize yourself with the applicable international human rights law. This will help ensure that you collect all necessary facts that will eventually be used in the legal analysis section.

Quick Tip: It is helpful to note if international NGOs have made comments about the case, such as that the individual is a prisoner of conscience. However, this is not evidence, and you still must present the facts that support the alleged violation of his/her human rights.

Once you have collected all the facts and information regarding the case, you are now ready to write the Statement of Facts. It is easiest to present the Statement of Facts in distinct sections, such as:

1. Background information on the country detaining the individual;
2. Background information on the individual detained;
3. The circumstances of the individual’s arrest, detention, and treatment; and

4. The trial and sentencing information.

While drafting a Statement of Facts, you should pay particular attention to the following three issues: chronology of events, citing sources, and confidentiality.

Chronological Order

It is always a good idea to write your Statement of Facts section in chronological order. This means that the relevant events should be presented starting with the earliest event and then following the order in which they occurred in time. Writing your facts in chronological order is a way to keep your Statement of Facts section as coherent as possible. Avoid including information or facts that are not relevant, but make sure to include biographical facts about the person.

Citing Sources

It is important to use source citations in your petition when you can. This is critical because it helps readers locate the source of information (with proper credit given) and it lends legitimacy to your information, which is only as strong as its source.

You should provide a citation for the following three main types of information you use:

1. When you are providing a direct quote from a source;
2. When you summarize information from a source; and
3. When you are using specific facts from a source.

When you provide a citation, you should provide sufficient information in the footnote for your reader to understand what document you are using as a source. You can use an informal format to provide a citation to the sources of information, but make sure to identify what the document is, when it is dated, and provide a website address if available. For example:

No One Left to Witness: Torture, the Failure of Habeas Corpus and the Silencing of Lawyers in Uzbekistan, Human Rights Watch, December 2011, available at <http://www.hrw.org/reports/2011/12/13/no-one-left-witness-0>.

Confidentiality

Sometimes you will work with sensitive information and sources. When there is a high probability that your source could be persecuted for providing sensitive information to you, you should keep the identity of that source confidential. When you need to make a citation to information obtained from such sources, you should refer to them simply as “a source.”

1. Country Background

It is important to include background information on the country where the violation occurred because it adds context to the alleged political nature of the individual’s detention and provides a framework for analyzing the government’s actions and their impact on the individual’s human

rights. The purpose of this section is to provide a summary of the country's system of government and reports of patterns of relevant human rights violations.

Therefore, the information you provide in the Country Background section should address human rights violations relevant to the government's treatment of the victim. For example, if the victim is a journalist, you should address the government's treatment of journalists and independent media. If there were flagrant fair trial violations in the victim's case, you should include any past instances demonstrating the government's failure to respect procedural rights in political cases. Detailing past violations similar to the case you are addressing will make it easier to establish that the victim falls within the category of persons routinely persecuted by the government and/or that there is a pattern of similar human rights violations.

Important information to include:

- The government's general pattern of human rights violations and disregard for the rule of law;
- The history of government repression of people like the detained individual (similar profession, affiliation, or activity);
- Brief examples of other cases that resemble the detained individual's case;
- A summary of the evidence concerning human rights violations and condemnation by the international community; and
- Statements by the international community expressing concern about human rights violations and calls to investigate.

Quick Tip: International organizations such as Human Rights Watch and government institutions such as the U.S. State Department issue detailed annual reports about the human rights situations in countries worldwide. These highly respected institutions are helpful resources for country information. The UN Special Rapporteur thematic reports can also be useful, as can the Country Visit reports by UN Rapporteurs and the Working Groups.

2. Victim Background

It is very important to include biographical and professional background information on the individual detained, especially if you are making the argument that the arrest and detention is politically motivated. The purpose here is to describe the person, their family, their occupation, their affiliations, and the work or advocacy that is believed to have compelled their arrest.

The information you provide must be as specific as possible. For example, if the victim is a journalist, you need to include information about the news media he or she worked for or submitted his articles to and the topics he or she covered. If obtainable, you should provide copies of news articles written by the detainee. Also, note that it is common that arrests of prominent journalists and human rights activists are preceded by threats or other forms of harassment.

Therefore, you need to record any prior harassment or persecution by the government and include that information in this section as well.

Important information to include:

- Profession;
- Political affiliation;
- Activities with human rights groups, political organizations, journalists, or foreign entities;
- Past threats or harassment by officials or police; and
- Information about family and illnesses.

3. Circumstances of Arrest and Detention

You must provide a concise but detailed account of the circumstances surrounding the arrest, interrogation, and detention of the individual. The information should be organized in chronological order and be as detailed as possible.

Important questions to address (to the extent possible):

- Date, time, and location of the search or arrest;
- Authorities who carried out the search or arrest;
- Information on whether there was a properly executed search or arrest warrant;
- Details about the search conducted of the person and premises, focusing on what items the police seized (e.g. books, computers, photographs, videos, pamphlets, personal computer, books, print materials from client's house);
- The nature and content of the seized items (e.g. a pamphlet about a banned religious organization);
- Prejudicial statements made by the law-enforcement officials during the search or arrest or public statements made by officials;
- Mistreatment inflicted on the victim during the search or arrest;
- *Incommunicado* detention (include detailed information on the actions the victim's family took to establish his or her location);
- Actual criminal charges against the victim, including the domestic legislation applied;
- Access to family and a lawyer; and
- Physical or psychological pressure during interrogation.

Quick Tip: Pay careful attention to how the arrest and detention were carried out. In most cases, it is at this stage that you can identify signs that the arrest and detention are politically motivated.

