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Witness Statements in International Human Rights Litigation: Preparation Guide

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The role of witness statements

A case before the European Court of Human Rights (the Court) or a United Nations (UN) Treaty Body is started when a victim or their representative files an application. This normally contains brief details about the victim; a short statement of the alleged violations of the European Convention on Human Rights (ECHR) or other Convention or international Covenant; and other brief details that establish the victim's entitlement to bring a case before the Court or Treaty Body. At the time of filing an application, or in some cases at a later time, an applicant or their representative will file more complete submissions with full details of the alleged violations of the Convention/Covenant. Where these details depend on evidence obtained from the victim or other persons with knowledge or expertise relevant to the case, it will be necessary to present this evidence to the Court/Treaty Body in the form of a witness statement.

Why are statements so important?

Almost all cases are dealt with by international courts on the papers alone, i.e. without an oral hearing at which the witnesses will be present to give evidence in person. Even when there is an oral hearing, it is unlikely that there will be the opportunity for a witness to tell the Court or relevant UN Committee everything they know. As a result, the most important way to ensure consideration of all the relevant evidence of the victim or other persons with knowledge of what happened is through written witness statements.

In civil law countries, during the domestic proceedings it is usual for the investigating and/or prosecuting authorities to obtain statements from complainants and witnesses, and such statements may form the evidential basis of the decisions made by the domestic courts (in addition to oral evidence). However, for proceedings at the international level such statements may be deficient in a number of ways: they may be too superficial; they may be too narrowly limited in scope; they may have a particular 'slant' reflecting the specific interests of the investigating authority at the time. Furthermore, statements taken by investigators during the domestic proceedings may not touch at all on issues which will be raised at the international level, such as the experience of discrimination, and for victims, evidence about the effects of the violations. In the worst cases, statements taken by investigators may have deliberately omitted matters which did not fit in with the 'official version' of what had happened, or witnesses may have been pressured to say certain things, or leave out others. More fundamentally, the authorities may not have identified, tracked down and questioned certain witnesses at all (which may be deliberate in some situations).

For all of these reasons, it may be necessary to take fresh statements from witnesses which deal fully, in sufficient detail, with all the factual matters that are relevant to the points being raised at the international level. There is no procedural bar at all from doing so.

The legal arguments which can be made in any case need to be supported by evidence, including witness statements. A claim that human rights have been violated may be unsuccessful if insufficient detail is provided in those statements or other evidence. The Court or Committee may draw inferences as to the well-foundedness of the allegation from the failure to adduce evidence (see e.g. [Rule 44C](#) of the [Rules of the European Court of Human Rights](#)) or find that the claim is unsubstantiated. Similarly, a claim for reparations (before the Court only), known as "just satisfaction", may fail in whole or in part if insufficient detail of the harm suffered by the victim and the causes of that harm is contained in the statements. Therefore it is important to prepare statements which contain as much detail as possible on all the matters relevant to the particular allegations complained of before the Court/UN Treaty Body.

When should witness statements be provided?

Witness statements may be required at many stages in the proceedings including:

- to submit with the application;
- to provide an update on developments in the case;
- to respond factually to points made or documents disclosed by the Government;
- to support a claim for damages or specific measures.

Factors to consider when deciding whether and when to take a witness statement: the relevance of trauma-informed best practice

Providing a witness statement is not only important when it comes to strengthening and humanising a case, it is also an opportunity for the survivor to tell their story and can provide some catharsis. However, providing testimony can also potentially be a re-traumatising process for survivors of human rights violations: requiring a witness to speak about traumatic experiences can lead to re-traumatisation and can be harmful for their recovery.

As such, when deciding whether and when to take a witness statement, it is important to consider the needs and experiences of the witness and the risk of harm to their emotional or psychological well-being. For example, it may be that there is already sufficient evidence in statements provided during domestic proceedings that can be used or adapted for the purposes of international proceedings, which would avoid the witness having to re-tell their story.

If you decide that a witness statement is needed in the case, you should give adequate consideration in advance as to how you can obtain the statement in a survivor-centred and trauma-informed way. Guidance in relation to trauma-informed best practice is included in the following sections.

For more information, see EHRAC's [Trauma-informed Legal Practice Toolkit](#).

