

# 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 will therefore almost always 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.

## **Preparing for the interview**

Arrange to meet each witness separately.

Prepare a list of questions to cover with the witness before you meet them. This will assist you to ensure that you cover all relevant issues. It will also assist you to direct the witness towards providing you with the information that you need and to avoid discussing matters that may not be relevant for the preparation of their statement. Even if you do not have any background information and do not know what the witness might tell you, there are some basic questions that you will always need to ask and it will be useful to start with these (see [“Examples of some areas to cover in statements”](#) below).

You should be careful to avoid asking leading questions when questioning a witness. Leading questions are those that suggest an answer, such as “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 happened to you?”, “when did that occur?”, or “where was the victim at that time?”.

It is often easiest to seek the information chronologically. That way you can ask about any inconsistencies as you go along. Use questions such as “what happened next?” to move the witness through the events.

## **During the interview**

Take full notes of the answers which the witness provides, using their own words. If you are working with an interpreter, make sure that the interpreter renders your questions and the witness’ answers fully and accurately.

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.

It may be more appropriate to have a series of short interviews with the witness rather than one long one, depending on the level of trauma the witness has experienced, their age, health or capacity. Monitor the witness’ demeanour during the interview and suspend or stop the interview if the witness becomes distressed or needs a break for other reasons.

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, identify any gaps or inconsistencies in their account and ask them about these when you next meet. Avoid repeating questions which you have already asked and had answered, unless you need to obtain additional detail or clarification. This is particularly important where a witness is having to recall traumatic events.

If there is a gap in time in the witness' account, ask specific questions about what occurred and in what order. For example, if the witness says that they did not go searching for their missing relative until four hours after the event, ask them to explain why this was and what was happening in the interim. If the witness gave a different account of the events to the police from the one they give you, ask them about this. Sometimes asking a question in another way will resolve inconsistencies as the inconsistency may be the result of a misunderstanding or mistranslation, if working through an interpreter. If gaps or inconsistencies still remain, try to explore the reasons for them with the witness.

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, the reasons for these should be included in their statement. 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.

## **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 6 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?





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