



The Law Society  
of England and Wales

## **International Human Rights Training**

**Intervention manual**

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*international*  
**opportunities**

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## Section 1

### 1. Introduction

- 1.1. This manual has been produced by the Law Society's Human Rights Unit. Its aim is to train volunteers to write intervention letters for and on behalf of the Law Society for its "Lawyers for Lawyers" programme. Research by volunteers will also inform the Law Society's "Rule of Law in Practice" programme.
- 1.2. The manual contains an explanation of the Law Society's intervention system, basic principles of international law, a letter writing guide and common issues of international law which arise during interventions work.
- 1.3. It has been compiled by reviewing the interventions the Law Society has written over the years and to ensure that the Law Society's actions remain consistent with previous practice.
- 1.4. For more information about the Law Society's human rights activities, please contact the Human Rights Adviser (HRA), Courtenay Barklem or the Human Rights Policy Assistant, Sarah Smith, whose details are on the inside cover.

### 2. What are interventions?

- 2.1. Interventions are official actions taken by the Law Society in response to breaches of the rule of law or violations of human rights which fall within our mandate.
- 2.2. Interventions can take the form of a letter, press statement, amicus curiae brief, diplomatic delegations, a campaign, capacity-building or any other appropriate method.
- 2.3. This training manual concentrates on letter interventions. Volunteers from the Law Society's International Action Team research and write the letter's first draft, before it is reviewed by the Law Society (including the HRA, Human Rights Committee and International Department). If approved, it is signed by the President. Please see the following website for past examples of interventions: <http://international.lawsociety.org.uk/node/3806>

### 3. In what situations does the Law Society intervene?

- 3.1. The Law Society is the representative body for solicitors in England and Wales. Its primary role is to represent lawyers, to promote the rule of law and proper administration of justice. Thus, it is not a front-line human rights or campaigning body and so cannot intervene in every case of violation, especially if the facts of the case are not directly related to its primary purpose.
- 3.2. In summary, the Law Society writes interventions to governments and competent authorities in the following circumstances:
  - in support of lawyers, judges and their co-workers whose human rights have been violated or who risk intimidation, assault or other interference for carrying out their legitimate duties;

- opposing threats to independence of the legal profession, the independence of the judiciary, or the proper administration of justice; and
  - opposing gross or systemic human rights violations<sup>1</sup> or breaches of norms generally accepted and recognized by the international community<sup>2</sup> which undermine respect for the rule of law.
- 3.3. For further explanation of the Law Society’s mandate, see paragraphs 26.4 and 26.5 below.
4. Why does the Law Society write interventions?
- 4.1. Lawyers play an important role in the administration of justice. This is recognised in the preamble to the UN Basic Principles on the Role of Lawyers (1990) which states:
- “adequate protection of the human rights and fundamental freedoms to which all persons are entitled...requires that all persons have effective access to legal services provided by an independent legal profession”*
- 4.2. This highlights two pre-requisites for effective human rights protection: the existence of an independent legal profession and the provision of effective access to legal services.
- 4.3. Over recent years, there have been an increasing number of physical attacks on, intimidation of, or administrative restrictions against lawyers. Such incidents undermine the independence of the legal profession and prevent and deter lawyers from carrying out their legitimate duties.
- 4.4. Very often such interference is a cynical ploy to influence the outcome of a court case. Even on the rare occasion when it is not, it nevertheless subverts the proper administration of justice and the rule of law.
- 4.5. The importance of the rule of law for human rights protection is enshrined in the Universal Declaration of Human Rights, adopted by the United Nations in 1948, which states that “[i]t is essential that human rights should be protected by the rule of law” otherwise “barbarous acts” like those seen in World War II would result.
- 4.6. Indeed, solicitors have a duty to “uphold the rule of law and the proper administration of justice” (Solicitors’ Regulation Authority Principle no.1).
- 4.7. Article 14 of UN Basic Principles on the Role of Lawyers also indicates that lawyers have an active role to play in the protection of human rights. It provides that “Lawyers, ... in promoting the cause of justice, [must] seek to uphold human rights and fundamental freedoms recognized by national and international law”.

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<sup>1</sup> For the guidance of what is a “gross” or “systemic” violation see page 56 ref: 30A

<sup>2</sup> Such norms do not need to reach the level of jus cogens (c.f. Ref. No. 30B on page 57)

4.8. The UN Basic principles also highlight that:

*“professional associations of lawyers have a vital role to play in upholding professional standards and ethics, protecting their members from persecution and improper restrictions and infringements, providing legal services to all in need of them, and cooperating with governmental and other institutions in furthering the ends of justice and public interest”*

4.9. Therefore, the Law Society as the professional body representing more than 150,000 solicitors in England and Wales seeks to support solicitors, the international colleagues with whom they work, and the independence of the legal profession as a whole, so that they can perform their important roles and duties.

5. How does the intervention system operate?

5.1. Our intervention work is assisted by the International Action Team (“IAT”). The IAT is a network of solicitors, trainees and students who wish to undertake some pro bono international human rights work.

5.2. The IAT has a team of monitors who look out for the latest news and developments in international human rights. The monitoring team is mainly made up of students.

5.3. When a case is identified which may fit the mandate for a letter intervention, a volunteer or volunteers will be assigned to carry out the factual research, legal research, and/or drafting.

5.4. Such opportunities will be allocated through one of the following two routes:

5.4.1. If your firm is a corporate member of the IAT, then the IAT Admin Team will contact your firm’s pro bono officer, who in turn will contact you. Your work will be co-ordinated by your firm’s pro bono manager. You will be informed by the IAT Admin Team after your training if you are a corporate member; or

5.4.2. If you are an individual IAT member, casework will be posted on the IAT members-only website (details of which will be provided after completion of training). IAT members may also be sent email notifications. IAT members can accept opportunities and post their completed work via the members-only website.

5.5. There is no obligation to take on or accept any pro bono task offered to you. The IAT is designed for you to pick and choose according to your availability and interests. The work can be done remotely via the internet so that it is available to you regardless of geographic location.

5.6. However, if you accept a task, we require that you comply with our quality standards and deadlines.

#### Quality standards

5.7. IAT volunteers must comply with the quality and service standards set out in the Attorney General’s Statement of Principles for International Pro Bono

Legal Work, regardless of whether they are lawyers, students or otherwise.  
[http://www.internationalprobono.com/declarations/item.1254-UK Attorney Generals Pro Bono Declaration](http://www.internationalprobono.com/declarations/item.1254-UK%20Attorney%20Generals%20Pro%20Bono%20Declaration).

- 5.8. In particular, IAT work should always be done to a high standard (Principle B1a), a response to a request to undertake International Pro Bono Legal Work should be given within a reasonable time (Principle B1b) and volunteers should give IAT work the same priority, attention and care as would apply if the work in question was undertaken on a paid rather than a pro bono basis (Principle B2b).

### Deadlines

- 5.9. Generally, pro bono research is intended to take 2 to 3 hours. Drafting tasks are also expected to take between 2 and 3 hours. Unless we specify otherwise, the default deadlines are as follows:
- all research tasks to be submitted within 7 days of acceptance,
  - drafting-only tasks to be submitted within 7 days of acceptance, and
  - for combined research and drafting tasks, drafting to be completed within 7 days of submitting the research.
- 5.10. If, due to unforeseen circumstances, you have difficulty in meeting the deadline then you **MUST** inform us as soon as possible. Corporate members can do so via their pro bono manager. Individual members can post a message via the members-only website.
- 5.11. This will allow us either to grant an extension of time, to re-allocate to another volunteer or to provide you with assistance.

### Review and revisions

- 5.12. Your completed research will be reviewed by the IAT Admin Team to make a preliminary assessment as to whether the case fits our mandate, requiring further action. If it does, then it is likely to be sent to a volunteer for drafting. Sometimes, the researcher is the person best placed to carry out the drafting and may be offered first refusal.

NB if you have taken on a combined "research and drafting" task, then once you have submitted your research, proceed directly to drafting which you should submit within 7 days of your research. Do not wait to be contacted before commencing and submitting the drafting portion of the task.

- 5.13. Your drafts will be reviewed by our Senior Lawyers' Team, which is a group of experienced IAT volunteers headed by Alastair Logan OBE.
- 5.14. You may be contacted by the Senior Lawyers to carry out further research, to clarify queries or make revisions.

### Final Assessment

- 5.15. When the Senior Lawyers Team is satisfied with your work, it is then assessed internally at the Law Society, including by the International

Department and Human Rights Committee. It is only at this stage, when the work is near completion, that a final assessment can be made.

- 5.16. If the intervention is approved, it is signed by the Law Society's President and sent to the relevant authorities in-country and usually published on our website (see <http://international.lawsociety.org.uk/node/3806>).
- 5.17. However, we cannot guarantee that all draft interventions will make it to fruition. There are a number of reasons why this might happen, for example:
  - 5.17.1. the incident does not quite fit into our strict mandate, e.g. it does not yet evidence a gross or systemic pattern;
  - 5.17.2. the political situation in-country means that an intervention would cause more harm than good for the people we are trying to protect;
  - 5.17.3. there are other (e.g. diplomatic) avenues that would be more fruitful, or the Law Society is already in dialogue with the authorities on different issues and so should avoid inconsistent messages which would undermine credibility.

#### Alternative use

- 5.18. If the draft intervention is discontinued, your work is still likely to be used as:
  - 5.18.1. information supplied to another NGO who is better suited and has a mandate to act upon it;
  - 5.18.2. raw data to inform our country profiles, annual report and lobbying work;
  - 5.18.3. background information in a later intervention, e.g. as evidence of a systemic pattern of violation which only emerged when more incidents occurred.



## Section 2

### 6. International Human Rights Standards

6.1. The UN Charter (1945) opens with the words:

*WE THE PEOPLES OF THE UNITED NATIONS DETERMINED*

*To save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and*

*to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small, and*

*to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and*

*to promote social progress and better standards of life in larger freedom.*

6.2. The first human rights standard, proclaimed by the UN General Assembly in 1948, was the Universal Declaration of Human Rights<sup>3</sup> (UDHR). It remains the cornerstone of the UN's human rights system.

6.3. The next two standards were adopted by the UN in 1966 and came into force in 1976. They were the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR). They articulated the provisions of the Declaration in treaty form.

6.4. These three standards, plus the two Optional Protocols to the ICCPR, are known as the International Bill of Human Rights.

6.5. There are seven other international human rights treaties in force. These are:

6.5.1. International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) (1965/1969)

6.5.2. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) (1979/1981)

6.5.3. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) (1984/1987)

6.5.4. Convention on the Rights of the Child (CRC) (1989/1990)

6.5.5. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICPMW) (1990/2003)

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<sup>3</sup> The Universal Declaration of Human Rights is a non-treaty standard. Non-treaty standards (or 'soft law') are adopted by the UN as the agreed and recommended standard for the way states treat those under their jurisdiction. States do not need to become party to them, so they are not legally binding.

- 6.5.6. Convention on the Rights of Persons with Disabilities (CRPD) (2006/2008)
- 6.5.7. International Convention for the Protection of All Persons from Enforced Disappearance (CPED) (2006/2010)
- 6.6. Some of the treaties have optional protocols which can complement or add to the original agreement. For example, the Second Optional Protocol to the International Covenant on Civil and Political Rights seeks the abolition of the death penalty.
- 6.7. These treaties impose international standards in the field of human rights, detailing the rights of all individuals. However, most importantly, the treaties generate corresponding legal duties on state actors to protect against and remedy human rights violations.
- 6.8. The international human rights treaties are a unique body of international law because they make states accountable for the treatment of those under their jurisdiction. However, they are difficult to enforce at the national level. In addition, ratification of an international treaty does not necessarily mean that it becomes part of the State's national law.
- 6.9. Generally states have either 'dualist' or 'monist' legal systems. In monist states, international law is directly applicable. Dualist systems, including most common law systems, treat international law and national law as two separate legal systems and, usually, a legislative act is needed to incorporate a treaty into national law.
- 7. What is a treaty?<sup>4</sup>
- 7.1. A treaty is an agreement by states to be bound by particular rules. International treaties have different designations such as covenants, charters, protocols, conventions, accords and agreements. The treaty is legally binding on those states which have consented to be bound by the provisions of the treaty -- in other words party to the treaty.
- 7.2. In order to become a party, the State must have (1) expressed its consent to be bound by a treaty through an act of ratification, acceptance, approval or accession, and (2) the date of entry into force of the treaty for that particular State must have passed.
- 7.3. Some treaties, such as the human rights treaties, are only open to States, whereas others are also open to other entities with treaty making capacity. Both Covenants and CERD are open to signature and ratification by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations. The other core human rights treaties are open to all States.
- 7.4. The Optional Protocols are all restricted to States parties to the parent treaty except the CRC Optional Protocol on the involvement of children in armed conflict, to which any State may accede.

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<sup>4</sup> *Fact Sheet No. 30*, Office of the High Commissioner for Human Rights, page 47

8. How does a State become party to a treaty?<sup>5</sup>
- 8.1. Each human rights treaty contains provisions setting out, first, how States must proceed to bind themselves by the substantive provisions of the treaty and, second, when the treaty will enter into force.
- 8.2. In order to become a party to a multilateral treaty, a State must demonstrate, through a concrete act, its willingness to undertake the legal rights and obligations contained in the treaty. In other words, it must express its consent to be bound by the treaty.
- 8.3. A State can express its consent to be bound in several ways, in accordance with the final clauses of the relevant treaty. The human rights treaties allow for consent to be expressed either through signature followed by ratification, acceptance or approval, or through accession. Under certain circumstances, a State may also bind itself through succession.
- 8.4. Many treaties require a minimum number of States parties before they can enter into force in international law.
9. Signature<sup>6</sup>
- 9.1. Multilateral treaties, like the human rights treaties, usually provide for signature subject to ratification, acceptance or approval. In such cases, the act of signing does not impose positive legal obligations on the State.
- 9.2. However, signature does indicate the State's intention to take steps to be bound by the treaty at a later date. In other words, signature is a preparatory step on the way to ratification of the treaty by the State.
- 9.3. Signature also creates an obligation, in the period between signature and ratification, acceptance or approval, to refrain from acts that would defeat the object and purpose of the treaty.<sup>7</sup>
- 9.4. Providing for signature subject to ratification allows States time to seek approval for the treaty at the domestic level and to enact any legislation necessary to implement the treaty domestically, prior to undertaking the legal obligations under the treaty at the international level.
10. Ratification, acceptance or approval<sup>8</sup>
- 10.1. Ratification consists of two procedural acts. On a domestic level, it requires approval by the appropriate constitutional organ (usually the head of state or parliament).
- 10.2. On the international level, ratification, acceptance and approval all refer to the definitive act undertaken internationally, whereby a State establishes its consent to be bound by a treaty which it has already signed. It does this by depositing an "instrument of ratification" with the Secretary-General of the United Nations. To ratify a treaty, the State must have first signed the treaty; if a State expresses its consent to be bound without first having signed the

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<sup>5</sup> *Id.*, page 47

<sup>6</sup> *Id.*, page 48

<sup>7</sup> Article 18, Vienna Convention on the Law of Treaties 1969

<sup>8</sup> *Fact Sheet No. 30, Office of the High Commissioner for Human Rights*, page 48

treaty, the process is called accession (see below). Upon ratification, the State becomes legally bound by the treaty as one of its States parties. Generally, there is no time limit within which a State is requested to ratify a treaty which it has signed.