4. Trial and Sentencing

The purpose of this section is to describe what has taken place during legal proceedings and document all procedural and due process violations. Because courts are responsible for upholding

the rule of law, procedural violations during the trial demonstrate the court's lack of independence and impartiality; therefore, it is important that you obtain and include as much information as possible about irregularities during the trial.

You should document each stage of the court proceeding along with the date and the presiding court if you can. You must provide details about the trial and sentencing if such information is accessible and obtainable. If it is not and the trial was closed, then this important fact must be stated clearly.

It is also important to verify if the lawyer took any actions to appeal the client's conviction. Some of the available international mechanisms, such as the Human Rights Committee, require petitioners to disclose how these remedies (appeals) were exhausted during the domestic proceedings.

Important questions to address:

- Did the victim have prompt access to a lawyer of his or her choice?
- Was the client or lawyer given prior notice about the date and time of the trial?
- Was the trial open to the public, namely family members, media, and foreign embassies; if not, did the court explain why it decided to conduct a closed trial?
- Did the court act as an independent and impartial body? Did it show deference to the prosecution? If so, how?
- Did the lawyer have adequate time and facilities to prepare a defense?
- Was the defendant able to defend himself or herself effectively, including through the ability to examine witnesses, present evidence, and bring motions?
- Did the defense have the right to present witnesses and cross examine state witnesses?
- Did the prosecution or court prejudge the outcome of the case?
- Did the prosecution use statements obtained by torture or ill-treatment as evidence? If so, did the court undertake any measures to address allegations of torture and ill-treatment?
- Was the defendant or lawyer provided with all necessary trial documents on time, including the sentencing judgment?
- If the court failed to provide the defense with a copy of the sentencing judgment, what measures were undertaken by the defense and how long did it take to obtain the judgment?
- Did the defense have an effective right to appeal the court decision? and
- How long did the trial take?

5. Torture/ Ill-Treatment/ Conditions of Confinement

Political prisoners routinely face various forms of torture and ill-treatment at the hands of the police, often inflicted during interrogation as a means of eliciting a confession.

Important issues to address:

- Any allegation of mistreatment;

- Information about whether torture or ill-treatment was inflicted during interrogation;
- Medical records documenting torture or ill-treatment;
- How the government and courts responded to the allegations of torture or failed to respond;
- Information about other forms of ill-treatment while in detention, such as poor detention conditions, verbal abuse, threats, humiliation, and overly burdensome work in labor camps;
- Health problems or conditions resulting from or exacerbated by the torture or ill treatment;
- Whether the victim’s place of detention meets basic sanitary requirements; and
- How is the victim’s health? Is the victim receiving adequate medical attention?

Quick Tip: Note that the information on torture or ill-treatment is helpful for filing urgent appeals with most international mechanisms (See Section III for information on how to file urgent appeals).

B. Legal Analysis

After presenting the facts of your case, you must present the laws that apply to the case and make clear how those laws have been violated—in essence, the human rights violations. The purpose is to establish that by detaining the individual, the government violated its obligations under international human rights law and, in many cases, provisions of domestic law, such as protections in the state’s constitution. For cases involving arbitrary detention in Central Asian countries, the ICCPR governs because all governments in the region have signed and ratified the treaty. The ICCPR not only protects against unlawful detention, it also provides protections for fundamental freedoms, such as expression, belief, association, and assembly.

This section explains how to structure your legal argument to most effectively make the case that the government has violated specific provisions of international law.

To start, it is helpful to take the following steps:

1. Reexamine the facts of your case closely and carefully consider what international law applies;
2. Pay particular attention to the nature of the violation as much as possible: the event itself, its causes, whether the violation was an isolated incident or part of a larger pattern, which government institutions were involved, etc.;
3. Identify the human rights standards involved. Eventually, these human rights standards will be used to structure your whole legal section. (See Section III for the content of human rights standards);
4. Think broadly about how the violation of one particular human right intersects with other rights. For example, if a client was tortured by law-enforcement officials during their pre-trial investigation, this violates both the government’s obligation not to torture and its obligation to respect due process rights of those under arrest or detention.

After you identify human rights violations involved in your case, you must consider the government's involvement in these violations. Governments are the parties responsible for the implementation of and adherence to international human rights treaties. Therefore, any discussion of an alleged violation of international human rights law must demonstrate a connection between the injury and an official act or omission that can be attributed to authorities of the government. The government can be held responsible for all actions of its officials and authorities. The government can also be held responsible for the actions of persons or entities otherwise not associated with it when it can be demonstrated that the government granted some type of authority to those non-state actors.

Legal arguments should be presented concisely and in a straightforward organization. Each alleged violation should be clearly stated and should include a reference to the specific provision of international law. Supporting case law and persuasive commentary from an authoritative body, such as the Human Rights Committee, should also be referenced. As you write, separate each violation under its own heading—categorizing substantive violations separately from procedural violations.

Note that you will often have to address a set of government actions that allegedly violate multiple ICCPR provisions. The best way to discuss these actions systematically and comprehensively is to address them separately. For example, if government actions potentially violate freedom of expression, the right to a fair trial, and the prohibition against torture, you should address each violation separately while restating the facts relevant to each section.

There is no exact format for assembling a legal analysis section, but a helpful four-step roadmap is to:

1. State the violation;
2. State the applicable law;
3. Apply the law to the violation; and
4. Make a conclusion.

1. State the Violation

Start with an introduction that states what fundamental right has been violated. For example, if your case involves the detention of a journalist because of publications critical of the government, then the first violation will likely be the violation of the right to freedom of expression.