Planning and preparing for the interview

Planning how you will interview the witness

The way in which you interview the witness will directly affect their ability to recall experiences and the consistency with which they recount their story. Effective and trauma-informed interview practices will support the witness in their recollection, whereas harmful practices may result in increased inconsistencies.

Ensuring and affirming a sense of safety and agency is essential in this regard, and requires certain preparatory steps:

- Ensure that you **schedule sufficient time** for the interview, so as to give the witness adequate time to tell their story. You should arrange to meet each witness separately.

- Coming to the meeting **fully prepared** is an important way of reinforcing the witness's sense of safety. Preparing questions in advance is a crucial part of this (see below).
- Consider how to arrange the meeting in a way that **meets the witness' needs**. For example, you should think about how to facilitate a **comfortable meeting place** where the witness will feel safe sharing their story and will be afforded sufficient privacy. As part of this, you should speak to the witness in advance about whether any **adjustments or accommodations** are needed, and discuss their preferred location for the meeting (e.g. at their home or a community-based centre, as opposed to at your offices).
- Consider whether there may be any **communication barriers** when interviewing the victim, for example a language barrier that requires an interpretation. Where interpretation is needed, you should ensure that the witness is comfortable with the interpreter you have chosen.
- Be mindful of any **social norms and obligations** that could create barriers to the witness' engagement – for example, it may be taboo for a woman from a particular community to meet alone with a lawyer of a different gender. Where relevant, you can let witnesses know that they can be joined at the interview by a support person if they wish, such as a family member or community support worker.
- Ensure that you have clearly explained the **details and purpose** of the interview to the witness in advance, including explaining how their evidence will be used in the legal proceedings, and what the format of the interview will be.
- Consider offering the witness an **alternative means** of providing their testimony – for example, they may prefer to write down a statement rather than answering questions in person.
- Be prepared to refer the witness to **accessible and culturally competent support services** after the interview, including a counsellor or psychologist.

It may be more appropriate to have a series of short interviews with the witness rather than one long one, depending on the trauma the witness has experienced, their age, health or capacity. This should be discussed with the witness in advance. If you are having a series of interviews with the witness to complete the statement, plan what you need to cover with them before each meeting. Review the information you have already gained in order to avoid unnecessary repetition, and identify any gaps or inconsistencies in their account, ensuring that you are prepared to ask follow-up questions when you next meet (see below in relation to inconsistencies in testimony).

Preparing a list of questions

It is good practice to prepare a list of questions to cover with the witness before you meet them, as this will assist you to ensure that you cover all relevant issues. However, where you are interviewing a witness who has experienced trauma, it may not be appropriate or helpful to go through the questions chronologically. Trauma has a significant and complex impact on the way survivors record and remember traumatic events, and survivors may not be able to recall the traumatic experience from start to finish. Furthermore, whilst they may be able to recall some details very clearly, they may be entirely unable to recall other details.

The interview should be an opportunity for the witness to express their full experience in a way that feels comfortable and manageable for them. You should therefore see your list of questions as a prompt to guide and direct the discussion towards the information that is most relevant to the case, whilst giving the witness space to share their story and the impact it has had on them.

When preparing your questions, there are certain points to bear in mind:

- Questions should be **open-ended**. You should be careful to avoid asking “leading questions” when taking a witness statement, which are those that suggest an answer (e.g. “were you beaten by a soldier?” or “the victim was badly hurt, wasn’t he?”). It is better for the witness to tell you their story in their own words, so you should use general or open questions such as “what are you able to tell me about what happened to you?”, “when did that occur?”, or “do you recall where you were at that time?”.
- Whilst it may seem easier to seek the information chronologically, you should **not impose linear recall** on a witness that has experienced trauma. As such, you should avoid asking “what happened from start to finish?” or “what was the first thing that happened?”.
- You should ensure that your questions are **not framed in an accusatory or judgmental way**. Witnesses who have experienced trauma may not know or be able to explain why they responded to events in a certain way, and should not be asked to explain or validate their response. Accusatory questions about an individual’s immediate response can be re-traumatising (e.g. questions such as “why did you not...?” or “why did you choose to...?”).
- Think about whether all of your questions are **strictly necessary** for the purposes of supporting the legal arguments being raised in the case. You should avoid asking the witness to recount information that is not essential to the case where there is a risk that sharing such information will be re-traumatising for them.