10.3. Ratification at the international level, which indicates to the international community a State's commitment to undertake the obligations under a treaty, should not be confused with ratification at the national level, which a State may be required to undertake in accordance with its own constitutional provisions before it expresses consent to be bound internationally.

10.4. Ratification at the national level is inadequate to establish a State's intention to be legally bound at the international level. The required actions at the international level must also be undertaken.

## 11. Accession<sup>9</sup>

11.1. Accession is the act whereby a State that has not signed a treaty expresses its consent to become a party to that treaty by depositing an "instrument of accession" with the Secretary-General of the United Nations.

11.2. Accession has the same legal effect as ratification, acceptance or approval. However, unlike ratification, which must be preceded by signature to create binding legal obligations under international law, accession requires only one step, namely, the deposit of an instrument of accession. The conditions under which accession may occur and the procedure involved depend on the provisions of the relevant treaty.

11.3. Accession is generally used by States wishing to express their consent to be bound by a treaty where the deadline for signature has passed. However, many modern multilateral treaties provide for accession even during the period that the treaty is open for signature.

## 12. Succession<sup>10</sup>

12.1. Succession takes place only under certain specific circumstances, where a State which is party to a treaty has undergone a major constitutional transformation which raises some doubt as to whether the original expression of consent to be bound is still valid.

12.2. Such circumstances may include independence (for example, through decolonisation), dissolution of a federation or union, and secession of a State or entity from a State or Federation.

12.3. Under such circumstances, the Successor State may choose to ratify or accede to the treaty concerned in its own capacity, or alternatively it may express its consent to continue to be bound by the legal obligations assumed by the original State party with respect to the same territory through an act of succession. In such cases, the State concerned will notify the Secretary-General of the United Nations of its intention to succeed to the legal obligations.

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<sup>9</sup> *Id.*, page 48-49

<sup>10</sup> *Id.*, page 49

13. Distinction between ratification/accession and entry into force<sup>11</sup>
- 13.1. The act by which a State expresses its consent to be bound by a treaty is distinct from the treaty's entry into force. A State demonstrates its willingness to undertake the legal rights and obligations under a treaty through the deposit of an instrument of ratification, acceptance, approval or accession.
- 13.2. Entry into force of a treaty with regard to a State is the moment the treaty actually becomes legally binding for the State party. The treaty does not enter into force immediately: there is usually a delay, specified in the treaty, between the date of deposit of instrument and the date of entry into force.
- 13.3. The provisions of the treaty determine the exact moment of its entry into force. This may be a specified date, or after a specified number of ratifications have taken place.
14. Reservations<sup>12</sup>
- 14.1. A state may, in ratifying the treaty, enter reservations to the treaty, indicating that, while it consents to be bound by most of the provisions, it does not agree to be bound by certain specific provisions.
- 14.2. Reservations are governed by the Vienna Convention on the Law of Treaties, and cannot be contrary to the object and purpose of the treaty. States may accordingly, when signing, ratifying, accepting, approving or acceding to a treaty, make a reservation unless (a) the reservation is prohibited by the treaty; or (b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made. Other States parties may lodge objections to a State party's reservations. Reservations may be withdrawn completely or partially by the State party at any time.
- 14.3. Further, even if the state is not a party to the treaty or if it has entered reservations thereto, that state may still be bound by those treaty provisions which have become part of customary international law or constitute peremptory rules of international law, such as the prohibition against torture.
15. Interpretative Declarations<sup>13</sup>
- 15.1. A state may make an interpretative declaration about its understanding of the matter contained in a treaty or the interpretation of the particular provision in a treaty. Declarations, unlike reservations, do not purport to exclude or modify the legal effect of the treaty (unless the treaty itself provides for this). Rather, it clarifies the meaning of certain provisions or the entire treaty.

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<sup>11</sup> *Id.*, page 49

<sup>12</sup> *Id.*, page 44

<sup>13</sup> *Id.*, page 39

16. Custom

16.1. Customary international law (or simply "custom") is the term used to describe a general and consistent practice followed by states deriving from a sense of legal obligation.

16.2. Thus, for example, while the Universal Declaration of Human Rights is not in itself a binding treaty, some of its provisions have the character of customary international law.

16.3. Customary international law and treaty law have equal authority in international law, but if both exist regarding the disputed issue, treaty law takes precedence.<sup>14</sup>

16.4. Custom, although no longer a major source of international law, remains an important influence and many rules of customary international law are reflected in treaty provisions.<sup>15</sup>

17. Declarations, resolutions etc adopted by UN organs<sup>16</sup>

17.1. General norms of international law principles and practices with which most states would agree are often stated in declarations, proclamations, standard rules, guidelines, recommendations and principles. While these do not have binding legal effect on states, if adopted by UN organs they nevertheless represent a broad consensus on the part of the international community as the agreed and recommended standards for the way States should treat those under their jurisdiction. Therefore, they have a strong and undeniable (moral) force in the practice of states in their conduct of international relations.

17.2. The value of such instruments rests on their recognition and acceptance by a large number of states and, even without binding legal effect, they may be seen as declaratory of broadly accepted principles within the international community.

17.3. Such statements and declarations of international law and practices by the UN are often referred to as "soft law". Although non-binding, they are sometimes more useful to refer to in intervention letters than "hard law" treaties: a state cannot claim that the principles are not applicable on the grounds that the state has not ratified them.

17.4. The term "soft law" can sometimes refer to provisions in treaties ("legal soft law")<sup>17</sup> which are merely general obligations, statements of intent or aspirations.

17.5. The full body of international human rights instruments consist of more than 100 treaties, declarations, guidelines, recommendations and principles which together set out international human rights standards. A list of such international instruments is set out in Annex 1.

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<sup>14</sup> *International Law*, Rebecca Wallace and Anne Holliday, 1<sup>st</sup> Ed., page 10

<sup>15</sup> *Id.*, page 18

<sup>16</sup> *A Basic Handbook for UN Staff*, Office of the High Commissioner for Human Rights, Human Rights, page 5

<sup>17</sup> *International Law*, Rebecca Wallace and Anne Holliday, 1<sup>st</sup> Ed., page 24

18. The Treaty Bodies.

18.1. Each of the nine UN human rights treaties has a treaty body, an expert group elected by the State Parties to that treaty, entrusted with the task of overseeing the domestic implementation of the treaty. The nine current treaty bodies are<sup>18</sup>:

18.1.1. Committee on the Elimination of Racial Discrimination (CERD) – International Convention on the Elimination of All Forms of Racial Discrimination

18.1.2. Committee on Economic, Social and Cultural Rights (CESCR) - International Covenant on Economic Social and Cultural Rights

18.1.3. Human Rights Committee (HRC) - International Covenant on Civil and Political Rights

18.1.4. Committee on the Elimination of Discrimination against Women (CEDAW) - Convention on the Elimination of All Forms of Discrimination against Women

18.1.5. Committee against Torture (CAT) - Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

18.1.6. Committee on the Rights of the Child (CRC) - Convention on the Rights of the Child

18.1.7. Committee on Migrant Workers (CMW) - International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

18.1.8. Committee on the Rights of Persons with Disabilities (CRPD) - Convention on the Rights of Persons with Disabilities

18.1.9. Committee on Enforced Disappearances (CED) - International Convention for the Protection of All Persons from Enforced Disappearance.

18.2. All the treaty bodies have two functions and some have three:

18.2.1. **Monitoring:** All state parties are required to produce initial and periodic reports. The Treaty Bodies discuss these reports with representatives of the state party and make conclusions and recommendations.

18.2.2. **Producing general comments/recommendations:** The Treaty Bodies develop the understanding of individual articles of their treaty through General Comments or General Recommendations

18.2.3. **Hearing complaints:** Six of the nine human rights treaties have additional procedures. Those under the jurisdiction of states party to these procedures can make complaints to the relevant Treaty Body about alleged violations of that treaty.

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<sup>18</sup> For more details, see <http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>



18.3. You may find it useful to refer to the recommendations or general comments of these treaty bodies to support your arguments in your intervention letter, especially if they clarify how certain treaty provisions are to be interpreted or if they relate to the country that is the target of your intervention.

## 19. The Right of Petition

19.1. The additional provisions of the six treaties which allow the right of petition by individuals to the UN are:

19.1.1. Optional Protocol to the International Covenant on Civil and Political Rights

19.1.2. Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination

19.1.3. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

19.1.4. Article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

19.1.5. Optional Protocol to the Convention on the Rights of Persons with Disabilities

19.1.6. Articles 30 and 31 of the International Convention for the Protection of All Persons from Enforced Disappearance

19.2. The outcome of complaints is often referred to as 'jurisprudence' but in fact the procedure is quasi-judicial. There are no formal hearings by the Treaty Bodies, just an exchange of papers. The findings are not binding. Nevertheless, this jurisprudence is influential and can be used in your intervention letters.

## 20. The UN Special Procedures

20.1. The UN Special Procedures consist of country and thematic mechanisms established by the UN Human Rights Council (formerly the Commission on Human Rights).

20.2. Special Procedures can be either individuals (called "Special Rapporteurs", "Special Representatives" or "Independent Experts") who are leading experts in a particular area of human rights, or working groups usually composed of five members. In order to preserve their independence they do not receive pay for their work.

20.3. Various activities can be undertaken by special procedures, including responding to individual complaints, conducting studies, providing advice on technical cooperation, and engaging in promotional activities. The special mechanisms are categorised according to thematic mandates and country mandates. Currently, there are 35 thematic and 9 country mandates under special procedures. The Office of the United Nations High Commissioner for Human Rights provides staffing and logistical support to aid each mandate-holder in carrying out their work.



- 20.4. Reports and conclusions from the Special Procedures can be used in intervention letters. Full details of their work are available at: <http://www2.ohchr.org/english/bodies/chr/special/index.htm>
21. The Universal Periodic Review
- 21.1. The Universal Periodic Review (UPR) is a unique process which involves a review of the human rights records of all 192 UN Member States once every four years. The UPR was created through the UN General Assembly on 15 March 2006 by resolution 60/251, which established the Human Rights Council itself.
- 21.2. Over the UPR's four-year cycle, forty-eight States are reviewed each year, during three sessions of the Human Rights Council's Working Group on the UPR, with 16 States reviewed at each session. By the end of 2011, the UPR will have reviewed the human rights records of every country.
- 21.3. Each country is reviewed in Geneva during a three hour session, one hour of which is given to the State under review to make a presentation about its human rights framework and record. A two-hour interactive dialogue follows, during which the Human Rights Council's member states question the State and make recommendations towards the improvement of its human rights situation and performance.
- 21.4. Ultimately, a report is produced containing these recommendations and it is often useful to refer to them in Law Society interventions as they represent a persuasive record of a state's human rights performance as judged by its peers.<sup>19</sup> Further details can be found at: <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>
22. The Regional Mechanisms<sup>20</sup>
- 22.1. The global structure created by the international human rights instruments is bolstered by regional human rights regimes. The most developed regional regime is the European Convention on Human Rights and Fundamental Freedoms which was adopted by the Council of Europe in 1950. The Convention is enforced by a European Court of Human Rights in Strasbourg whose decisions are binding on signatory governments. It is this document that has now been incorporated into English law by the Human Rights Act 1998.
- 22.2. The other regional regimes include the American Convention and the African Convention. An Arab Convention on human rights was agreed in 1994 and the Commonwealth of Independent States (former Soviet Union) signed up to a Convention on Human Rights in Minsk in 1995. There have also been moves towards an Asian convention. Various regional bodies with primarily economic objectives, including the EU and the Association of Southeast Asian Nations (ASEAN), have also taken on a role in promoting human rights

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<sup>19</sup> See e.g. *Law Society's report on Mexico* to UN Special Rapporteur on the Independence of Judges and Lawyers, March 2011, at pages 7, 11, 13, 17 and 34, <http://international.lawsociety.org.uk/files/Mexico%20report%202011.pdf>

<sup>20</sup> *Human Rights*, Dr Maureen Spencer and John Spencer, 3<sup>rd</sup> Ed., pages 4 and 5

- 22.3. Sometimes it may be more appropriate to refer to legal standards or case law of regional human rights regimes rather than the international/UN mechanisms. For example, a judgment of the European Court of Human Rights may carry more weight in the UK because it is closer to home and of a more judicial character than a recommendation from a UN Committee.

### Section 3

#### 23. State responsibility for human rights<sup>21</sup>

23.1. The obligation to protect, promote and ensure the enjoyment of human rights is primarily the responsibility of states, thereby conferring on states responsibility for the human rights of individuals. Many human rights are owed by states to all people within their territories, while certain human rights are owed by the state to a particular group of people: for example, the right to vote in elections is only owed to citizens of a state.

23.2. State responsibilities include the obligation to take protective measures to ensure that human rights are protected by providing effective remedies for persons whose rights are violated, as well as measures against violating the rights of persons within its territory.

23.3. Under international law, the enjoyment of certain rights can be restricted in specific circumstances. For example, if an individual is found guilty of the crime after a fair trial, the state may lawfully restrict a person's freedom of movement by imprisonment. Restrictions on civil and political rights may only be imposed if the limitation is determined by law but only for the purposes of securing due recognition of the rights of others and meeting the just requirements of morality, public order and the general welfare in a democratic society. Economic, social and cultural rights may be limited by law, but only in so far as the limitation is compatible with the nature of rights solely to promote the general welfare in a democratic society.