2. State the Law

Next, clearly state which international law protects the fundamental right. For example, Article 19 of the ICCPR protects an individual's right to free expression. Use supporting authority such as case law and authoritative commentary provided by UN bodies, such as the Human Rights Committee, to further explain the specific actions or rights that the law protects.

In arguing violations of the ICCPR, the primary case law to consult consists of cases that have been decided by the UN Human Rights Committee and decisions reached by special procedures such as the UN Working Group on Arbitrary Detention. For authoritative commentary, use the Human Rights Committee's General Comments, which provide greater explanation of what each ICCPR provision protects as well as acceptable limitations to those protections.

3. Applying the Law to the Violation

After stating what body of international law applies and the specific provisions that have been violated, you will need to apply that law to the facts of your case. It is not enough to merely cite the law and conclude that there has been a violation. Instead, it is essential that your analysis apply the facts of the case to the applicable law and then explain how the government has failed to meet its obligations under the law (the ICCPR). The government can only be held responsible if its actions (described in the fact section) violated one or several provisions of the ICCPR. You must explain how the action in question violates that specific provision of the ICCPR.

This analysis can often be the most challenging section to write—especially for non-lawyers. However, the guidelines below will help you apply the law to your case facts in an effective and convincing way. As noted above, legal analysis involves comparing the law (which under the ICCPR provides for substantive and procedural right) to the facts (which will involve some behavior by the government). Your task is to explain how the government action violates that law. Occasionally, the analysis will be relatively straightforward. This is especially true when procedural rights are involved because the ICCPR provides specific protections. For example, if the law requires that a detainee be immediately informed of the reason for his or her arrest, and the arresting authorities failed to do so, the violation is clear. In such cases, the analysis will be relatively brief.

More often, however, a substantial analysis will be required. This is especially true where substantive rights are violated or where the law itself could be subject to different interpretations. For example, if a journalist is arrested because she criticized a local official for taking bribes, it is not enough to merely identify the right to freedom of expression and conclude that there has been a violation. Instead, you will have to explain that by arresting her, the government has limited her right to freedom of expression. Moreover, you will have to show the actual charges, which will likely be fabricated, are unfounded, and that the motivation of the government is to punish the protected free expression.

Frequently, it will be helpful to refer to the case law and statements of international bodies like the Human Rights Committee and the UN Working Group and make comparisons to the current case. For example, in explaining that her arrest violated her right to freedom of expression, you should cite cases where the Human Rights Committee has specifically held that detaining an individual constitutes a limitation on free expression. Further, you could refer to the General Comments issued by the Human Rights Committee that highlight the special protection that the right to freedom of expression affords journalists when they write about public officials.

Quick Tip: You should not introduce any new facts in the legal analysis section. If there are new facts, go back to the Statement of Facts section and also include them there.

When governments prosecute individuals for exercising substantive rights like freedom of expression, association, assembly, or political participation, the charges are often directly related to that protected activity. For example, the government might accuse a journalist of supporting terrorism for writing an article critical of anti-terror laws, or prosecute an opposition activist on charges of insulting the president as a result of critical campaign materials. In such circumstances, the government will often point to narrow limitations on substantive rights (such as national security), which are allowed under international law. It is therefore important to proactively address any arguments that the government might make related to these limited exceptions (for more information on these limitations, see Section III.B above). However, where the government tries to obscure its true motivation for the prosecution by relying on fabricated charges, like extortion or drug possession, it is not strictly necessary to address the narrow limits on substantive rights, but is strategically a good practice anyway.

Important questions to consider:

- How does the government action violate specific provisions of the ICCPR?
- Are there any ambiguities in the law that must be addressed?
- Do the actions of the government fit the circumstances mentioned in a specific provision of the ICCPR? and
- Are there exceptions to the rule? If yes, do they apply to your case?

4. Conclusion

To properly complete a legal petition or brief, a conclusion section should summarize the reasons that the government action violates certain provisions of international law. It is also appropriate to include any remedy you are requesting from the body to which you are submitting the petition (e.g. request that the detention be found arbitrary and a call for the individual's release).

C. Case Illustration

In this section we present a hypothetical case and an example legal brief that could be submitted for that case. The hypothetical case includes some basic facts that are often observed in cases involving POCs in Central Asia. You will then find a sample fact section and legal analysis section. This is only a brief example with sample arguments of only a few violations.

1. Hypothetical Case

Ravshan Kasimov is a prominent Uzbek journalist and human rights activist. Over several years, he has published numerous articles about human rights violations, government

corruption, and other politically sensitive issues. His articles have appeared in independent newspapers domestically and on the internet.

Before his arrest, Mr. Kasimov published a report about how law-enforcement agents routinely use torture to extract confessions. The report provided detailed information about recent deaths from torture and included names of officials who had allegedly tortured detainees in custody. The day after he published the report, plain-clothed police officers arrived at his home and arrested him. Officers searched his home and seized his personal computer, books, and other printed materials.

In the days that followed, his family received no information about where Mr. Kasimov was being detained or whether he had been charged with a crime. Nearly one week after the arrest, an officer called the family and informed them that Mr. Kasimov had been charged with extortion. The family hired a lawyer who was only allowed to meet with Mr. Kasimov on two occasions before his one-day trial on November 16, 2007.

The trial was closed to the public. The court convicted Mr. Kasimov and sentenced him to nine years in prison for extortion.