During the interview

When carrying out the interview with the witness, **active listening** is essential: you should give the witness space and sufficient time to talk, recognising that individuals who have experienced trauma may take longer to recall events.

You should try to **limit the number of times** that the witness has to re-tell their story. With this in mind, you should take full notes of the answers which the witness provides, using their own words. With the witness’ consent, you may also wish to record the interview to avoid asking them to repeat information at a later date.

If you are working with an **interpreter**, make sure that the interpreter renders your questions and the witness’ answers fully and accurately.

Try not to draw conclusions about the witness’ account or credibility based on their **behaviour** during the interview. Individuals who have experienced trauma may exhibit different responses – some may appear angry or distressed, whereas others may appear detached or unresponsive, and may even seek to minimise the event. This should not be interpreted to mean that they have not experienced a traumatic event.

You should, however, **monitor the witness’ demeanour** during the interview, paying attention to both verbal and non-verbal cues. You may need to suggest taking a break or returning to the interview at a later time, particularly if the witness becomes distressed or needs a break for other reasons.

Add to your **list of questions** as you move through the interview to ensure you do not miss anything. If there is anything you do not understand as the witness gives their account, ask them to explain it – being mindful of the need to frame your questions in a non-accusatory way (see above). If there appear to be inconsistencies or gaps in the witness’ account, you can explore this by asking open follow-up questions which are framed in a non-judgmental way, bearing in mind the impact that trauma has on memory. It may be that an inconsistency is simply the result of a misunderstanding or mistranslation, particularly if you are working through an interpreter.

If you are holding a series of meetings, **avoid repeating questions** which you have already asked and had answered, unless it is essential for you to obtain additional detail or clarification. This is particularly important where a witness is having to recall traumatic events.

Ensure the witness is aware of the fact that they should **report any intimidation or harassment** they receive in the future to their lawyer.

Drafting the statement: points to remember

Statements should contain clear specific details

It is important to ensure that the information contained in the statement is detailed, clear and concise. As much relevant detail as possible should be included, while irrelevant details should be excluded. A statement that is longer than it needs to be or contains irrelevant information will not assist the Court/Committee when it has to decide what in fact happened. Including extraneous material, or information on which the witness is not able to personally give evidence, may undermine the credibility of the statement or detract from the key evidence which the witness provides.

If there are gaps or inconsistencies in the witness' account, this can be acknowledged in the statement and, where relevant and appropriate, an explanation can be given. Include facts not opinions.

Witness statements are primarily statements of fact. In their statement, a witness should generally only give details of facts which are within their knowledge, and not comments or opinions. There are some exceptions to this. For instance, if the witness is an expert whom you have commissioned to provide a professional opinion on a specific aspect of your case (e.g. if they are a forensic medical expert, an army officer, an engineer, an academic, etc.), they may give their opinion on a matter within their area of expertise (but not give their opinion outside of that area or on the legal arguments of the case). Also, if the witness' belief is important, details should be given of the belief and the reasons for it. For example, if the witness believes that their relative is dead, that they acted in self-defence, or if they believe that the authorities have not conducted a proper investigation into an incident, this should be included in their statement. Similarly, where relevant a witness should explain how they felt during or following the incident. For example, a witness may explain how they felt during the search of their home, or when the police failed to protect them during a protest or from abuse by a partner.

Do not include hearsay if it can be avoided

Hearsay is evidence based on the reports of others rather than something which is in the personal knowledge of a witness. For example, if the witness was not present during the attack but their mother was and she told them about the attack and they then included that information in their statement, it would be hearsay. In this example, the witness statement should be obtained from the witness' mother who actually saw the attack. In general, statements should not include hearsay if a statement can be obtained from the original source of the information, unless there is good reason not to do so.

If it is not possible to obtain a statement from the source of the information, the witness' statement should include as many of the following details as possible:

- Who provided the witness with the information;
- When and in what context the information was given;

- What was actually said by the source of the information;
- Where relevant, the source’s demeanour at the time; and
- Why it is not possible to obtain a statement from the source of the information.