23.4. In a legitimate and declared state of emergency, states can take measures which limit or suspend (or "derogate" from) the enjoyment of certain rights. Such derogations are permitted only to the extent necessary for the situation and may never involve discrimination based on race, colour, sex, language, religion or social origin. Any derogation must be reported to the Secretary General of the United Nations. However in accordance with article 4, paragraph 3 of ICCPR, certain human rights -- non-derogable rights -- may never be suspended or restricted even in situations of war and armed conflict. These include the right to life, freedom from torture, freedom from enslavement or servitude and freedom of thought, conscience and religion. In addition, in times of armed conflict when humanitarian law applies, human rights law continues to afford protection.

#### 24. What is humanitarian law?<sup>22</sup>

24.1. International humanitarian law (sometimes referred to as "the law of armed conflict" and "the law of war") is a body of principles and norms intended to limit human suffering in times of armed conflict and to prevent atrocities. It can be defined as part of international law -- comprising international treaty and customary law -- which seeks to protect persons who are not, or are no longer, taking part in the hostilities (i.e. the sick, wounded or shipwrecked combatants, prisoners of war or civilians), and to restrict the method and means of warfare between parties to the conflict.

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<sup>21</sup> *A Basic Handbook for UN Staff*, Office of the High Commissioner for Human Rights, Human Rights, pages 5 to 6

<sup>22</sup> *Id.*, pages 6 to 7

- 24.2. Modern international humanitarian law is mainly embodied in the four Geneva Conventions of 1949 and the two 1977 protocols additional to those conventions.
- 24.3. Significantly, common to all Geneva Conventions is article 3 which establishes minimum rules to be observed by each party to an internal armed conflict. This article provides that persons taking no active part in the hostilities "*shall in all circumstances be treated humanely, without adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria*", "*the passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples*" is prohibited and "*the wounded and sick shall be collected and cared for*".
25. The link between humanitarian and human rights law.<sup>23</sup>
- 25.1. Humanitarian law and human rights law were traditionally regarded as separate areas of international law: human rights law set standards for the state in guaranteeing the rights and freedoms of individuals and humanitarian law provided standards for the protection of war victims and the manner in which hostilities were conducted. In other words, it was thought that human rights law was less applicable in situations of humanitarian emergency and armed conflict. Those holding this view pointed to the provisions in the ICCPR which permit states to derogate temporarily from some civil and political rights in times of public emergency which threatened the life of the nation. However, the provisions of most international human rights instruments apply even in times of armed conflict.
- 25.2. The need to safeguard human rights during armed conflict has been given priority as human rights are recognized as integral to peace and security. In 1966 a UN study found that the major international instruments provided for a broader spectrum of human rights protection than the Geneva Conventions. This led to the adoption by the Teheran World Conference on Human Rights in 1968 and the UN General Assembly, in 1970, passed a number of resolutions recognizing that fundamental human rights and international instruments continue to apply in situations of armed conflict.
- 25.3. It is now acknowledged that human rights law and humanitarian law should be viewed in an integrated and holistic manner, where the individual has protection under human rights law at all times, as well as that provided under humanitarian law during periods of armed conflict.

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<sup>23</sup> *Id.*, pages 7 to 8

## Section 4

### 26. Guide to researching

26.1. There are 2 types of research required for Law Society interventions:

- Factual research: which is used to decide whether the Law Society should pursue this matter as an intervention. It is also used to write the first part of the intervention letter; and
- Legal research: which will assist with drafting the law section of the intervention. The letter drafter will ultimately have to select the most persuasive provisions from your legal research for inclusion in the final letter.

26.2. However, before carrying out research, you should first review the following preliminary issues:

#### Preliminary issues

26.3. Identify which strand of Law Society's mandate this intervention falls under by reference to paragraph 3.2 above.

26.4. Ask yourself the following 8 Key Questions:

1. Is the victim a lawyer or a judge carrying out their professional duties or exercising their legitimate rights?
2. Does the violation impede the work of the judiciary or the legal profession or threaten their independence?<sup>24</sup>
3. Is the victim a non-lawyer who is effectively doing the work of a lawyer?<sup>25</sup> The UN Basic Principles on the Role of Lawyers state that they "*also apply, as appropriate, to persons who exercise the functions of lawyers without having the formal status of lawyers.*"
4. Is the victim a non-lawyer who works for a lawyer, law firm, an organisation doing legal work or organisation representing those doing legal work?<sup>26</sup>
5. Is the victim a non-lawyer who has been denied access to a lawyer or to a court or has been hindered in obtaining such access (e.g. travel restrictions, threats of violence etc) and/or the violation represents an interference with the proper administration of justice?<sup>27</sup>

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<sup>24</sup> E.g. planned legislation to revise the regulation of the judiciary in Fiji  
<http://international.lawsociety.org.uk/files/Fiji140509.pdf>

<sup>25</sup> E.g. human rights defenders such as journalists in Papua, Indonesia where there are virtually no lawyers

<sup>26</sup> E.g. threats against workers at the Tlachinollan Human Rights Centre in Mexico which made lawyers' work virtually impossible,  
<http://international.lawsociety.org.uk/files/Mexico%205%20June%2009.pdf> and Russian government action against Oleg Orlov, the chairman of the Memorial Human Rights Centre see  
<http://international.lawsociety.org.uk/files/Oleg%20Orlov%20RUSSIA.pdf>

<sup>27</sup> See e.g. mass trials in Iran at [http://international.lawsociety.org.uk/files/Iran%20statement\\_0.doc](http://international.lawsociety.org.uk/files/Iran%20statement_0.doc)

6. If none of the above, has another organisation or person produced a report about or a comment on the matter?<sup>28</sup> Is that organisation or person a lawyer, law firm, an organisation doing legal work or organisation representing those doing legal work?<sup>29</sup>
7. If none of the above, is the violation of the rule of law gross and systemic.<sup>30</sup> Is it a failure to comply with a court judgment?<sup>31</sup> Is it a breach of a *jus cogens* norm,<sup>32</sup> or of a universally recognised or generally accepted principle of international law?<sup>33</sup> Is it so exceptional that the Law Society should comment on it (e.g. it undermines respect for the rule of law)?<sup>34</sup>
8. If you cannot answer “yes” to any of the above, it is unlikely to be an intervention. Please contact the Law Society to discuss alternative actions.

26.5. Review the list of issues/violations on the first page of the relevant Annex as follows:

- Lawyers at risk (Annex 2)
- Threat to independence of judiciary or legal profession (Annex 3)
- Rule of law violation (Annex 4)
- Death penalty (Annex 5)

### Factual research

26.6. Most factual research will be carried out by using internet search engines and web-based news outlets. You may also wish to review the websites of various human rights organisations, for example:

- Human Rights Watch  
[www.hrw.org](http://www.hrw.org)
- Amnesty International – Write for rights  
[www.amnesty.org.uk/content.asp?CategoryID=10673](http://www.amnesty.org.uk/content.asp?CategoryID=10673)
- Frontline Defenders  
[www.frontlinedefenders.org/](http://www.frontlinedefenders.org/)
- FIDH  
[www.fidh.org/spip.php?page=appels&id\\_rubrique=2](http://www.fidh.org/spip.php?page=appels&id_rubrique=2)
- OMCT – Observatory for Human Rights Defenders  
[www.omct.org/human-rights-defenders/urgent-interventions/](http://www.omct.org/human-rights-defenders/urgent-interventions/)
- Lawyers for Lawyers (Netherlands)  
[www.lawyersforlawyers.nl/](http://www.lawyersforlawyers.nl/)
- Lawyers Rights Watch  
[www.lrwc.org/campaign.php?action=open&id=1](http://www.lrwc.org/campaign.php?action=open&id=1)

<sup>28</sup> See Baha'is in Iran <http://international.lawsociety.org.uk/files/Bahais.pdf>

<sup>29</sup> E.g. an amicus brief by the Cambodia Centre for Human Rights re admissibility of evidence obtained through torture <http://international.lawsociety.org.uk/files/Cambodia%207%20oct%2009.pdf>

<sup>30</sup> For example, Guantanamo Bay detention

[http://international.lawsociety.org.uk/files/US%20Attorney%20General%20letter%20May%202009\\_0.pdf](http://international.lawsociety.org.uk/files/US%20Attorney%20General%20letter%20May%202009_0.pdf)

<sup>31</sup> *Law Society's report on Mexico* to UN Special Rapporteur on the Independence of Judges and Lawyers, March 2011, at page 35, <http://international.lawsociety.org.uk/files/Mexico%20report%202011.pdf>

<sup>32</sup> See Ref. No. 30B on page 57

<sup>33</sup> For example, the execution of juveniles, the mentally retarded, or the mentally ill, see

<http://international.lawsociety.org.uk/files/China%207%20Oct%2009.pdf> and

<http://international.lawsociety.org.uk/files/20080721160750.pdf>

<sup>34</sup> See Ref No. 30A, page 56. For example, the government crackdown on protests in Burma in 2007, see <http://www.timesonline.co.uk/tol/comment/letters/article2584334.ece>

- 26.7. In researching the facts, you will have to do the following:
- 26.7.1. Make a list of the key sources of information. Note down the URL hyperlinks so that the IAT Admin and Senior Lawyers' Team can access them later;
  - 26.7.2. Identify the facts and events which are material to the current incident. Please set these out in chronological order and cross-reference to your sources. Cross-referencing makes final checking and vetting easier for the IAT Admin Team and will speed up approval by the Senior Lawyers' Team;
  - 26.7.3. Set out the background facts which provide the context and also establish whether the latest incident forms part of a consistent pattern of behaviour or is a symptom of wider systemic problem, where relevant.
  - 26.7.4. Identify the name(s) and address(es) of the potential recipients of the intervention; and
  - 26.7.5. Find out the name of the country's ambassador in the UK, and the address, fax no. and email (where available) of their UK embassy.

#### Legal research

- 26.8. If you have not already done so, you should address the 'Preliminary issues' set out at paragraphs 26.3 to 26.5 above.
- 26.9. Review the list of international human rights instruments (see Annex 1) to identify those relevant to the human rights violation(s) in question. Review the text of any such instruments to identify relevant provisions. See <http://www2.ohchr.org/english/law/index.htm>.
- 26.10. Alternatively, you can review the shortcuts in Annexes 2 to 5 to identify relevant legal standards.
- 26.11. Check whether any TREATY you rely on has been ratified, has come into force or has any relevant reservations. The following link will assist: <http://www2.ohchr.org/english/bodies/ratification/index.htm>
- 26.12. Consider whether your research may be assisted by reference to "jurisprudence" from treaty bodies, Special Procedures, UPR and/or Regional Mechanisms (see paragraphs 18 to 22 above).
- 26.13. You will have to make a list of the names of the treaties, declarations or other international instruments/judgments which are relevant. If possible, include the Article numbers of relevant provisions, but do not quote the actual legal text.

#### Submitting your research

- 26.14. You will post your research in the pro-forma web-form via the IAT members-only website (or for corporate members, in accordance with any other instructions from your pro bono manager). An illustration of what the pro-forma looks like can be found at Annex 6.



## Section 5

### 27. Letter writing guide

#### Overview

- 27.1. Drafting volunteers will be provided with the research, factual and legal, that has already been carried out by a research volunteer.
- 27.2. If you have not already done so, you should address the 'Preliminary issues' set out at paragraphs 26.3 to 26.5 above.
- 27.3. Select the facts which are material to and which illustrate the human rights issues already identified.
- 27.4. Identify the relevant provisions of international law which are relevant to the facts and issues already highlighted.
- 27.5. You will then draft your letter using the four section structure described below at paragraph 27.11. In summary, the four sections are:
  - Introduction
  - Facts
  - Law
  - Request
- 27.6. You then post your drafting in the pro-forma web-form via the IAT members-only website (or for corporate members, in accordance with any other instructions from your pro bono manager). An illustration of what the pro-forma looks like can be found at Annex 7.

#### Core ingredients

- 27.7. Remember to state in your letter, where appropriate:
  - the mandate under which the letter falls (e.g. that the victim is a lawyer, doing job of a lawyer or assisting a lawyer; the incident is a breach of well-established international law which diminishes respect for the rule of law; is part of a consistent pattern or is a gross or systemic violation which is of wide-spread international concern or which undermines the whole justice process). See paragraphs 26.3 to 26.5 for guidance;
  - the Law Society's key concern (e.g. We are concerned in case Mr X is being targeted because of his legitimate work as a lawyer in representing a client [e.g. who is out of favour with or taking a case against the government] etc);
  - the alleged real reason for the mistreatment (e.g. it has been alleged by several respected NGOs that criminal libel proceedings have been brought against Mr X to disrupt his legitimate work as a lawyer); and
  - the practical consequences of the (non-)actions of the authorities (e.g. it is impeding the legitimate work of a lawyer).



## Tone

- 27.8. It must be remembered that the Law Society is a professional body representing lawyers and is not primarily a human rights or campaigning organisation. Thus, interventions should reflect the impartiality of the Law Society and serve to maintain its national and international standing and its international relations.
- 27.9. Do not give the impression that the intervention is ideological or politically opposed to the government in question. It is more effective to stress that the Law Society's even-handed concern for human rights is based on adherence to recognised principles of international law with which the state is expected to uphold. In this way, compliance is a rule of law issue. Where possible we highlight a country's reputation for justice or respect for the rule of law and demonstrate an understanding of its current practical difficulties.
- 27.10. This approach helps to differentiate the Law Society from standard human rights bodies and may make governments more receptive to our message rather than being dismissed out of hand.

## Structure

- 27.11. The standard structure for intervention letters consists of four main sections: introduction, facts, law and request. Paragraphs 27.38 and 27.39 below contain two sample intervention letters which the Law Society wrote in 2006 in which the four sections have been clearly marked. The four sections are described in more detail as follows:

### 1. Introduce the Law Society

- 27.12. Each letter contains a short introductory paragraph explaining what the Law Society is and why it writes interventions. The following sample letters contain standard wording for this paragraph. Please note the Law Society now represents over 150,000 solicitors in England and Wales.