2. Presenting the Facts

Although the hypothetical summary above provides some basic information about the victim's background and the possible reasons for his arrest, there are many critical facts that remain unknown. Therefore, before you can write a complete Statement of Facts section, more information must be obtained from available sources. For the list of important information to include, refer to Section V.A above. Below is an example statement of facts based on the hypothetical case of Mr. Kasimov. It includes many additional facts that would have been obtained during development of the case.

a. Country Background

Reminder: The Statement of Facts should begin with a country background section that provides context for the government's actions against the victim and highlights the ways that the case is part of a broader pattern of similar violations.

Uzbekistan is ostensibly a republic with separate executive, legislative, and judicial branches; however, in reality it is an authoritarian state dominated by the executive branch. Uzbekistan obtained its independence from the Soviet Union in 1991 by referendum, and since that time the nation has been controlled by President Islam Karimov. The people of Uzbekistan do not have a meaningful opportunity to change the composition of the government through the electoral process.¹⁴² Only parties loyal to President Karimov are allowed to register and participate in

¹⁴² *Parliamentary Elections, December 26, 2004*, Organization for Security and Cooperation in Europe (2005) available at http://www.osce.org/odihr/elections/uzbekistan/eoms/parliamentary_2004.

elections. As a result, in its most recent assessment of the country's democratic development, Freedom House has given Uzbekistan a score of 7 (the worst possible).¹⁴³

Uzbekistan's laws set forth important protections for citizens accused of criminal offenses, but these protections are frequently ignored by the government. Though trials are generally open to the public, it can be difficult for international observers to obtain access in certain cases.¹⁴⁴ Defendants in Uzbekistan are entitled to an attorney from the time they are detained; however, the government often violates the right to an attorney during pretrial detention and either denies or delays such access.¹⁴⁵ In many cases, defendants are held incommunicado and almost all criminal cases brought by prosecutors result in guilty verdicts.¹⁴⁶

Independent journalists and human rights defenders in Uzbekistan are routinely subjected to politically-motivated prosecutions, sham trials, and long prison sentences as a result of their work.¹⁴⁷ The government uses false charges of extortion or tax evasion to prevent them from exposing corruption or local criminal activities.¹⁴⁸ For example, Akzam Turgunov, a human rights activist and political opposition leader, was wrongly detained in Uzbekistan in 2008, convicted on extortion charges, and sentenced to 10 years in prison. The Working Group on Arbitrary Detention found that by convicting Mr. Turgunov on unsubstantiated charges, the Uzbek government sought to "punish him for his human rights and political activities."¹⁴⁹

The Committee to Protect Journalists described Uzbekistan as "the region's worst jailer of the press."¹⁵⁰ Human Rights Watch has reported that there are at least 10 human rights defenders in prison in Uzbekistan.¹⁵¹ The U.S. Department of State reported that in 2007, harassment of journalists and human rights activists increased. Police and security services subject them to arrests, harassment, intimidation, violence, and torture. Journalists and human rights activists are ordered to cease their contacts with foreign diplomats or international human rights organizations and are retaliated against for continuing these contacts.¹⁵²

Because of the government's persecution of independent journalists, there is almost no investigative reporting in Uzbekistan and thus "the number of critical newspaper articles remain[s] low and narrow in their scope."¹⁵³ Independent and critical news websites are blocked

¹⁴³ *Nations in Transit Country Report*, Freedom House (2007) available at http://freedomhouse.org/sites/default/files/NIT13_Uzbekistan_2ndProof.pdf [hereinafter *Nations in Transit Country Report 2007*].

¹⁴⁴ *Id.*

¹⁴⁵ U.S. Department of State, *2007 Human Rights Report: Uzbekistan*, Apr. 8, 2011, available at <http://uzbekistan.usembassy.gov/rep031108.html> (hereinafter U.S. State Department Report 2007).

¹⁴⁶ *Id.*

¹⁴⁷ *World Report 2007 – Uzbekistan*, Human Rights Watch (Jan. 14, 2008) [hereinafter *Human Rights Watch Report, 2007*] available at www.hrw.org/legacy/wr2k7/wr2007master.pdf.

¹⁴⁸ U.S. State Department Report, 2007, *supra* note 145.

¹⁴⁹ *Turgunov v. Uzbekistan*, UN Working Group on Arbitrary Detention, Opinion No. 53/2011 (Nov. 17, 2011) available at <http://www.unwgadatabase.org/un/Document.aspx?id=2830>.

¹⁵⁰ *Attacks on the Press in 2007*, Committee to Protect Journalists (Feb. 5, 2008) available at <http://cpj.org/2008/02/attacks-on-the-press-2007.php> [hereinafter *Committee to Protect Journalists Report, 2007*].

¹⁵¹ Human Rights Watch Report, 2007, *supra* note 147.

¹⁵² U.S. State Department Report, 2007, *supra* note 145.

¹⁵³ *Id.*

by the Uzbek government. For example, Ferghana, BBC Uzbek Service, and Radio Free Europe/Radio Liberty are not accessible in Uzbekistan.¹⁵⁴

Prison conditions are “poor and in some cases life threatening.” According to reports by international NGOs, Uzbek prisoners face “severe abuse, overcrowding, and shortages of food and medicine” in addition to harsh working conditions for those prisoners regularly assigned to manual labor details.¹⁵⁵ The International Committee of the Red Cross (ICRC) has been forced to periodically suspend prison visits, most recently in April 2013, because of unacceptable terms of access for the organization.

b. Victim Background

Reminder: The main purpose of this section is to provide information about the biographical and professional background of the victim that triggered the government persecution. This information would have been gathered during the fact gathering period.