The statement should be in the witness’ own words

Statements should, as far as possible, be in the words of the witness and they should be written in first person perspective, i.e. as if the witness was giving that evidence in person. For instance, they should say, “I did this ...”, and “I saw this ...”. They should also be in words that the witness would use, not legal jargon, and be drafted in a language that the witness understands.

The statements should describe events from the witness’ own perspective. This is particularly important when you are preparing statements from a number of witnesses about the same event. The Court or Committee will not find it credible if a number of witnesses use the same words to describe the same event even though they had different perspectives, were in different places at the time of the event, and heard about the event at different times. Do not simply prepare one statement and copy it for each witness. Each witness should have their own statement, given and prepared separately in their own words, which describes the events from their perspective. Their written statement should consist of the evidence that they would give if they provided oral evidence to the Court/Committee.

The statement should not include legal submissions or argument

A witness statement should only include the witness’ evidence. It should not include legal submissions or opinions about the legal arguments such as “this amounts to a violation of the ECHR” or “this was a breach of Article 3”. Submissions such as these will be made either in the initial application or in the additional submissions filed by the victim or their legal representative.

Ensure that the statement covers all relevant matters, including evidence necessary to establish a ‘clear causal connection’ between the alleged violation and the harm suffered by the victim

If the witness is claiming that they have suffered financial or other losses or damage as a result of a violation, ensure that there is an explanation of what loss they have suffered and how the violation caused the loss or damage. If a ‘clear causal connection’ cannot be established, the claim for just satisfaction may fail. Claims for pecuniary loss should be supported by statements which explain how the alleged pecuniary loss is quantified, annexing relevant documentary evidence. Examples:

- Loss of earnings claims could be supported by bank records or payslips evidencing previous wages or a contract of employment setting out a person’s salary.
- Property claims could be supported by title deeds demonstrating ownership, comparable properties to demonstrate market value or a previous rental agreement to evidence loss of rental income.
- Court fees or fines paid could be backed up by receipts.

Where a witness is the applicant in the case and, within their application, will be requesting that the Court orders the State to take specific steps (such as reopen an investigation or release a detainee), the witness may wish to include this in their statement, explaining the steps that they have already undertaken to encourage the State to do so.

Attach any corroborating or supporting evidence

All available evidence that supports or corroborates the witness' account should be obtained and attached to the witness' statement. The evidence that is relevant will depend on the factual circumstances of each case, but common examples are:

- Photographs, sketches, video footage, maps or diagrams that show the harm suffered, the persons involved, or the area where the incident or incidents took place, with an explanation of the provenance of the attachments (e.g. the person who took the photographs or drew the maps, the date and time on which they were taken);
- Police reports or reports of any other investigations;
- Medical evidence (e.g. doctors' reports, hospital records or psychological reports);
- Receipts, invoices or other evidence showing the value of property that has been lost and/or the cost of replacing property that has been lost;
- Any national judicial or administrative decisions concerning the incident or incidents;
- Specific research, newspaper reports or other official reports relating to the events or the country's situation, if these are relevant.

Finalising the statement

Once you have drafted the statement, arrange a time for the witness to review the statement and make any amendments before they sign and date it. If the statement has been prepared through a translator, ensure that the statement is an accurate translation and that the witness understands the language of the statement which they sign.

Updating information

During the course of a case, a witness may need to make more than one witness statement in the light of further relevant developments. Often applicants may need to provide further rebuttal evidence or respond factually to specific points after the Government formally replies to the application or discloses certain documents in the case. You can prepare one (or more) supplementary statement(s) setting out this additional evidence and noting in the heading that this is a supplementary or second witness statement from the witness.

As with preparing the original witness statement, you should consider carefully whether it is strictly necessary for the witness to provide a new statement, bearing in mind that providing testimony can potentially be a re-traumatising process for survivors of human rights violations.

Anonymity

Witness statements prepared in a case will be disclosed to the Respondent Government. However, applicants may request that witness statements, as with other case documents, not be made publicly available "in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties or of any person concerned so require, or to the extent strictly necessary in the opinion of the President of the Chamber in special circumstances where publicity would prejudice the interests of justice" ([Rule 33\(2\)](#) of the Rules of the European Court of Human Rights).