Letters relating to death penalty issues can include the following policy statement which was adopted by the Law Society in February 2009 and which brings the Law Society into line with the majority of international opinion and bar associations:

*“The Law Society calls upon states who still maintain the death penalty to establish a moratorium on executions with a view to progressively reducing the number of offences for which it may be imposed and abolishing the death penalty completely at the earliest possible opportunity.”*

### 2. Outline the facts of the case

- 27.13. The second section sets out the factual scenario.
- 27.14. Background facts provide context and can establish whether the latest incident forms part of a consistent pattern of behaviour or is a symptom of a wider systemic problem, where relevant.

- 27.15. The material facts, which describe the current incident, often are best laid out in chronological order.
- 27.16. Accuracy is of the utmost importance. Details such as dates and exact nature of maltreatment should be verified or corroborated before being used. Sufficient information about the identity and location of the victim or incident should be provided so that the addressee, assuming that they were previously unaware of the incident, would be able to investigate and identify the matter now that we have raised it.
- 27.17. In addition, the facts of the case should be presented diplomatically. To these ends, use phrases such as “allegedly”, “received credible reports that”, “we have been informed that”, “it has been widely reported in the media that” or “[well-known organisation or respected expert] has said that”, where necessary.
- 27.18. Rather than expressly accusing a foreign government of breach of international law, we often set out the reported events and then draw the state's attention to the international legal standards that would be relevant if the reports are true.
- 27.19. Despite this technique of juxtaposing rather than directly accusing, drafters must ensure that the facts act as signposts pointing to the law to come in the next section. Related issues, facts and law must contain a common thread so that they are linked, even if their positions in the text are dislocated due to the four section structure.
- 27.20. If the Law Society has intervened in this case or similar cases before, this needs to be made clear, including when and who wrote to the particular recipient – e.g. “*My colleague and immediate predecessor [X] wrote to you in [year Y] to express concern over [Z]*”. Copies of previous interventions can be obtained from the Human Rights Adviser.

### 3. Relevant extracts from international, and sometimes domestic, law

- 27.21. As a rule of thumb, try to quote only one provision of law per human rights issue. If there are several competing provisions that could be used, choose the most persuasive one (which is usually a ratified treaty rather than soft law).
- 27.22. Please ensure that each extract implicitly links to a material fact stated above.
- 27.23. Domestic law of the country in question should be used carefully, especially in the absence of specific knowledge about the case law and legal structure of that country.
- 27.24. Where relevant, the month and year that a country became party to a particular treaty should be stated. Check whether any TREATY you rely on has been ratified, has come into force or has any relevant reservations. Click here to check:  
<http://www2.ohchr.org/english/bodies/ratification/index.htm>

#### 4. The Law Society's requests

- 27.25. This section outlines what the Law Society, in the context of its role as an independent body seeking to uphold the rule of law, requests of the relevant national authorities. The Law Society requests usually relate to the use of due process and adherence to human rights standards.
- 27.26. Very often, especially if we do not have sufficient evidence to identify the actual perpetrators, the Law Society will appeal to the state's positive duty to protect against, investigate and remedy human rights violations regardless of who has committed them.
- 27.27. When facts are highly disputed or when the Law Society should not be seen to be interfering with or prejudicing ongoing court or investigative processes (even if the suspicion is that they are sham), the Law Society may prefer to request assurances from the government rather than to demand direct action (for example, assurances that no violations are taking place or to do their utmost to ensure that due process and human rights are upheld).

#### **Addressee**

- 27.28. The researcher will have identified the name(s) and address(es) of the potential recipient(s) of the intervention. The drafter will have to decide to which of these to address the letter.
- 27.29. Usually we write to high government officials (e.g. President or Prime Minister) so that it comes to the attention of the most powerful offices of government. Ideally, we would also send a copy to the person(s) who will actually implement any solution (e.g. providing protection, launching an investigation or releasing from custody, perhaps Minister of Justice, or local Police Chief etc). This will require additional research and consideration into the legal structure of the country to understand how political power is allocated there.
- 27.30. If you are unsure whether the person to whom you are writing has the power to carry out the actions we are requesting (e.g. launch an investigation, release from prison etc), then you can modify the wording of section four along the following lines:

*“We request that you use all the powers vested in you to ensure....”* or  
*“We request that you use all means available to your good offices to ensure...”*

#### **Salutation**

- 27.31. The drafter will also have to decide which salutation should be used to address the recipients. The following websites may provide guidance or examples:
- Ministry of Justice archived “Forms of Address”  
[www.justice.gov.uk/guidance/forms-of-address.htm](http://www.justice.gov.uk/guidance/forms-of-address.htm)
  - Amnesty International – Write for rights  
<http://www.amnesty.org.uk/content.asp?CategoryID=10673>

## Other drafting dos and don'ts

- 27.32. Remember not to confuse signature of a treaty with ratification. A state having "*signed*" a treaty, does not mean that it is binding on that state. The treaty may still require ratification and entry into force. If the state is a signatory but has not ratified the treaty, then, where appropriate, you may still refer to the treaty by stating that "*under article 18 of the Vienna Convention on the Law of Treaties*" the state must "*refrain from acts which would defeat the object and purpose of a treaty*".
- 27.33. Be relatively brief. A good rule of thumb is that Law Society interventions are usually no more than two pages long. It is not necessary to quote long or numerous sections of law in the interventions letter – only rely on the most relevant provisions.
- 27.34. An intervention is not intended to be a legal submission. Therefore, detailed legal argument is not required. The intervention is simply meant to express the Law Society's concern about potential non-compliance with the rule of law or international legal standards.
- 27.35. Often we will not have the time or resources to translate the intervention letter. Therefore, it is likely to be read by non-native English speakers. Please try to use straightforward and non-technical language so that it is accessible to foreign readers.
- 27.36. Finally, post your drafting in the pro-forma web-form via the IAT members-only website (or for corporate members, in accordance with any other instructions from your pro bono manager). An illustration of what the pro-forma website looks like can be found at Annex 7.
- 27.37. As stated in paragraphs 5.17 and 5.18 above, we cannot guarantee that all draft interventions will make it to fruition. If your work is discontinued, we will often still make alternative use of it.

## 27.38. SAMPLE LETTER NO.1

Mr Abdulkadir Aksu  
Minister of the Interior  
Ministry of Interior  
Icisleri Bakanligi  
Ankara, Turkey

8 February 2006

Dear Minister

1	<p>The Law Society is the professional body representing more than 138,000 solicitors in England and Wales. Its concerns include upholding the independence of the legal profession, the rule of law and human rights throughout the world.</p>
2	<p>The Law Society is concerned for Ibrahim Kaboglu, Professor of Constitutional Law at the University of Marmara, Istanbul who, with Professor Baskin Oran of the Faculty of Political Science at the University of Ankara, has been charged under Articles 216 and 301 of the Penal Code with ‘inciting the people to enmity or hatred’ and ‘open denigration of the judicial organs of the State’. If convicted, they face up to five years’ imprisonment.</p> <p>We are informed that, in October 2004, the time of the alleged offence, Professor Kaboglu was serving on the nomination of the Prime Minister as President of the Human Rights Advisory Board of Turkey, a body funded by the Prime Minister’s Office. The Board adopted by 24 votes to seven with two abstentions a report prepared by the Board’s Minority Rights and Cultural Commission which was chaired by Professor Oran. We understand that it is the content of this report which has led to their prosecution.</p> <p>This concerns us because it appears that Professors Kaboglu and Oran may well face prosecution solely for the expression of their legitimately held opinions.</p>
3	<p>We recall that Turkey became party to the UN International Convention on Civil and Political Rights in 2003 and is bound to uphold its provisions, including those contained in Articles 19(1) and 19(2) which require that:</p> <p><i>1. Everyone shall have the right to hold opinions without interference.</i></p> <p><i>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.</i></p>
4	<p>On behalf of the Law Society, I respectfully urge that, unless there is substantial evidence to show that Professors Ibrahim Kaboglu and Baskin Oran may have committed a recognisable criminal offence, the proceedings against them should be dropped.</p>

Yours sincerely,

[insert name]  
President

27.39. SAMPLE LETTER NO. 2

Lic. José Reyes Baeza Terrazas  
Gobernador del Estado de Chihuahua  
Palacio de Gobierno, Primer piso,  
C. Aldama No.901,  
Col. Centro, CP 31000  
Chihuahua,  
Estado de Chihuahua,  
México.

2 February 2006

Dear Governor,

1	The Law Society is the professional body representing more than 138,000 solicitors in England and Wales. Its concerns include upholding the independence of the legal profession, the rule of law and human rights throughout the world
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2	<p>The Law Society is deeply concerned by the murder of human rights lawyer Dante Almaraz who was shot dead by unknown men in the centre of Ciudad Juárez, Chihuahua state, on 26 January. We understand that Dante Almaraz was driving through central Ciudad Juárez in the afternoon of 26 January when another car blocked his way. A number of armed men got out of the car and shot Dante Almaraz repeatedly. A passenger in the car, possibly his brother, was also seriously wounded.</p> <p>We recall that lawyer Mario Escobedo Anaya, who represented Gustavo González Meza, Víctor Javier García Uribe's co-defendant in the murder case, was shot dead by police in February 2002. The police claimed to be acting in self-defence, although witness evidence contradicted this version of events. In 2003 Gustavo González Meza died in custody, in circumstances that have never been entirely clarified.</p> <p>We are aware that Dante Almaraz was a well-known defence lawyer in Ciudad Juárez. He defended Víctor Javier García Uribe, a bus driver who was reportedly tortured into confessing to the murder of eight young women in 2001, and was sentenced to 50 years in prison. His family received anonymous death threats in an apparent attempt to stop their campaign to prove his innocence. In 2005 Dante Almaraz secured Victor Javier Garcia Uribe's release on appeal.</p> <p>We additionally recall that the Inter American Commission on Human Rights ordered your government to take protection measures to ensure the safety of Dante Almaraz and others under threat in 2002 and 2003. We believe that your government was still bound by this order for protection, but it is unclear what measures were in place when Dante Almaraz was killed.</p> <p>We have been informed that Dante Almaraz stated publicly in 2005 that some people within the local Public Prosecutor's Office resented him carrying out his legal defence work. In 2005 he filed a complaint against the representatives of Chihuahua State Public Prosecutor's Office responsible for Ciudad Juárez in relation to an investigation opened against him for alleged car theft, a charge which he denied. In the weeks before his death he publicly stated that he was concerned about his safety and that he believed if anything were to happen to him then members of the local State Public Prosecutor's Office would be responsible. An internal enquiry has reportedly been opened in the State Public Prosecutor's Office to examine these allegations.</p>
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3	<p>In this context, we would draw to your attention Articles 16(a) and (c), 17 and 18 of the UN Basic Principles on the Role of Lawyers (1990) which state that:</p> <p><i>16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; ... and ( c ) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.</i></p> <p><i>17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.</i></p> <p><i>18. Lawyers shall not be identified with their clients or their clients' cases as a result of discharging their functions.</i></p>
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4	<p>On behalf of the Law Society, I respectfully urge that you establish an impartial and thorough investigation into the murder of Dante Almaraz and the wounding of his passenger, including any possible links with members of the local Public Prosecutor's Office, the results of which should be made public and those responsible brought to justice. I further urge you to ensure the safety of Víctor Javier García Uribe, Dante Almaraz's family, and all human rights defenders in Ciudad Juarez.</p>
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Yours sincerely,

[insert name]  
President

28. Future Work of the IAT

- 28.1. Members of the IAT can form Working Groups in relation to particular themes that interest them. Already Working Groups have been or are active in relation to human rights in Russia, Colombia, Malaysia, Mexico, and Rwanda etc. Where the activities of these working groups fall within the Law Society's mandate, the IAT Admin Team will give practical support to the group in pursuing their interests.
- 28.2. For more details on previous IAT activities, see our annual reports at: <http://international.lawsociety.org.uk/node/10381>
- 28.3. When an IAT volunteer has gained experience after working on a number of letter interventions, you may be offered a pro bono opportunity to assist with more in-depth and more strategic interventions and reports. These may include submissions to the Universal Periodic Review or reports to the UN Special Rapporteur on the Independence of Judges and Lawyers.
- 28.4. Experienced IAT members or those showing particular aptitude may also be invited to join the Senior Lawyers' Team to assist with initial review and vetting of the IAT's work.



# Annex 1

## International Human Rights Instruments

The following list of human rights instruments can be found, in a clickable format, at: <http://www2.ohchr.org/english/law/index.htm>

### THE INTERNATIONAL BILL OF HUMAN RIGHTS

- Universal Declaration of Human Rights 1948
- International Covenant on Economic, Social and Cultural Rights 1966
- International Covenant on Civil and Political Rights 1966
- Optional Protocol to the International Covenant on Civil and Political Rights
- Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty

### THE CORE INTERNATIONAL HUMAN RIGHTS INSTRUMENTS and their monitoring bodies

There are nine core international human rights treaties. Each of these treaties has established a committee of experts to monitor implementation of the treaty provisions by its States parties. Some of the treaties are supplemented by optional protocols dealing with specific concerns.