Ravshan Kasimov is a prominent Uzbek journalist and human rights activist. He has published numerous articles critical of the authorities in many local newspapers, including Huquq Posboni and Qishloq Hayoti. His articles have also been published by many internet news agencies such as Ozodlik and Ferghana. Mr. Kasimov has been under pressure from government officials since 2004 after he reported on corruption in the city of Bukhara (Uzbekistan) and accused government officials of abusing their authority. At that time, he was a correspondent for Advokat-Press and was fired after publishing his articles.

In October 2006, five local school principals contacted Mr. Kasimov and asked that he investigate an unofficial order from the governor of Vobkent district in Bukhara province requiring them to send their students to work in the fields during the cotton harvest. The educators learned about Mr. Kasimov after he published a number of articles about forced labor in the region. Beginning in late 2006, Mr. Kasimov petitioned various government bodies, including the offices of local and national prosecutors, urging them to investigate the order.

On January 20, 2007, Holis Shodiev, the governor of Vobkent district, summoned Mr. Kasimov to his office and demanded that he stop investigating the cotton harvest and sending complaints to various government bodies. After stating that Mr. Kasimov “won’t achieve anything,” the governor warned him of “bad consequences” for slandering Mr. Shodiev and other officials.

Mr. Kasimov has also worked as a well-known human rights activist. He is a member of the human rights organization Ezgulik (“Mercy”). In addition to defending the rights of farmers and students, Mr. Kasimov’s work focused on investigating and documenting torture throughout Uzbekistan. On September 28, 2007, Mr. Kasimov returned from a two-day seminar in Geneva about torture in Central Asia, where he presented a report about widespread abuses in Uzbek prisons. The report provided a detailed account of recent deaths from torture. On the day after his return, Mr.

¹⁵⁴ Committee to Protect Journalists Report, 2007, *supra* note 150.

¹⁵⁵ U.S. State Department Report, 2007, *supra* note 145.

Kasimov was summoned to the Bukhara province National Security Service, where he met with the head of the office, Mr. Tohir Rustamov. After asking questions about Mr. Kasimov's participation in the seminar, Mr. Rustamov warned that Mr. Kasimov would regret his activities "directed at damaging Uzbekistan's international image" and that he could be subject to arrest.

c. Circumstances of Arrest and Detention

Reminder: The main purpose of this section is to provide information about substantive and procedural law violations that occurred during the arrest and detention. Remember, it is very important to include specific details like names and dates, where they are available.

Late in the evening on October 15, 2007, the Department for Combating Tax, Currency Crimes and Legalization of Criminal Proceeds under the Bukhara Province Prosecutor's Office (Prosecutor's Office) arrested Mr. Kasimov at his apartment in Bukhara city.

When Mr. Kasimov opened the door, eight plain-clothed officers from the Prosecutor's Office entered his apartment without presenting a warrant. When asked for a warrant and identification documents, one of the officers replied that he would be informed of the details at the Prosecutor's Office. While this officer spoke to Mr. Kasimov and checked his passport, other officers searched the apartment and started putting aside Mr. Kasimov's books and printed materials. At one point during the search, an officer seized Mr. Kasimov's articles and interview notes, indicating that the prosecutors would "get to the bottom" of who was funding his activities. When Mr. Kasimov wanted to call his family to inform them about the search in his apartment, the officer prevented him from doing so, but promised to inform the family once they got to his office. The officers then loaded all the printed materials and Mr. Kasimov's personal computer into their cars and drove to the Prosecutor's Office.

On October 20, 2007, the Prosecutor's Office charged Mr. Kasimov with extortion on the basis of a statement by Holis Shodiev, the governor of Vobkent district. Mr. Kasimov was interrogated numerous times by a senior investigator, Mr. Ahmad Haqyorov. No lawyer was present during the interrogations. According to Investigator Haqyorov, Mr. Shodiev claimed that on January 20, 2007, Mr. Kasimov had sought to extort 7,000 US dollars from him.

During the interrogation, Investigator Haqyorov asked many questions about Mr. Kasimov's work as a journalist and a human rights activist. Particularly, Mr. Haqyorov referred to the torture report Mr. Kasimov presented in Geneva and wanted to know who had paid for his work and who had provided him with information about torture and ill-treatment in Uzbek prisons. Mr. Haqyorov also wanted to know what articles he was working on at the time of his arrest.

The Prosecutor's Office held Mr. Kasimov incommunicado for five days. His family was not informed about his well-being or whereabouts. Their repeated requests to different law-enforcement agencies, including the Prosecutor's Office, went unaddressed.

A family-hired lawyer was first able to meet with Mr. Kasimov on October 20, 2007. During the meeting, an official from the Prosecutor's Office remained in the room. Mr. Kasimov's only other meeting with his lawyer was on November 14, 2007, two days before the trial began.

d. Trial and Sentencing

Reminder: The main purpose of this section is to provide information about substantive and procedural law violations during the trial and sentencing. Again, it is important to include all known, relevant details.

The government charged Mr. Kasimov with extortion under Article 169 of the Uzbek Criminal Code. Prominent international human rights groups criticized the charges against Mr. Kasimov as trumped up and motivated by his reporting on corruption in Bukhara province and widespread torture in Uzbek prisons. Rights organizations also documented a number of procedural violations during the trial phase of the proceedings.

The one-day trial occurred on November 16, 2007. The prosecution based its case against Mr. Kasimov entirely on written statements and whose alleged authors were not subject to cross examination by the defense. During the hearing, the government presented a statement written by the alleged victim, Mr. Shodiev, which claimed that Mr. Kasimov tried to extort 7,000 US dollars from him in exchange for not publishing an article about his role in the use of student labor. During the trial, the government also presented the statements of the five school principals, who first approached Mr. Kasimov about the story. Although the defense raised serious questions about the credibility of these statements during the proceedings—including the fact that three of the educators later claimed that the statements were given under pressure from government officials—none of the alleged witnesses were made available for cross examination by the defense.