Annex 1: Examples of some areas to cover in witness statements

Below are some examples of the sorts of questions you may need to ask witnesses and the areas that may need to be covered in individual statements. These are examples only and the specific questions you will need to ask will depend on the facts of the case you are working on. Not all witnesses will be able to provide details on every area. The answers should be incorporated into a statement (i.e. continuous prose drafted in the first person) as described above, and should not be submitted as a list of questions and answers.

Questions for all witnesses

1. The witness

- a. Their full name;
- b. Their date of birth;
- c. Their address; and
- d. Their occupation.

2. Facts

- a. When (on what date and at what time) did the incident(s) take place?
- b. Where was the witness at that time? What were they doing?
- c. Who was with the witness at the time of the incident? Identify each person as best they can, e.g. give:
 - their name;
 - their date of birth;
 - their relationship with each person there, e.g. neighbour, brother, friend;
 - where they are an official, the body for whom they work and their rank;
 - if they did not know them, any identifying features, clothing or unusual characteristics.
- d. What did the witness see?
- e. What did each person present say or do?
- f. What happened as a result of the incident?
- g. Was any damage caused or harm suffered?
- h. If so, who or what caused it? Include as much identifying information as possible about those involved including:
 - any names used;
 - the rank or ranks of those involved;
 - any uniform or vehicle markings;

- the languages used;
 - the weapons or other instruments used;
 - any other identifying features such as facial hair, scarring etc.
- i. What was the state of health of the victim or the victim’s property prior to the incident?
 - j. What did the witness and the other persons present do immediately after the incident?
 - k. If the victim was taken away:
 - how were they taken away?
 - by whom? what did they look like? (also see 2(h) above.)
 - was anyone else with them?
 - where were they taken to?
 - how long were they held there for?
 - if they were transferred to another place, when did this happen and where was it?
 - l. Were there any other witnesses to the events that have not previously been identified? If so, do you know how we can contact them?

Additional questions for those witnesses who are victims

3. Domestic and other remedies

- a. Has there been any investigation by the local or national authorities?
- b. If a report was made to someone in authority (i.e. a state official), who made the report and to whom? Where was the official based? What did they say they would do?
- c. What other legal steps has the victim taken? Which court/tribunal dealt with the claim? What was/were the outcome/s?
- d. Were any written judgments/reports given? Does the victim have a copy of them? If not, can they obtain copies of them?
- e. What other possible legal steps could they have taken? If there were other legal options, why have they not pursued these?
- f. When was the last legal step completed?
- g. If it has been more than 4 months since the last legal step was completed, are there any continuing violations?
- h. Has the victim made a complaint to any other international court or tribunal?

4. Effect of the incident on the victim

- a. What was the effect of the incident on the victim?
- b. Did the victim suffer any physical harm? If so, provide full details of when, where and what harm was suffered.
- c. Did the victim suffer any emotional or psychological harm including any distress? If so, provide full details of when, where and what harm was suffered.

- d. Did the victim seek any medical or other treatment? If so, from whom? What was the nature and cost of the treatment?
- e. What ongoing treatment has been recommended?
- f. Does the victim still experience any physical, emotional or psychological effects as a result of the incident?

5. Losses – Land (if relevant)

- a. What area of land did the victim have available to them before the attack?
- b. What was the nature and the extent of the damage to the land?
- c. Did the victim own the land? If so, did the victim owe any money for its purchase?
- d. Did the victim rent the land? If so, how much did the victim pay for it?
- e. How was the land used? How much was used for crops, cattle, buildings etc.?
- f. How much rental income, if any, did the victim receive from the land?
- g. How much profit did the victim receive from the land from sales of surplus crops or any other source?
- h. What is the victim's estimate of the value, in monetary terms, of produce from the land consumed by their immediate family?
- i. How many/what sort of animals were kept on the land? What is the victim's estimate of their monetary value? What is the basis of that estimate?
- j. How many/what sort of crops were growing on the land at the time of the incident? What is the victim's estimate of their monetary value? What is the basis of that estimate?
- k. What other resources were available on the land? For example, supplies of water etc.?
- l. How many people lived on or were supported by the land?
- m. What losses has the victim suffered as a result of the damage to the land?