		<i>Date</i>	<i>Monitoring Body</i>
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination	21 Dec 1965	CERD
ICCPR	International Covenant on Civil and Political Rights	16 Dec 1966	CCPR
ICESCR	International Covenant on Economic, Social and Cultural Rights	16 Dec 1966	CESCR
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women	18 Dec 1979	CEDAW
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	10 Dec 1984	CAT
CRC	Convention on the Rights of the Child	20 Nov 1989	CRC
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families	18 Dec 1990	CMW
CPED	International Convention for the Protection of All Persons from Enforced Disappearance	20 Dec 2006	CED
CRPD	Convention on the Rights of Persons with Disabilities	13 Dec 2006	CRPD
ICESCR - OP	Optional Protocol of the Covenant on Economic, Social and Cultural Rights	10 Dec 2008	CESCR
ICCPR- OP1	Optional Protocol to the International Covenant on Civil and Political Rights	16 Dec 1966	HRC
ICCPR- OP2	Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty	15 Dec 1989	HRC
OP- CEDAW	Optional Protocol to the Convention on the Elimination of Discrimination against Women	10 Dec 1999	CEDAW
OP-CRC- AC	Optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	25 May 2000	CRC
OP-CRC- SC	Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	25 May 2000	CRC
OP-CAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	18 Dec 2002	SPT
OP-CRPD	Optional Protocol to the Convention on the Rights of Persons with Disabilities	12 Dec 2006	CRPD

## UNIVERSAL HUMAN RIGHTS INSTRUMENTS

In addition to the International Bill of Rights and the core human rights treaties, there are many other universal instruments relating to human rights. A non-exhaustive selection is listed below. The legal status of these instruments varies: declarations, principles, guidelines, standard rules and recommendations have no binding legal effect, but such instruments have an undeniable moral force and provide practical guidance to States in their conduct; covenants, statutes, protocols and conventions are legally-binding for those States that ratify or accede to them. Information on the status of ratification of selected instruments is available here:

<http://www2.ohchr.org/english/bodies/ratification/index.htm>

### WORLD CONFERENCE ON HUMAN RIGHTS AND MILLENNIUM ASSEMBLY

- Vienna Declaration and Programme of Action
- United Nations Millennium Declaration

### THE RIGHT OF SELF-DETERMINATION

- United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples
- General Assembly resolution 1803 (XVII) of 14 December 1962, "Permanent sovereignty over natural resources"
- International Convention against the Recruitment, Use, Financing and Training of Mercenaries

### RIGHTS OF INDIGENOUS PEOPLES AND MINORITIES

- Declaration on the Rights of Indigenous Peoples
- Indigenous and Tribal Peoples Convention, 1989 (No. 169)
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities

### PREVENTION OF DISCRIMINATION

- Equal Remuneration Convention, 1951 (No. 100)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- International Convention on the Elimination of all Forms of Racial Discrimination (ICERD)
- Declaration on Race and Racial Prejudice
- Convention against Discrimination in Education
- Protocol Instituting a Conciliation and Good Offices Commission to be responsible for seeking a settlement of any disputes which may arise between States Parties to the Convention against Discrimination in Education
- Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief
- World Conference against Racism, 2001 (Durban Declaration and Programme of Action)

### RIGHTS OF WOMEN

- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-OP)
- Declaration on the Protection of Women and Children in Emergency and Armed Conflict
- Declaration on the Elimination of Violence against Women

### RIGHTS OF THE CHILD

- Convention on the Rights of the Child (CRC)
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (CRC-OPSC)
- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC-OPAC)
- Minimum Age Convention, 1973 (No. 138)
- Worst Forms of Child Labour Convention, 1999 (No. 182)

## RIGHTS OF OLDER PERSONS

- United Nations Principles for Older Persons

## RIGHTS OF PERSONS WITH DISABILITIES

- Declaration on the Rights of Mentally Retarded Persons
- Declaration on the Rights of Disabled Persons
- Principles for the protection of persons with mental illness and the improvement of mental health care
- Standard Rules on the Equalization of Opportunities for Persons with Disabilities

## HUMAN RIGHTS IN THE ADMINISTRATION OF JUSTICE: PROTECTION OF PERSONS SUBJECTED TO DETENTION OR IMPRISONMENT

- Standard Minimum Rules for the Treatment of Prisoners
- Basic Principles for the Treatment of Prisoners
- Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty
- Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT)
- Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- Safeguards guaranteeing protection of the rights of those facing the death penalty
- Code of Conduct for Law Enforcement Officials
- Basic Principles on the Use of Force and Firearms by Law Enforcement Officials
- United Nations Standard Minimum Rules for Non-custodial Measures (The Tokyo Rules)
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)
- Guidelines for Action on Children in the Criminal Justice System
- United Nations Guidelines for the Prevention of Juvenile Delinquency (The Riyadh Guidelines)
- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power
- Basic Principles on the Independence of the Judiciary
- Basic Principles on the Role of Lawyers
- Guidelines on the Role of Prosecutors
- Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions
- Declaration on the Protection of All Persons from Enforced Disappearance
- Basic Principles and Guidelines on the Right to a Remedy and Reparation
- International Convention for the Protection of All Persons from Enforced Disappearance (not yet into force)

## SOCIAL WELFARE, PROGRESS AND DEVELOPMENT

- Declaration on Social Progress and Development
- Universal Declaration on the Eradication of Hunger and Malnutrition
- Declaration on the Use of Scientific and Technological Progress in the Interests of Peace and for the Benefit of Mankind
- Declaration on the Right of Peoples to Peace
- Declaration on the Right to Development
- Universal Declaration on the Human Genome and Human Rights
- Universal Declaration on Cultural Diversity

## PROMOTION AND PROTECTION OF HUMAN RIGHTS

- Principles relating to the status of national institutions (The Paris Principles)
- Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

## MARRIAGE

- Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages
- Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages

## RIGHT TO HEALTH

- Declaration of Commitment on HIV/AIDS

## RIGHT TO WORK AND TO FAIR CONDITIONS OF EMPLOYMENT

- Employment Policy Convention, 1964 (No. 122)

## FREEDOM OF ASSOCIATION

- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

## SLAVERY, SLAVERY-LIKE PRACTICES AND FORCED LABOUR

- Slavery Convention
- Protocol amending the Slavery Convention signed at Geneva on 25 September 1926
- Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery
- Forced Labour Convention, 1930 (No. 29)
- Abolition of Forced Labour Convention, 1957 (No. 105)
- Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others
- Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime

## RIGHTS OF MIGRANTS

- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICPMW)
- Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime

## NATIONALITY, STATELESSNESS, ASYLUM AND REFUGEES

- Convention on the Reduction of Statelessness
- Convention relating to the Status of Stateless Persons
- Convention relating to the Status of Refugees
- Protocol relating to the Status of Refugees
- Declaration on the Human Rights of Individuals Who are not Nationals of the Country in which They Live

## WAR CRIMES AND CRIMES AGAINST HUMANITY, INCLUDING GENOCIDE

- Convention on the Prevention and Punishment of the Crime of Genocide
- Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity

- Principles of international co-operation in the detection, arrest, extradition and punishment of persons guilty of war crimes and crimes against humanity
- Statute of the International Tribunal for the Former Yugoslavia
- Statute of the International Tribunal for Rwanda
- Rome Statute of the International Criminal Court

#### HUMANITARIAN LAW

- Geneva Convention relative to the Treatment of Prisoners of War
- Geneva Convention relative to the Protection of Civilian Persons in Time of War
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I)
- Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)

## Annex 2

### International Legal Standards – Lawyers at Risk

The Law Society represents solicitors from England and Wales. Thus, it will intervene where one of its solicitors is at risk abroad.

However, the Law Society, in upholding the rule of law, also intervenes on behalf of all lawyers whose rights are at risk, regardless of where they come from.

One of the roles of the Law Society is to open new markets for its members in foreign jurisdictions. Therefore, in order to ensure the safety of its members, their investments, and their professional colleagues, the Law Society encourages governments around the world to respect the role of lawyers in their jurisdictions.

The Law Society acts in defence of the values that underpin the legal profession worldwide – something which we hope our legal brethren would do for us if we ever found our rights at risk in England and Wales.

The key international instrument in this regard is the UN Basic Principles on the Role of Lawyers (1990). The full text can be found at the following website:

<http://www2.ohchr.org/english/law/lawyers.htm>

Another useful text is the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, which can be found at:

<http://www2.ohchr.org/english/law/freedom.htm>

Set out below are the key provisions organised thematically. Each issue has a reference number for your convenience.

#### Index

#### **Ref. No. Human rights Issue/ Violation**

- |   |   |
|---|---|
| 1 | Confidentiality   |
| 2 | Disciplinary proceedings being used illegitimately to restrict lawyer's ability to discharge duties |
| 3 | Duties – Prevented from Carrying Out Legitimate Duties  |
| 3 | Intimidation, Interference, Threats and Physical Violence   |
| 4 | Freedom of Association  |
| 5 | Freedom of Expression   |
| 6 | Freedom of Movement   |
| 7 | House Arrest  |
| 8 | Restrictions on ability to practise   |
| 9 | Restrictions on entry into the profession   |

## Key provisions organised thematically

Ref. No.  1	Intervention Category	Lawyers at risk
	Specific issue	Confidentiality
	Law	<p>UN Basic Principles on the Role of Lawyers (1990) states:</p> <p><i>8. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.</i></p> <p><i>22. Governments shall recognize and respect that all communications and consultations between lawyers and their clients within their professional relationship are confidential.</i></p>

Ref. No.  2	Intervention Category	Lawyers at risk
	Specific issue	Disciplinary proceedings being used illegitimately to restrict lawyer's ability to discharge duties
	Law	<p>UN Basic Principles on the Role of Lawyers (1990) states:</p> <p><i>26. Codes of professional conduct for lawyers shall be established by the legal profession through its appropriate organs, or by legislation, in accordance with national law and custom and recognized international standards and norms.</i></p> <p><i>27. Charges or complaints made against lawyers in their professional capacity shall be processed expeditiously and fairly under appropriate procedures. Lawyers shall have the right to a fair hearing, including the right to be assisted by a lawyer of their choice.</i></p> <p><i>28. Disciplinary proceedings against lawyers shall be brought before an impartial disciplinary committee established by the legal profession, before an independent statutory authority, or before a court, and shall be subject to an independent judicial review.</i></p> <p><i>29. All disciplinary proceedings shall be determined in accordance with the code of professional conduct and other recognized standards and ethics of the legal profession and in the light of these principles.</i></p>

Ref. No.  3	Intervention Category	Lawyers at risk
	Specific issue	Prevented from carrying out legitimate duties – general
	Comment	<p>The core provisions of the UN Basic Principles on the Role of Lawyers are Articles 16, 17, and 18.</p> <p>These will cover most scenarios, including: intimidation or threats; and physical violence or death.</p>

	Law	<p>Articles 16, 17 and 18 of the UN Basic Principles on the Role of Lawyers (1990) state that:</p> <p><i>16. Governments shall ensure that lawyers</i>  <i>(a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference;</i>  <i>(b) are able to travel and to consult with their clients freely both within their own country and abroad; and</i>  <i>(c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.</i></p> <p><i>17. Where the security of lawyers is threatened as a result of discharging their functions, they shall be adequately safeguarded by the authorities.</i></p> <p><i>18. Lawyers shall not be identified with their clients or their clients' causes as a result of discharging their functions.</i></p>
	Notes	Although these provisions are set out in full above, it is usual (for the sake of brevity) to quote only the directly relevant words when drafting an intervention.

Ref. No.  4	Intervention Category	Lawyers at risk
	Specific issue	Lawyers - Freedom of Association - Mass arrest of lawyers (for demonstrations)
	Law	<p>Article 23 of the UN Basic Principles on the Role of Lawyers (1990) states that</p> <p><i>Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights ...</i></p> <p>You may also wish to refer to the general freedom of association provisions that apply to non-lawyers. Please see Ref. No. 22 which sets out these provisions.</p>

Ref. No.  5	Intervention Category	Lawyers at risk
	Specific issue	Freedom of expression (e.g. to expose human rights violations)
	Law	<p>Article 23 of the UN Basic Principles on the Role of Lawyers (1990) states</p> <p><i>Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights ...</i></p> <p>You may also wish to refer to the general freedom of expression provisions that apply to non-lawyers. Please see Ref. No. 23 which sets out these provisions.</p>



Ref. No.  6	Intervention Category	Lawyers at risk
	Specific issue	Freedom of movement
	Comment	A lawyer is guaranteed freedom of movement in carrying out his legitimate duties by virtue of Articles 16(a), (b) and (c) of UN Basic Principles on the Role of Lawyers (1990).
	Law	<i>16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics.</i>

Ref. No.  7	Intervention Category	Lawyers at risk
	Specific issue	House arrest
	Comment	Where the lawyer is placed under house arrest, not only will it be a restriction on her freedom of movement (see Ref. No. 6), but it is usually in circumstances where she is also being arbitrarily detained.  Please see Ref. No. 16, 18 and 19 for the international standards relating to arbitrary arrest and detention.
	Law	Article 9 of the United Nations International Covenant on Civil and Political Rights (1966)  <i>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....</i>  Article 3 of the Universal Declaration of Human Rights (1948) states that:  <i>Everyone has the right to life, liberty and security of person.</i>  Article 9 of the Universal Declaration of Human Rights (1948) states that:  <i>No one shall be subjected to arbitrary arrest, detention or exile.</i>

Ref. No.  8	Intervention Category	Lawyers at risk
	Specific issue	Restrictions on a lawyer's ability to practise
	Comment	
	Law	<p>UN Basic Principles on the Role of Lawyers (1990) states:</p> <p><i>19. No court or administrative authority before whom the right to counsel is recognized shall refuse to recognize the right of a lawyer to appear before it for his or her client unless that lawyer has been disqualified in accordance with national law and practice and in conformity with these principles.</i></p> <p><i>20. Lawyers shall enjoy civil and penal immunity for relevant statements made in good faith in written or oral pleadings or in their professional appearances before a court, tribunal or other legal or administrative authority.</i></p> <p><i>21. It is the duty of the competent authorities to ensure lawyers access to appropriate information, files and documents in their possession or control in sufficient time to enable lawyers to provide effective legal assistance to their clients. Such access should be provided at the earliest appropriate time.</i></p>
Notes		

Ref. No.  9	Intervention Category	Lawyers at risk
	Specific issue	Restrictions on entry into the profession
	Comment	
	Law	<p>UN Basic Principles on the Role of Lawyers (1990) states:</p> <p><i>9. Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law.</i></p> <p><i>10. Governments, professional associations of lawyers and educational institutions shall ensure that there is no discrimination against a person with respect to entry into or continued practice within the legal profession on the grounds of race, colour, sex, ethnic origin, religion, political or other opinion, national or social origin, property, birth, economic or other status, except that a requirement, that a lawyer must be a national of the country concerned, shall not be considered discriminatory.</i></p> <p><i>11. In countries where there exist groups, communities or regions whose needs for legal services are not met, particularly where such groups have distinct cultures, traditions or languages or have been the victims of past discrimination, Governments, professional associations of lawyers and educational institutions should take special measures to provide opportunities for candidates from these groups to enter the legal profession and should ensure that they receive training appropriate to the needs of their groups.</i></p>
Notes		

## Annex 3

### **International Legal Standards – Independence of the legal profession and the judiciary**

The independence of the legal profession and the judiciary are essential in providing the foundations upon which the rule of law can flourish.

In our globalised economy, rule of law violations in one country can adversely affect people and investment from other nations, for example, the ability of solicitors to practise internationally.