The proceedings were also largely closed to the public. The court allowed only a very limited group of people to attend the proceedings. Among those who were granted permission to attend the trials were Mr. Kasimov's close family members and his lawyer. Although the court failed to provide any explanation for limiting access to the proceedings, it still excluded a number of individuals from entering the courtroom, including independent reporters, foreign embassy officials, and local human rights defenders. On January 12, 2008, the Bukhara city criminal court convicted Mr. Kasimov and sentenced him to 9 years in prison.¹⁵⁶ The verdict was passed behind closed doors and the court did not provide Mr. Kasimov or his lawyer with a copy of the verdict. Instead, Mr. Kasimov was only able to obtain a copy of the verdict on March 16, 2008, after submitting a complaint to the Uzbek ombudsperson for human rights. As a result of the delay, Mr. Kasimov's lawyer was unable to submit an appeal to the appellate division by the 10-day deadline. Mr. Kasimov did attempt to appeal his conviction to the Cassation Court on March 28, 2008, but that appeal was rejected because it was not filed by the 30-day deadline.

During a meeting in late May 2008, Mr. Kasimov told his family that he was suffering from tuberculosis and was being denied adequate medical treatment. On August 11, 2008, Human

¹⁵⁶ Judgment, Bukhara City Criminal Court, January 12, 2008.

*Rights Watch identified Mr. Kasimov as one of ten wrongfully imprisoned Uzbek human rights defenders that should be immediately released. Other human rights organizations, such as Reporters Without Borders, have also demanded Mr. Kasimov's release.*¹⁵⁷

In late August 2008, Mr. Kasimov's family reported that prison authorities accused Mr. Kasimov of multiple prison regime violations, which prevented him from being eligible for the 2008 Independence Day amnesty. When a relative went to visit Mr. Kasimov in prison on September 27, 2008, prison authorities told him that Mr. Kasimov had been put into a punishment cell for allegedly violating prison regulations, but would not say which rules he violated. As of September 2008, Mr. Kasimov had been sent to a punishment cell three separate times. Prison authorities also attempted to hide Mr. Kasimov from a delegation of the ICRC during a prison visit in 2011.

3. Drafting the Legal Analysis

As discussed in Section V.B above, the purpose of the legal analysis is to apply the relevant international law to the facts of the case—all with the purpose of showing that the government has violated specific human rights standards. A number of procedural and substantive violations of the ICCPR can be identified from the above hypothetical case facts, including:

- The right to be free from torture or other mistreatment (Article 7)
- The right to be free from arbitrary or *incommunicado* detention (Article 9(1))
- The right to be promptly informed of the reason for arrest (Article 9(2))
- The right to a fair and public trial (Article 14(1))
- The right to the assistance the of legal counsel (Articles 14(3)(b) and 14(3)(d))
- The right to cross examine witnesses (Article 14(3)(e))
- The right to an appeal (Article 14(5))
- The right to freedom of expression (Article 19(2))
- The right to freedom of association (Article 22)

In drafting your legal analysis, it is important to identify all of the potential violations and then explain in detail how the government's actions violated the relevant standards. Each violation will require its own legal analysis. Below is an example of legal analysis for two violations: the right to freedom of expression and the right to assistance of counsel. (If you were preparing a full legal brief, you would include discussion of each of the violations listed above violations.)

¹⁵⁷ Because this is a hypothetical case, there is not a real citation available for this claim. However, when you cite reports or statements by other organizations in your petition, it is important to provide the correct citation.

a. The Government of Uzbekistan Denied Mr. Kasimov the Right to Freedom of Expression

Reminder: The four-step process in analyzing an action under a law is:

1. State the violation;
2. State the law;
3. Apply the law to the violation; and
4. Conclusion.

By imprisoning Mr. Kasimov in response to his work as a journalist and rights defender, the Government of Uzbekistan has violated his right to freedom of expression.

Article 19(2) of the International Covenant on Civil and Political Rights (ICCPR) provides that “[e]veryone shall have the right of freedom of expression.”¹⁵⁸ An analogous provision guaranteeing freedom of opinion and expression is contained in Article 19 of the Universal Declaration on Human Rights (UDHR).¹⁵⁹ Article 19(2) of the ICCPR is of special importance to journalists and human rights defenders. Under the ICCPR, the right to freedom of expression specifically includes the “freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, whether orally, in writing or in print, in the form of art, or through any other media of [one’s] choice.”¹⁶⁰ Further, the Human Rights Committee, which is tasked with interpreting the ICCPR, has emphasized that freedom of expression and “a free and uncensored press” are of “paramount importance” in a democratic society.¹⁶¹

The facts of this case demonstrate that—consistent with its well-documented pattern of using fabricated charges to silence independent voices—the Uzbek government arrested and imprisoned Mr. Kasimov on fabricated charges in response to his work as a journalist and human rights defender. Such a restriction on the exercise of his internationally protected activities violates his right to freedom of expression, as protected by Article 19(2) of the ICCPR.

First, Mr. Kasimov regularly received threats of retaliation in response to his work. He was initially warned of possible retaliation by a government official when he published an article about official corruption. On January 20, 2007, Mr. Shodiev, the governor of Vobkent district, summoned Mr. Kasimov to his office and demanded that he stop investigating the use of forced labor in the Vobkent district. Mr. Shodiev warned him that his efforts “won’t achieve anything” and that “bad consequences” could follow for slandering a government official.