6. Losses – Buildings (if relevant)

- a. How many and what type of buildings did the victim have available to them?
- b. What was the nature and extent of the damage to those buildings?
- c. Did the victim own the buildings? If so, was any money owing in respect of their purchase/construction?
- d. Did the victim rent the buildings? If so, how much did the victim pay?
- e. Did the victim receive any rent for the buildings? If so, how much?
- f. What was the surface area of the buildings? How many storeys did they have?
- g. Of what type of construction were the buildings?
- h. What is the victim's estimate of the value of the buildings? What is the basis for this estimate?
- i. How long has the victim owned or rented the buildings?
- j. What losses has the victim suffered as a result of the damage to the buildings?

7. Losses – Personal property (if relevant)

- a. What property, apart from land/buildings and livestock, did the victim own e.g. furniture, tools, clothes, pictures and photographs?
- b. What is the victim's estimate of the value of the items lost? What is the basis for this estimate?
- c. Can these items be replaced? If so, at what cost?

8. Loss of earnings (past and future)

- a. What income did the victim receive before the incident?
- b. What income does the victim now receive?
- c. Is that likely to change in the future? If so, why?
- d. How did the incident cause this change?

9. If the victim lost their home/had their belongings destroyed, what has the victim paid since the incident and what is the victim presently paying for:

- a. rent for current accommodation?
- b. food/other provisions?
- c. clothing?
- d. utilities e.g. electricity/fuel bills?
- e. other expenses resulting from the incident?

10. Legal costs and expenses or fines in domestic proceedings

- a. What has the victim paid to date by way of legal fees and other costs and expenses in domestic or other proceedings?
- b. Has the victim paid any fines in domestic proceedings? If so, how much, and on which date(s)?
- c. What documents can the victim produce to prove the amount of the fees/costs and expenses or fines they have paid so far?

Annex 2: Presentation of witness statement (sample structure)

1. Insert heading to include the name of the Court in which the case is being litigated, the case name and application number (if known), the parties to the case, and the name of the witness providing the statement, e.g.:

“IN THE EUROPEAN COURT OF HUMAN RIGHTS

App. No. 12345/67

BETWEEN:

OLGA IVANOVA (Applicant)

-and-

RUSSIA (Respondent)

WITNESS STATEMENT OF THE APPLICANT OLGA IVANOVA

2. In the first paragraph identify the witness by their full name, including their date of birth, address and occupation, e.g.:

“My name is Olga Anastasia Ivanova. I was born on 3 June 1970 in St Petersburg, Russia. Since 2018, I have lived in Moscow where I work as a doctor. My address is Prospekt Mira 352, Flat 42, 129128 MOSCOW, Russia.”

3. Explain the capacity in which the witness provides their statement, e.g.:

“I am the first applicant in this case” or “I am the mother of Vladimir Ivanov who died on 1 January 2019” or “I witnessed the protests which took place in Freedom Square on the night of 3 May 2018”.

4. Set out a chronological account of the facts on which the witness can provide evidence, in numbered paragraphs on numbered pages. Use headings and sub-headings to divide up longer statements.

5. If a witness wishes to attach documents or other evidence as annexes, they should refer to them in the body of the statement and indicate the number of the annex, e.g.:

“On 3 May 2018, I was present in the Square at 3.45pm when the police dispersed the environmental protests. I was standing on the corner of the square on the steps at the foot of the monument looking towards the demonstrations. From there I had a clear view of what was happening. I took 25 photographs of the events from between 3.45pm and 3.55pm. I attach these photographs as Annex 1.”

6. End with a statement of truth e.g.:

“I believe that the facts stated in this witness statement are true.”

7. Insert witness' full name, leaving a space for them to sign and date the statement.
8. Insert list of annexes attached to the witness statement. If an annex contains multiple documents, for example a number of photographs, include an index which explains what each document is:

“Annex 1: Photographs taken from the foot of the monument on Freedom Square, 3 May 2018

- Photograph 1: Riot police standing in line
- Photograph 2: Protesters holding placards
- Photograph 3: Baton assault on Vladimir”



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