The weakening of the independence of the legal profession or the judiciary in other countries around the world will ultimately undermine our own independence if the trend goes unchallenged.

We have seen, in recent years, a marked increase in attacks on the judiciary, the legal profession, law societies and bar associations, as a tactic by regimes to neutralise opposition.

Thus, the Law Society seeks to encourage governments around the world to respect the independence of the legal profession and the judiciary in their jurisdictions.

The key international instruments in this regard are the UN Basic Principles on the Role of Lawyers (1990) and Basic Principles on the Independence of the Judiciary (1985). The full texts can be found at the following websites respectively:

<http://www2.ohchr.org/english/law/lawyers.htm>

<http://www2.ohchr.org/english/law/indjudiciary.htm>

Set out below are the key provisions organised thematically. Each issue has a reference number for your convenience.

#### Index

<b>Ref. No.</b>	<b>Human rights Issue/ Violation</b>
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10	Interference with bar association or law society or independence of legal profession
11	Interference with the Judiciary

## Key provisions organised thematically

Ref. No.  10	Intervention Category	Independence of legal profession and judiciary
	Specific issue	Interference with bar association or law society or independence of legal profession
	Comment	
	Law	<p>UN Basic Principles on the Role of Lawyers (1990) provides that:</p> <p><i>23. Lawyers like other citizens are entitled to freedom of expression, belief, association and assembly. In particular, they shall have the right to take part in public discussion of matters concerning the law, the administration of justice and the promotion and protection of human rights and to join or form local, national or international organizations and attend their meetings, without suffering professional restrictions by reason of their lawful action or their membership in a lawful organization. In exercising these rights, lawyers shall always conduct themselves in accordance with the law and the recognized standards and ethics of the legal profession.</i></p> <p><i>24. Lawyers shall be entitled to form and join self-governing professional associations to represent their interests, promote their continuing education and training and protect their professional integrity. The executive body of the professional associations shall be elected by its members and shall exercise its functions without external interference.</i></p> <p>See also:</p> <p><i>4. Governments and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. Special attention should be given to assisting the poor and other disadvantaged persons so as to enable them to assert their rights and where necessary call upon the assistance of lawyers.</i></p> <p><i>9. Governments, professional associations of lawyers and educational institutions shall ensure that lawyers have appropriate education and training and be made aware of the ideals and ethical duties of the lawyer and of human rights and fundamental freedoms recognized by national and international law.</i></p> <p><i>11. In countries where there exist groups, communities or regions whose needs for legal services are not met, particularly where such groups have distinct cultures, traditions or languages or have been the victims of past discrimination, Governments, professional associations of lawyers and educational institutions should take special measures to provide opportunities for candidates from these groups to enter the legal profession and should ensure that they receive training appropriate to the needs of their groups.</i></p> <p><i>25. Professional associations of lawyers shall cooperate with Governments to ensure that everyone has effective and equal access to legal services and that lawyers are able, without improper interference, to counsel and assist their clients in accordance with the law and recognized professional standards and ethics.</i></p>
	Notes	Articles 24 and 25 are the most often quoted provisions in intervention letters regarding interference with professional associations of lawyers.

Ref. No.  11	Intervention Category	Independence of legal profession and judiciary
	Specific issue	Interference with the Judiciary
	Comment	
	Law	<p>Articles 1 to 7 of the United Nations (UN) Basic Principles on the Independence of the Judiciary (1985) state that:</p> <ol style="list-style-type: none"> <li>1. <i>The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country. It is the duty of all governmental and other institutions to respect and observe the independence of the judiciary.</i></li> <li>2. <i>The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law, without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason.</i></li> <li>3. <i>The judiciary shall have jurisdiction over all issues of a judicial nature and shall have exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.</i></li> <li>4. <i>There shall not be any inappropriate or unwarranted interference with the judicial process, nor shall judicial decisions by the courts be subject to revision. This principle is without prejudice to judicial review or to mitigation or commutation by competent authorities of sentences imposed by the judiciary, in accordance with the law.</i></li> <li>5. <i>Everyone shall have the right to be tried by ordinary courts or tribunals using established legal procedures. Tribunals that do not use the duly established procedures of the legal process shall not be created to displace the jurisdiction belonging to the ordinary courts or judicial tribunals.</i></li> <li>6. <i>The principle of the independence of the judiciary entitles and requires the judiciary to ensure that judicial proceedings are conducted fairly and that the rights of the parties are respected.</i></li> <li>7. <i>It is the duty of each Member State to provide adequate resources to enable the judiciary to properly perform its functions.</i></li> </ol> <p>Article 14(1) of the ICCPR requires that:</p> <p><i>All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.</i></p>
Notes		

## Annex 4

### International Legal Standards – Rule of Law issues

This Annex sets out some universal rule of law issues. Each issue has a reference number for your convenience. Violations of these principles sometimes occur on their own or in combination with others set out in Annexes 2, 3 and 5.

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<b>Ref. No.</b>	<b>Human rights Issue/ Violation</b>
12	Access to lawyers/legal services - General
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15	Access to legal services – Public Information and Education
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17	Denial of medical assistance in detention
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## Key Provisions Organised Thematically

Ref. No.  12	Intervention Category	Rule of Law
	Specific issue	Access to a lawyer - General
	Comment	
	Law	<p>Articles 1,5,6,7 and 8 of the United Nations Basic Principles on the Role of Lawyers (1990) state:</p> <p><i>1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.</i></p> <p><i>5. Governments shall ensure that all persons are immediately informed by the competent authority of their right to be assisted by a lawyer of their own choice upon arrest or detention or when charged with a criminal offence.</i></p> <p><i>6. Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.</i></p> <p><i>7. Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.</i></p> <p><i>8. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.</i></p> <p>United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), Principles 17(1) and 19 state:</p> <p><i>Principle 17(1)</i></p> <p><i>A detained person shall be entitled to have the assistance of a legal counsel.</i></p> <p><i>Principle 19</i></p> <p>A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.</p> <p>Article 14(3) of the ICCPR states:</p> <p>In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:</p> <p>... (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;</p>
Notes		

Ref. No.  13	Intervention Category	Rule of Law
	Specific issue	Access to lawyers/legal services - without discrimination
	Comment	
	Law	Article 2 of UN Basic Principles on the Role of Lawyers (1990) states  <i>Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on race, colour, ethnic origin, sex, language, religion, political or other opinion, national or social origin, property, birth, economic or other status.</i>
Notes		

Ref. No.  14	Intervention Category	Rule of Law
	Specific issue	Access to lawyers/legal services - in the case of insufficient funds to pay a lawyer
	Comment	
	Law	Articles 2,3 and 6 of UN Basic Principles on the Role of Lawyers (1990) state:  <i>2. Governments shall ensure that efficient procedures and responsive mechanisms for effective and equal access to lawyers are provided for all persons within their territory and subject to their jurisdiction, without distinction of any kind, such as discrimination based on ... property...economic or other status.</i>  <i>3. Governments shall ensure the provision of sufficient funding and other resources for legal services to the poor and, as necessary, to other disadvantaged persons. Professional associations of lawyers shall cooperate in the organization and provision of services, facilities and other resources.</i>  <i>6. Any such persons who do not have a lawyer shall, in all cases in which the interests of justice so require, be entitled to have a lawyer of experience and competence commensurate with the nature of the offence assigned to them in order to provide effective legal assistance, without payment by them if they lack sufficient means to pay for such services.</i>
Notes		

Ref. No.  15	Intervention Category	Rule of Law
	Specific issue	Access to legal services – Public Information and Education
	Comment	
	Law	Article 4 of UN Basic Principles on the Role of Lawyers (1990) states:  <i>4. Governments and professional associations of lawyers shall promote programmes to inform the public about their rights and duties under the law and the important role of lawyers in protecting their fundamental freedoms. Special attention should be given to assisting the poor and other disadvantaged persons so as to enable them to assert their rights and where necessary call upon the assistance of lawyers.</i>
Notes		



Ref. No.  16	Intervention Category	Rule of Law
	Specific issue	Arbitrary arrest or detention (e.g. without charge or on false charges)
	Comment	<p>Law</p> <p>Article 3 of the Universal Declaration of Human Rights (1948) states that:</p> <p><i>Everyone has the right to life, liberty and security of person.</i></p> <p>Article 9 of the Universal Declaration of Human Rights (1948) states that:</p> <p><i>No one shall be subjected to arbitrary arrest, detention or exile.</i></p> <p>Article 9 and of the International Covenant on Civil and Political Rights states that:</p> <p><i>9.1 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.</i></p> <p><i>9.2. 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.</i></p> <p><i>9.3. 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. 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 judgement.</i></p> <p><i>9.4. 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.</i></p> <p><i>9.5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation...</i></p> <p><i>14.3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:</i></p> <p><i>(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him...</i></p> <p><i>(c) To be tried without undue delay;</i></p> <p>Articles 1, 7 and 8 of the United Nations Basic Principles on the Role of Lawyers (1990) state:</p> <p><i>1. All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings.</i></p> <p><i>7. Governments shall further ensure that all persons arrested or detained, with or without criminal charge, shall have prompt access to a lawyer, and in any case not later than forty-eight hours from the time of arrest or detention.</i></p> <p><i>8. All arrested, detained or imprisoned persons shall be provided with adequate opportunities, time and facilities to be visited by and to communicate and consult with a lawyer, without delay, interception or censorship and in full confidentiality. Such consultations may be within sight, but not within the hearing, of law enforcement officials.</i></p>
Notes		

Ref. No. 17	Intervention Category	Rule of law
	Specific issue	Denial of medical assistance in detention
	Comment	
	Law	<p>Article 22(2) of the UN Standard Minimum Rules for the Treatment of Prisoners states that:</p> <p><i>Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals.</i></p> <p>Principles 1 and 24 of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988) state:</p> <p><i>1. All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.</i></p> <p><i>24. A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge.</i></p>
Notes	Also, consider whether denial of medical treatment can be categorised as torture or inhumane or degrading treatment (see Ref. No. 27, 28).	

Ref. No. 18	Intervention Category	Rule of Law
	Specific issue	Detention - General
	Comment	
	Law	<p>Article 10(i) of the ICCPR states that:</p> <p><i>All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.</i></p> <p>Principle 8 of the UN Standard Minimum Rules for the Treatment of Prisoners which states that:</p> <p><i>the different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of ... the legal reason for their detention ...</i></p>
Notes	See also United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988)	

Ref. No. 19	Intervention Category	Rule of Law
	Specific issue	Detention - Long period of untried detention or arrest for arbitrary reasons
	Comment	
	Law	<p>ICCPR Article 9 requires that:</p> <p><i>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.</i></p> <p><i>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</i></p>

		<p><i>him.</i></p> <p><i>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. 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 judgement.</i></p> <p><i>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.</i></p> <p><i>5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.</i></p>
	Notes	

Ref. No.	Intervention Category	Rule of Law
	Specific issue	Enforced Disappearances
	Comment	
	20	<p>Law</p> <p>Article 10 of the UN Declaration on the Protection of all Persons from Enforced Disappearance (1992) states that:</p> <p><i>1. Any person deprived of liberty shall be held in an officially recognized place of detention and, in conformity with national law, be brought before a judicial authority promptly after detention.</i></p> <p><i>2. Accurate information on the detention of such persons and their place or places of detention, including transfers, shall be made promptly available to their family members, their counsel or to any other persons having a legitimate interest in the information unless a wish to the contrary has been manifested by the persons concerned.</i></p> <p><i>3. An official up-to-date register of all persons deprived of their liberty shall be maintained in every place of detention. Additionally, each State shall take steps to maintain similar centralized registers. The information contained in these registers shall be made available to the persons mentioned in the preceding paragraph, to any judicial or other competent and independent national authority and to any other competent authority entitled under the law of the State concerned or any international legal instrument to which a State concerned is a party, seeking to trace the whereabouts of a detained person.</i></p>
Notes		

Ref. No.	Intervention Category	Rule of Law
	Specific issue	Foreign Travel
	Comment	
	21	<p>Law</p> <p>Articles 12(2), 12(4), of the International Covenant on Civil and Political Rights, state that:</p> <p><i>Everyone shall be free to leave any country, including his own.</i></p> <p><i>No one shall be arbitrarily deprived of the right to enter his own country.</i></p>
Notes		

Ref. No.  22	Intervention Category	Rule of Law
	Specific issue	Freedom of Association
	Comment	
	Law	<p>ICCPR Article 22</p> <p><i>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.</i></p> <p>Article 12 of the UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (1998) states that:</p> <p><i>1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.</i></p> <p><i>2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.</i></p> <p><i>3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.</i></p>
Notes		

Ref. No.  23	Intervention Category	Rule of Law
	Specific issue	Freedom of expression
	Comment	
	Law	<p>Article 19 of the Universal Declaration of Human Rights (1948) states that:</p> <p><i>Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.</i></p> <p>Article 19 of the ICCPR states that:</p> <p><i>(1) Everyone shall have the right to hold opinions without interference</i></p> <p><i>(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.</i></p>
Notes		

	Intervention Category	Rule of Law
	Specific	Protection of Human Rights Defenders

Ref. No.	issue Comment	
24	Law	<p>UN Declaration on Human Rights Defenders adopted by the UN General Assembly on 9 December 1998 states that:</p> <p><i>“everyone has the right, individually and in association with others, to promote and to strive for the protection and realisation of human rights and fundamental freedoms at the national and international levels”.</i></p> <p>Article 1 of UN Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognised Human Rights and Fundamental Freedoms (1999) states:</p> <p><i>Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels.</i></p> <p>Article 12 states that:</p> <p><i>1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.</i></p> <p><i>2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.</i></p> <p><i>3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.</i></p> <p>Articles 19 and 22 of the ICCPR provide that:</p> <p><i>Article 19</i></p> <p><i>Everyone shall have the right to hold opinions without interference.</i></p> <p><i>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.</i></p> <p><i>Article 22</i></p> <p><i>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.</i></p> <p><i>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</i></p>

		<p><i>of this right.</i></p> <p><i>3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.</i></p>
	Notes	The Organization of American States (OAS) Resolutions of June 1999 and June 2000 on Human Rights Defenders in the Americas call on member states to work harder to protect human rights defenders and promote their work.