¹⁵⁸ International Covenant on Civil and Political Rights, U.N. Doc A/6316 (1966), entered into force Mar 23, 1976 (hereinafter ICCPR) at art 19(2).

¹⁵⁹ Universal Declaration of Human Rights, U.N. Doc. A/810 (1948) (hereinafter UDHR) at art 19.

¹⁶⁰ ICCPR, at art 19(2).

¹⁶¹ *De Morias v. Angola*, UN Human Rights Committee, Communication No. 1128/2002, U.N. Doc. CCPR/C/D/1128/2002 (adopted Mar. 29, 2005) at ¶ 6.7. See also *General Comment No. 25*, UN Human Rights Committee, U.N. Doc. CCPR/C/21/Rev.1Add.7 (July 12, 1996) at ¶ 12.

On another occasion, a government official warned Mr. Kasimov that his continued contact with foreign NGOs and news media would lead to his arrest. This happened after Mr. Kasimov returned from a seminar in Geneva, where he spoke about widespread torture in the country. On September 29, 2007, he was summoned to the Bukhara province National Security Service office. Mr. Tohir Rustamov, the head of that office, met with Mr. Kasimov and asked questions about his participation in the seminar. After asking questions about who provided him with information about torture in Uzbek prisons, Mr. Rustamov warned Mr. Kasimov that he would regret his activism and further activities directed at damaging Uzbekistan's international image and might be arrested.

Second, during the arrest of Mr. Kasimov, the officers seemed more concerned with his work on government corruption and torture than with the alleged extortion attempt. During the search of Mr. Kasimov's apartment, plain-clothed officers checked his books and print materials thoroughly, then confiscated them along with his personal computer. During the pre-trial investigation, interrogators asked questions related to Mr. Kasimov's publications and his contacts with foreign NGOs. Reinforcing the earlier threats, officers seized Mr. Kasimov's articles and interview notes, indicating that they would be used to discover who had been supporting his activities.

The government's targeting of Mr. Kasimov has also continued in prison. In August 2008, Mr. Kasimov's family reported that authorities had accused him of multiple prison regime violations but refused to provide any details about his alleged transgressions. In fact, he has been repeatedly placed in a punishment cell and was therefore ineligible for amnesties. Further, the government attempted to hide Mr. Kasimov from a delegation of the ICRC despite serious concerns about his health and access to adequate medical treatment.

Reputable human rights organizations have consistently reported about the practice of silencing journalists and human rights activists by subjecting them to long prison sentences on fabricated charges. The government's retaliation against Mr. Kasimov closely fits this pattern of persecutions. Human Rights Watch, Amnesty International, and the U.S. Department of State have all reported that the Uzbek government routinely arrests and detains human rights activists under the guise of extortion and other fabricated charges in order to prevent the exposure of government malfeasance.¹⁶² Further, the specific facts of this case, and the procedural violations at trial, demonstrate that the government's ultimate motivation was to punish Mr. Kasimov for his activism.

Freedom of expression is not an absolute right under the ICCPR and may be subject to limited restrictions in certain circumstance. Under Article 19(3), such restrictions must be provided by law and must be necessary either to respect the rights and reputations of others or for the protection of national security, public order, or public health or morals. In this case, however, these narrow limitations do not apply and as the government resorted to fabricated charges, it has asserted none. The Human Rights Committee has interpreted the limited provisions of Article 19(3) narrowly, noting that the government must meet a "strict test of justification"¹⁶³ and that any

¹⁶² See e.g. Human Rights Watch, *Human Rights Watch Concerns on Uzbekistan*, June 8, 2009 available at <http://www.hrw.org/news/2009/06/08/human-rights-watch-concerns-uzbekistan-0>.

¹⁶³ *Park v. Republic of Korea*, UN Human Rights Committee, Communication No. 628/1995, U.N. Doc. CCPR/64/D/628/1995 (adopted Oct. 20, 1998) at ¶ 10.3

limitation must not jeopardize the right itself.¹⁶⁴ Instead, the limitation must meet a three-part test, which requires that the government demonstrate that the limitation is 1) provided for by law, 2) necessary, and 3) for one of the enumerated purposes, such as protecting national security or the legitimate rights of others.

However, this limitation does not allow the government to silence independent journalists who report on important issues, even if the government disapproves of the reporting. Instead, the ICCPR protects the right of journalists and human rights defenders to “criticize or openly and publicly evaluate their Government without fear of interference or punishment.”¹⁶⁵ Because the government targeted Mr. Kasimov in response to his legitimate work as a journalist reporting on critical issues in Uzbekistan, his imprisonment does not fall within the narrow exceptions of Article 19(3).

As such, the continued imprisonment of Mr. Kasimov is a violation of Article 19(2) because it is the result of his peaceful free expression.

b. The Government of Uzbekistan Denied Mr. Kasimov the Right to Effective Legal Representation

The government failed to meet its obligations under international law when it prevented Mr. Kasimov from benefiting from the right to effective legal representation.

The right of an accused to defend himself through a lawyer is a fundamental component of the right to a fair trial. Article 14(3)(b) of the ICCPR protects the right of an individual to have “adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing.” Similarly, Article 14(3)(d) of the ICCPR provides that at trial an accused person is entitled to “defend himself in person or through legal assistance of his own choosing.” The right to legal representation must be effective. This means that lawyers must be able to advise and represent their clients without restrictions and undue influence from any party.¹⁶⁶ The denial of legal assistance in any stage of criminal proceedings can jeopardize the entire process and infringe on the defendant’s fair trial rights.¹⁶⁷ Further, access to an attorney must be “prompt,” a requirement which had been found to be violated when the government denies access to a lawyer for a period of five days.¹⁶⁸

¹⁶⁴ General Comment No. 34, UN Human Rights Committee, U.N. Doc. CCPR/C/G/34 (Pep. 12, 2011) at ¶ 21.