Ref. No.  25	Intervention Category	Rule of Law
	Specific issue	Incommunicado Detention
	Comment	
	Law	<p>United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), Principles 17(1) and 19 of state:</p> <p><i>Principle 17(1)</i></p> <p><i>A detained person shall be entitled to have the assistance of a legal counsel.</i></p> <p><i>Principle 19</i></p> <p><i>A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations.</i></p> <p>Article 19(2) of the ICCPR states:</p> <p><i>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.</i></p>
Notes		

Ref. No.  26	Intervention Category	Rule of Law
	Specific issue	State of emergency
	Comment	
	Law	<p>Article 4 of the United Nations International Covenant on Civil and Political governs states of emergency as follows:</p> <p><i>1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.</i></p> <p><i>2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.</i></p>

		<p>3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.</p> <p>The rights enumerated under Article 4(2) which are non-derogable and, therefore, must be respected at all times include the right to life (Article 6); the right not to be subjected to torture or ill-treatment (Article 7); and the right to recognition everywhere as a person before the law (Article 16).</p>
	Notes	

26A	Intervention Category	Rule of Law
	Specific issue	Non – Retroactivity
	Comment	
	Law	<p>Article 15 ICCPR</p> <p>1 . No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.</p> <p>2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.</p>

Ref. No. 27	Intervention Category	Rule of Law
	Specific issue	Torture - General
	Comment	
	Law	<p>Article 7 of the ICCPR requires that:</p> <p><i>No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.</i></p> <p>In addition, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment requires states to take effective legislative, administrative, judicial or other measures to prevent acts of torture.</p> <p>Articles 1(1) and 2(1) state that:</p> <p>1 (1) <i>For the purposes of this Convention, the term "torture" means 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</i></p>



	<p><i>with the consent or acquiescence of a public official or other person acting in an official capacity.</i></p> <p><i>2(1) Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.</i></p> <p><i>Article 2(2) states that 'No exceptional circumstances whatsoever, whether a state of war or a threat or war, internal political instability or any other public emergency, may be invoked as a justification of torture'.</i></p> <p><i>Article 11 says that States must review interrogation procedures.</i></p> <p><i>Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.</i></p> <p><i>Moreover, Articles 12 and 13 require State parties to investigate all allegations of torture:</i></p> <p><i>Article 12</i></p> <p><i>Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.</i></p> <p><i>Article 13</i></p> <p><i>Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.</i></p> <p><i>Article 37 (a) of the Convention on the Rights of the Child expressly prohibits torture.</i></p> <p><i>Principles 1, 6, 21(1) and 24 of the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988) state that:</i></p> <p><i>1. All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person.</i></p> <p><i>6. No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment.</i></p> <p><i>21(1) It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person.</i></p> <p><i>(2) No detained person while being interrogated shall be subject to violence,</i></p>
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		<i>threats or methods of interrogation which impair his capacity of decision or his judgement.</i>
	Notes	

Ref. No. 28	Intervention Category	Rule of Law
	Specific issue	The defendant's confessions were extracted under torture
	Comment	For the definition of torture and the prohibition of torture see the Torture – General section at Ref. No. 27
	Law	<p>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Article 15 expressly excludes the use in any proceedings of statements made as a result of torture:</p> <p><i>“Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.”</i></p> <p>Under Article 15, if it is alleged that a statement has been obtained by torture then national courts are required to investigate the allegation and to exclude any such statement if the allegation is established.</p> <p>In this regard Article 14(3)(g) ICCPR provides:</p> <p><i>“In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:</i></p> <p>....</p> <p><i>(7) Not to be compelled to testify against himself or to confess guilt.”</i></p>
Notes	If the defendant is also under sentence of death, please see, Death Penalty/Torture at Ref. No. 40	

Ref. No. 29	Intervention Category	Rule of Law
	Specific issue	Unfair trial - General
	Comment	
	Law	<p>The United Nations Universal Declaration of Human Rights (1948) provides:</p> <p>Article 3 <i>Everyone has the right to life, liberty and security of person.</i></p> <p>Article 5 <i>No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.</i></p> <p>Article 10 <i>Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.</i></p> <p>Article 11(1) <i>Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.</i></p> <p>Article 14 of the ICCPR states:</p> <p><i>14.1 All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and</i></p>

		<p><i>obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law</i></p> <p>...</p> <p><i>14.2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.</i></p> <p><i>14.3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:</i></p> <p><i>(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;</i></p> <p><i>(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;</i></p> <p><i>(c) To be tried without undue delay;</i></p> <p><i>(d) To be tried in his presence, and to 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;</i></p> <p><i>(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; ...</i></p> <p><i>(g) Not to be compelled to testify against himself or to confess guilt.</i></p>
	Notes	

Ref. No.  30	Intervention Category	Rule of Law
	Specific issue	Unfair trial – the role of prosecutors
	Comment	
	Law	<p>UN Guidelines on the Role of Prosecutors (1990) states that prosecutors shall</p> <p><i>“at all times maintain the honour and integrity of their profession” (Article 3), and perform their duties fairly, consistently and expeditiously, and respect and protect human dignity and uphold human rights, thus contributing to ensuring due process and the smooth functioning of the criminal justice system” (Article 12).</i></p>
	Notes	

Ref. No.  30A	Intervention Category	Rule of Law
	Specific issue	Gross or systemic violations
	Comment	
	Law	<p>For the guidance of what is a “gross” violation see UN Resolutions:</p> <p>Resolution 1235, paragraphs 2 and 3:  <i>“gross violations of human rights and fundamental freedoms...”</i>  <i>“a consistent pattern of violations of human rights”</i></p> <p>Resolution 1503 paragraphs 1 and 5:  <i>“consistent pattern of gross and reliably attested violations”</i></p>
	Notes	<p>Resolution 1235: see <a href="http://www1.umn.edu/humanrts/procedures/1235.html">http://www1.umn.edu/humanrts/procedures/1235.html</a> or  Resolution 1503: see <a href="http://ap.ohchr.org/documents/E/ECOSOC/resolutions/1970-1503.doc">http://ap.ohchr.org/documents/E/ECOSOC/resolutions/1970-1503.doc</a></p>

Ref. No.  30B	Intervention Category	Rule of Law
	Specific issue	Jus cogens
	Comment	
	Law	<p>Article 53 of the Vienna Convention on the Law of treaties states that a <i>Jus Cogens</i> norm is:</p> <p><i>“A norm accepted and recognized by the international community from which no derogation is permitted.”</i></p> <p><i>Jus Cogens</i> norms derive their status from the fact that their violation will ‘shock the conscience of mankind’.</p> <p>A norm must meet 4 requirements;</p> <ol style="list-style-type: none"> <li>1. <i>It is general international law.</i></li> <li>2. <i>It is accepted by a large majority of states.</i></li> <li>3. <i>It is immune from derogation.</i></li> <li>4. <i>It has not been modified by a new norm of the same status.</i></li> </ol> <p>Unlike ordinary customary law, jus cogens norms cannot be violated by any state "through international treaties or local or special customs or even general customary rules not endowed with the same normative force". (<i>Prosecutor v. Furundzija</i>, International Criminal Tribunal for the Former Yugoslavia, 2002, 121 <i>International Law Reports</i> 213 (2002))</p> <p>Under Article 53 of the Vienna Convention on the Law of Treaties, any treaty that conflicts with a peremptory norm is void.</p>
Notes	Jus cogens norms include prohibitions on waging aggressive war, crimes against humanity, war crimes, genocide, slavery, torture, and summary execution. The Inter-American Commission on Human Rights has also said that the prohibition on the death penalty for juvenile offenders is also jus cogens, see Ref. No. 35.	

## Annex 5

### International Legal Standards - Death Penalty Issues

The "death penalty is qualitatively different ... and hence must be accompanied by unique safeguards" (Wainwright v. Witt, 469 US 412, 463 (1985)). International law and many national jurisdictions have enacted rules of law strictly regulating the application of the death penalty.

Many law societies and bar associations around the world have recognized the trend in international law to restrict the application of the death penalty. The Council of Bars and Law Societies of Europe (the CCBE, of which the Law Society of England and Wales is a member) has called for the abolition of the death penalty. The American Bar Association and the Union International des Avocats have called for a moratorium.

The Law Society's policy since February 2009 has been similar to the International Bar Association's, and states:

*"The Law Society calls upon states who still maintain the death penalty to establish a moratorium on executions with a view to progressively reducing the number of offences for which it may be imposed and abolishing the death penalty completely at the earliest possible opportunity."*

The key international provisions and instruments in this regard are Articles 6 and 14 of the ICCPR, Second Optional Protocol to the ICCPR (1989), and Safeguards guaranteeing protection of the rights of those facing the death penalty (1984).

Set out below are the key provisions organised thematically. Each issue has a reference number for your convenience.

#### Index

<b>Ref. No.</b>	<b>Human rights Issue/ Violation</b>
31	Appeals - The defendant has rights of appeal remaining
32	Double Jeopardy - The sentencing is in conflict with the concept of double jeopardy
33	Imposed for an insufficiently serious crime
34	Insanity - The defendant is insane
34A	Mental Illness
34B	Mental Retardation
35	Juvenile - The defendant is a juvenile
36	Pain - The execution itself would be painful
37	Pardon - The defendant has a right to seek pardon or commutation of the sentence
38	Pregnant - The defendant is pregnant or a new mother
39	Racial Bias - There is a racial bias in the imposition of the death penalty
40	Torture and the death penalty
41	Unfair trial resulting in capital conviction/sentence
42	Prohibition on extradition
43	Prolonged period on death row

## Key Provisions Organised Thematically

Ref. No.  31	Intervention Category	Death Penalty
	Specific issue	The defendant has rights of appeal remaining
	Comment	
	Law	<p>Articles 6 and 8 of the UN Safeguards guaranteeing the protection of the rights of those facing the death penalty (1984) state respectively that:</p> <p><i>“Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.”</i></p> <p><i>“Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.”</i></p> <p>Article 6(2) of the UN International Covenant on Civil and Political Rights requires that:</p> <p><i>“This [death] penalty can only be carried out pursuant to a final judgment rendered by a competent court.”</i></p> <p>Under Article 4 of the same Covenant this is classed as a non-derogable right, which must be respected at all times and under all circumstances:</p> <p>“... (2) No derogation be made from articles 6 ...”</p> <p>Article 14 of the UN Covenant on Civil and Political Rights provides that: “... 5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law. ...”</p>
Notes		

Ref. No.  32	Intervention Category	Death Penalty
	Specific issue	The sentencing is in conflict with the concept of double jeopardy
	Comment	
	Law	<p>Article 5 of the UN Safeguards guaranteeing protection of the rights of those facing the death penalty (1984) which states that:</p> <p><i>“Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights...”</i></p> <p>Article 14 referred to above deals with the concept of <i>ne bis in idem</i> or ‘double jeopardy’, where a defendant is tried twice for the same crime. Specifically 14(7) provides that:</p> <p><i>“No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country”</i></p>
Notes		

Ref. No.	Intervention Category	Death Penalty
	Specific issue	Imposed for an insufficiently serious crime
33	Comment	
	Law	<p>Article 1 of the UN Safeguards guaranteeing protection of the rights of those facing the death penalty (1984) provides that:</p> <p><i>“In countries which have not abolished the death penalty, capital punishment may be imposed only for the most serious crimes, it being understood that their scope should not go beyond intentional crimes with lethal or other extremely grave consequences.”</i></p> <p>Article 6(2) of the ICCPR states:</p> <p><i>In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.</i></p> <p>Paragraph 65 of the Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Philip Alston, A/HRC/4/20, 29, January 2007 states:</p> <p><i>...Over the past two decades international jurisprudence from a wide range of sources has succeeded in bringing clarity to the question of which crimes can legitimately be classified as being the “most serious”. As a result, the death penalty can only be imposed in cases where it can be shown that there was an intention to kill which resulted in the loss of life.</i></p> <p>The Commission on Human Rights, in its Resolutions 1991/61 and 2004/67, urged all states that still maintain the death penalty to ensure that it is not imposed for non-violent financial crimes or for non-violent religious practices or expressions of conscience.</p>
	Notes	<p>The UN Human Rights Committee has laid it down that the concept of “most serious crimes” as employed in the ICCPR “must be read restrictively to mean that the death penalty should be a quite exceptional measure”.</p> <p>In a series of judgments, the UN Human Rights Committee has extended this list to include offences such as “evading military service several times”, “abetting suicide, drug-related offences, committing a third homosexual act, “illicit sex”, “vague categories of offence relating to internal and external security”, “a person whose life endangers or corrupts society”, and aggravated robbery where the use of firearms did not produce death or wounding of any person. (See Official Records of the General Assembly, 37th session (1992), Suppl. No. 40 (A/37/40). Annex V para 7). And at its 58th session in 2002 the Commission added to this list “sexual relations between consenting adults” (UN Doc. E/CN.4/2002/L.104, para. 4c, “Promotion and Protection of Human Rights”)</p> <p>Resolution 2005/59, of the new end Commission on Human Rights, declared “that the death penalty is not [to be] imposed for non-violent acts such as financial crimes, religious practice or expression of conscience and sexual relations between consenting adults nor as a mandatory sentence”. (See The Death Penalty, A Worldwide Perspective, Roger Hood and Carolyn Hoyle, Oxford, Fourth Edition, 2008, p. 131)</p>

Ref. No.	Intervention Category	Death Penalty
	Specific issue	The defendant is insane
34		

	Comment	
	Law	Article 3 of the UN Safeguards guaranteeing protection of the rights of those facing the death penalty (1984) states that:  <i>“Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane.”</i>
	Notes	This prohibition has been enforced by resolutions adopted by the UN Commission on Human Rights during the last 10 years calling for an end to the use of the death penalty against anyone suffering from any form of mental disorder.

Ref. No.  34A	Intervention Category	Death Penalty
	Specific issue	The defendant is mentally ill.
	Comment	
	Law	Article 3 of the UN Safeguards guaranteeing protection of the rights of those facing the death penalty (1984) states that:  <i>“Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane.”</i>  Resolution 2004/67 para. 4(c.) of the United Nations Commission on Human Rights:  <i>...[u]rges all States that still maintain the death penalty . . . [n]ot to impose the death penalty on a person suffering from any form of mental disorder or to execute any such person.</i>  In the UN Seventh Quinquennial Report on Capital Punishment, published in 2005:  <i>[T]he safeguard to protect the insane and persons suffering from mental retardation or extremely limited mental competence from capital punishment will need to be reformulated to be in line with the recommendation of the Commission on Human Rights to include “any form of mental disorder”. (UN doc/2005/3, paragraph 89)</i>
Notes	This prohibition has been enforced by resolutions adopted by the UN Commission on Human Rights during the last 10 years calling for an end to the use of the death penalty against anyone suffering from any form of mental disorder.	