¹⁶⁵ *De Morias v. Angola*, UN Human Rights Committee, Communication No. 1128/2002, U.N. Doc. CCPR/C/83/D/1128/2002 (adopted Mar. 29, 2005) at ¶ 6.7.

¹⁶⁶ Human Rights Committee, General Comment No. 32, Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial, CCPR/C/GC/32 (Aug. 23, 2007), ¶¶ 34-38.

¹⁶⁷ Human Rights Committee, General Comment No. 32, Article 14: Right to Equality Before Courts and Tribunals and to a Fair Trial, CCPR/C/GC/32 (Aug. 23, 2007), ¶. 10.

¹⁶⁸ *Kelly v. Jamaica*, UN Human Rights Committee, Communication No. 537/1993, U.N. Doc. CCPR/C/57/D/537/1993 (adopted July 17, 1996) at ¶ 9.2. (Although the Committee has not identified exactly when access to legal counsel must be granted to meet the promptness requirement, in *Kelly v. Jamaica*, the Committee held that denying access to a lawyer for five days after the detainee requested such access violated Article 14(3)(b)).

The government violated its obligation to ensure Mr. Kasimov's right to effective legal representation by detaining him incommunicado, failing to allow him to meet with his lawyer in private and as many times as was needed, and failing to grant adequate time to prepare for the defense.

Authorities held Mr. Kasimov incommunicado for five days. During these five days, Mr. Kasimov was interrogated numerous times without the presence of his lawyer. This period of time is too long to be considered prompt. When a family-hired lawyer was finally able to see Mr. Kasimov on October 20, 2007, an officer from the prosecutor's office remained present in the room, preventing Mr. Kasimov from exercising the right to communicate with his lawyer privately. Furthermore, authorities granted Mr. Kasimov only two meetings with his lawyer while in custody. Mr. Kasimov's second meeting with the lawyer took place on November 14, 2007, just two days before the start of trial.

Each of these limitations on Mr. Kasimov's right to effective legal representation constitutes a violation of his rights under Articles 14(3)(b) and 14(3)(d).

4. Conclusion

| |
|---|
| <p>Reminder: The conclusion should concisely summarize the alleged violations and the specific laws violated by the activities at issue.</p> |
|---|

The detention of Mr. Kasimov on charges of extortion constitutes a violation of Articles 19 and 14 of the ICCPR [The facts of this case indicate numerous other violations of the ICCPR, which are not discussed here in this sample, but which would need to be addressed in a full brief.] It violates Article 19 because Mr. Kasimov's detention resulted from the exercise of his right to freedom of expression. Mr. Kasimov's detention violates Article 14 because the government failed to ensure his right to effective legal representation.

IV. ANNEX: CONTACT INFORMATION FOR SELECT UN MECHANISMS

Human Rights Committee

United Nations Office at Geneva
Office of the High Commissioner for Human Rights
8-14, avenue de la Paix
1211 Geneva 10 (Switzerland)
Phone: +41 22 917 92 61
Fax: +41 22 917 90 08
E-mail: ccpr@ohchr.org

For individual complaints:

c/o Petitions Team
Office of the High Commissioner for Human Rights
8-14, avenue de la Paix
1211 Geneva 10 (Switzerland)
Fax: + 41 22 917 90 22
E-mail: petitions@ohchr.org

UN Working Group on Arbitrary Detention

c/o Office of the High Commissioner for Human Rights
United Nations Office at Geneva
8-14, avenue de la Paix
1211 Geneva 10 (Switzerland)
Phone: +41 22 917 9289
Fax: +41 22 917 90 06
E-mail: wgad@ohchr.org

UN Working Group on Enforced and Involuntary Disappearances

c/o Office of the High Commissioner for Human Rights
United Nations Office at Geneva
8-14, avenue de la Paix
1211 Geneva 10 (Switzerland)
Phone: +41 22 917 90 00
Fax: +41 22 917 90 06
E-mail: wgeid@ohchr.org

UNESCO Committee on Conventions and Recommendations

Director of the Office of International Standards and Legal Affairs of UNESCO
7, place de Fontenoy
75352 Paris 07 SP (France)
Phone: +33 (0) 1 45 68 05 61
Fax: +33 (0) 1 45 68 55 76
Email: sec.cr@unesco.org

UN Special Rapporteur on Torture

c/o Office of the High Commissioner for Human Rights
United Nations Office at Geneva
8-14, avenue de la Paix
1211 Geneva 10 (Switzerland)
Email: sr-torture@ohchr.org; urgent-action@ohchr.org

UN Special Rapporteur on Freedom of Expression

c/o Office of the High Commissioner for Human Rights
United Nations Office at Geneva
8-14, avenue de la Paix
1211 Geneva 10 (Switzerland)
Fax: +41 22 917 90 06
Email: freedex@ohchr.org

UN Special Rapporteur on the Situation of Human Rights Defenders

c/o Office of the High Commissioner for Human Rights
United Nations Office at Geneva
8-14, avenue de la Paix
1211 Geneva 10 (Switzerland)
Fax: +41 22 917 90 06
Email: defenders@ohchr.org; urgent-action@ohchr.org