Ref. No.  34B	Intervention Category	Death Penalty
	Specific issue	Mental retardation
	Comment	(see Death Penalty - mental illness, above, and Roger Hood’s book, fourth edition, 2008, p.196)
	Law	Declaration on the Rights of Mentally Retarded Persons:  <i>6. The mentally retarded person has a right to protection from exploitation, abuse and degrading treatment. If prosecuted for any offence, he shall have a</i>

	<p><i>right to due process of law with full recognition being given to his degree of mental responsibility.</i></p> <p>In 1989, the United Nations Economic and Social Council recommended protections for those facing the death penalty including, "eliminating the death penalty for persons suffering from mental retardation or extremely limited competence, whether at the stage of sentence or execution."</p> <p>In 1999, the Commission on Human Rights passed a resolution calling on states which maintain capital punishment "not to impose the death penalty on a person suffering from any form of mental disorder or to execute any such person." The Commission confirmed its position on the execution of persons with a mental disorder again in 2000.</p> <p>The Special Rapporteur on Extrajudicial, Summary or Arbitrary Execution has consistently condemned the execution of people with mental retardation, with particular criticism of the United States. In 1998, the Special Rapporteur recommended that "governments that continue to enforce the death penalty are urged to take immediate steps to bring their domestic legislation and practices into line with international standards prohibiting the imposition of death sentence in regard to minors and mentally ill or handicapped persons."</p>
Notes	<p>An IQ of between 70 and 75 has been typically considered the cut off IQ score for the intellectual function prong of the definition of mental retardation, see 2 B. Sadock &amp; V. Sadock, Comprehensive Textbook of Psychiatry 2952 (7th ed. 2000)</p> <p>This prohibition has been enforced by resolutions adopted by the UN Commission on Human Rights during the last 10 years calling for an end to the use of the death penalty against anyone suffering from any form of mental disorder.</p>

Ref. No. 35	Intervention Category	Death Penalty
	Specific issue	The defendant is a juvenile
	Comment	The UN defines a 'juvenile' as someone under the age of eighteen. Where the defendant is a juvenile at the time of sentencing, or was a juvenile at the time of the commission of the crime, international law strictly prohibits the death penalty.
	Law	<p>Article 3 of the UN Safeguards guaranteeing protection of the rights of those facing the death penalty (1984) provides that:</p> <p><i>"Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane."</i></p> <p>Article 6(5) of the UN International Covenant on Civil and Political Rights requires that:</p> <p><i>"Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women."</i></p> <p>Under Article 4 of the same Covenant this is classed as a non-derogable right, which must be respected at all times and under all circumstances:</p> <p><i>"(2) No derogation be made from articles 6..."</i></p> <p>Article 37(a) of the UN Convention on the Rights of the Child Requires that:</p> <p><i>"Neither capital punishment nor life imprisonment without the possibility of release shall be imposed for offences committed by persons below eighteen years of age"</i></p>



		<p>Article 4 (5) of the American Convention on Human Rights (1969) states that</p> <p><i>“Capital punishment shall not be imposed upon persons who, at the time the crime was committed, were under 18 years of age or over 70 years of age”.</i></p> <p>N.B. In 1977 USA signed the American Convention but has not ratified it. By becoming a signatory, USA obliged itself under international law not to do anything to undermine the treaty pending its decision on whether to ratify.</p> <p>Article 14 of the ICCPR states:</p> <p><i>“In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation”.</i></p>
	Notes	<p>Repeated resolutions of the UN Commission on Human Rights have urged all States that still maintain the death penalty not to impose it for crimes committed by persons below 18 years of age or on a person suffering from any form of mental disorder or to execute any such person. This has also been recommended by the UN Committee on the Rights of the Child.</p> <p>The Inter-American Commission on Human Rights held that the United States is bound by a norm of <i>jus cogens</i> not to impose capital punishment on individuals who committed their crimes when they had not yet reached 18 years of age (<i>Domingues v. United States</i>, IACHR Case 12.285, No. 62/02 at para. 85). A <i>jus cogens</i> norm is one that is accepted and recognized by the international community from which no derogation is permitted, see Ref. No. 30B.</p>

Ref. No. 36	Intervention Category	Death Penalty
	Specific issue	The execution itself would be painful
	Comment	
	Law	<p>Article 9 of the UN Safeguards guaranteeing protection of the rights of those facing the death penalty (1984) states that:</p> <p><i>“Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.”</i></p>
	Notes	

Ref. No. 37	Intervention Category	Death Penalty
	Specific issue	The defendant has a right to seek pardon or commutation of the sentence
	Comment	
	Law	<p>Articles 7 and 8 of the UN Safeguards guaranteeing protection of the rights of those facing the death penalty (1984) state respectively that:</p> <p><i>“Anyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment.”</i></p> <p><i>“Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.”</i></p> <p>Article 6(4) of the UN International Covenant on Civil and Political Rights (1966) states that:</p> <p><i>“Anyone sentenced to death shall have the right to seek pardon or commutation of sentence. Amnesty, pardon or commutation of the sentence</i></p>
	Notes	

		<i>of death may be granted in all cases.”</i>
	Notes	

Ref. No.  38	Intervention Category	Death Penalty
	Specific issue	The defendant is pregnant or a new mother
	Comment	
	Law	<p>Article 3 of the UN Safeguards guaranteeing protection of the rights of those facing the death penalty (1984) states that:</p> <p><i>“Persons below 18 years of age at the time of the commission of the crime shall not be sentenced to death, nor shall the death sentence be carried out on pregnant women, or on new mothers, or on persons who have become insane.”</i></p> <p>Article 6(5) of the UN International Covenant on Civil and Political Rights requires that:</p> <p><i>“Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.”</i></p>
	Notes	

Ref. No.  39	Intervention Category	Death Penalty
	Specific issue	There is a racial bias in the imposition of the death penalty
	Comment	
	Law	<p>Article 5(a) of the International Convention on the Elimination of All Forms of Racial Discrimination requires</p> <p><i>“(a) The right to equal treatment before the tribunals and all other organs administering justice”</i></p>
	Notes	

Ref. No.  40	Intervention Category	Death Penalty
	Specific issue	Torture
	Comment	For the definition of torture and the prohibition of torture see the Torture – General section at Ref. No. 27
	Law	<p>Article 4 of the UN Safeguards guaranteeing protection of the rights of those facing the death penalty (1984) states that:</p> <p><i>Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.</i></p> <p>Article 5 of the UN Safeguards guaranteeing protection of the rights of those facing the death penalty (1984) states that:</p> <p><i>“Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.”</i></p> <p>If a person has been found guilty based on a confession obtained by torture, their guilt cannot be said to have been based upon clear and convincing</p>
	Notes	

		evidence, nor can they have received a fair trial in accordance with internationally recognised standards.
	Notes	If the defendant's confession was extracted under torture, see also Ref. No. 28

Ref. No.  41	Intervention Category	Death Penalty
	Specific issue	The death sentence has been imposed in the absence of a fair trial/due process (e.g. ineffective legal assistance, false testimony, problems with evidence)
	Comment	
	Law	<p>A fair trial and the application of due process, including the right to be provided legal representation, to be tried without delay are required by Articles 4 and 5 of the UN death penalty safeguards, both directly and through Article 14 of the UN Covenant on Civil and Political Rights.</p> <p>Articles 4 and 5 of the UN Safeguards guaranteeing protection of the rights of those facing the death penalty (1984) require respectively that:</p> <p><i>“Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.”</i></p> <p><i>“Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.”</i></p> <p>Article 14 of the International Covenant on Civil and Political Rights requires that:</p> <p>1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. 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 interest 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.</p> <p>2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.</p> <p>3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:</p> <p>(1). To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;</p> <p>(2). To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;</p> <p>(3). To be tried without undue delay;</p> <p>(4). To be tried in his presence, and to 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;</p>

		<p>(5). To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;</p> <p>(6). To have the free assistance of an interpreter if he cannot understand or speak the language used in court;</p> <p>(7). Not to be compelled to testify against himself or to confess guilt.</p> <p>4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.</p> <p>5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.</p> <p>6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.</p> <p>7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.</p>
	Notes	

Ref. No. 42	Intervention Category	Death Penalty
	Specific issue	Prohibition on extradition if risk of death
	Comment	
	Law	<p>Prohibition on transfer/extradition if risk of death penalty, see <i>Soering v. United Kingdom</i>, 11 EHRR 349 (1989)</p> <p>See also <i>United States v Burns</i> [2001] 1 SCR 283 (Canadian Supreme Court held it unconstitutional to extradite to a state without the assurance that death penalty will not be imposed)</p> <p>UN Human Rights Committee in <i>Judge v Canada</i>, held that abolitionist countries had an obligation not to expose a person to the real risks of death penalty through such extradition as this would constitute a violation of Article 6 ICCPR (right to life).</p> <p>Article 19(2) Charter of Fundamental Rights (adopted by EU in Nice, Dec 2000) states “No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty....”</p>
	Notes	

Ref. No. 43	Intervention Category	Death Penalty
	Specific issue	Death row phenomena – i.e. Prolonged period on death row
	Comment	Very long period of time on death row may render execution a cruel or inhuman punishment by international standards.
	Law	This was recognized by the European Court of Human Rights which held that to extradite someone to Virginia where they might face the death penalty would be a breach of Article 3 of the European Convention on Human Rights

		<p>[FN1] which prohibits torture or to inhuman or degrading treatment or punishment.</p> <p>The Court held that the “<i>very long time spent on death row in such extreme conditions, with the ever present and mounting anguish of awaiting execution of the death penalty</i>” was cruel because the condemned prisoner can expect to spend “<i>on average six to eight years</i>” in prison before being executed. [FN2]</p> <p>Similar findings have been made in the cases of <i>Pratt and Morgan v Attorney-General of Jamaica</i> in the Privy Council [FN3] and in <i>Andrews v. United States</i> [FN4] in the Inter-American Commission of Human Rights.</p>
	Notes	<p>FN1 Soering v. United Kingdom, 11 EHRR 349 at para. 11 (1989)          FN2 Id. at para. 106.          FN3 1993 4 All ER 769          FN4 IACHR Case 11.139, No. 57/96, paras. 46-49, 178 (Dec., 1996)</p>

## Annex 6 – Example of a Research Pro-Forma

(\*Required)

Your name \*

Your email \*

Victim's name \*

Government or authority with duty or jurisdiction to desist or protect \*

List the possible human rights or international law principles at issue \*

Refer to the rights/principles in brief. Do not quote law or legal sources. Keep it short and punchy.

State background facts (with dates) about the victim, including previous incidents. \* This is to set the scene and provide the context for the next section

List in chronological order the facts and events relating to the current incident. Please include dates of each event. \*

Please cross reference each fact/event to the sources to be listed below

Source no.1 \*

Provide web-link, and where possible state the name of source and the date on which the information was published or received

Source no.2

Provide web-link, and where possible state the name of source and the date on which the information was published or received

Other sources (please number them from no.3 onwards)

Provide web-link, and where possible state the name of source and the date on which the information was published or received

What is the date of the most recent source of information that you have relied on? \*

[dd/mm/yyyy]

Do you think this case fits our mandate? \*

Definite no 

1	2	3	4
---	---	---	---

 Definite yes

**Mandate Checklist \***

Please tick the closest match

The victim is a lawyer.	
The victim is not a lawyer. (S)he does the work of a lawyer.	
Non-lawyer whose work assists a lawyer's work or contributes to legal work.	
This is a breach of a well-established principle of international law and/or is of wide-spread international concern.	
This is a systemic and gross violation that undermines the justice system.	
I no longer think that this case fits our mandate.	

Legal research: Please list the names of the treaties, declarations or other international instruments which may be relevant. If possible, include the Article no. of relevant provision. Do not quote the actual legal text.

Have you checked that any treaties you refer to have been ratified and are in force? \* Please be aware of the difference between (i) soft law and treaties, and (ii) signature and ratification of treaties.

Yes	
No	
No treaties referred to	
No - factual research only	

**Addresses \***

Enter the name, title and address of the person(s) to whom any letter should be sent

Enter names and addresses of people who should receive a copy of this letter \*  
e.g. the name and address of the country's ambassador/embassy in the UK

## Annex 7 – Example of a Drafting Pro-Forma

(\*Required)

Volunteer's name \*

Volunteer's email \*

Victim's name \*

Country where victim is located or citizenship \*

Addresses \*

Enter the name, title and address of the person to whom the letter should be sent.

Enter the salutation \*

e.g. Dear Mr President or Your Excellency

Enter the heading for the letter \*

e.g. "Country - Mr Joe Bloggs - lawyer at risk"

First paragraph \*

Describe the Law Society

Second paragraph \*

Explain the facts, make sure that they signpost the provisions of law to be referred to in the next paragraph

Third paragraph \*

Quote legal standards, make sure these are relevant to the case and link to the facts that you have included in paragraph 2

Fourth paragraph \*

Sum up what the Law Society would like



Additional information  
Only use if necessary

--

Enter names and addresses of people who should receive a copy of this letter \*  
i.e. the name and address of the country's ambassador/embassy in UK

--

Mandate checklist \*

The victim is a lawyer and I have stated this in my draft.	
The victim is not a lawyer. (S)he does the work of a lawyer. I have stated this in my draft.	
Non-lawyer whose work assists a lawyer's work or contributes to legal work. I've stated this in my draft.	
This is a breach of a well-established principle of international law and/or is of wide-spread international concern.	
This is a systemic and gross violation that undermines the justice system.	
I no longer think that this case fits our mandate	

Have you checked that any treaties you refer to have been ratified and are in force? \*  
Please be aware of the difference between (i) soft law and treaties, and (ii) signature and ratification of treaties.

Yes	
No	
No treaties referred to	
No - factual research only	

Where relevant, have you stated what the alleged real reason for the mistreatment is? \*

Yes	
No	
Not relevant	

Where relevant, have you stated the practical consequences of the actions of the authorities (e.g. impeding the legitimate work of a lawyer)? \*

Yes	
No	
Not relevant	

Have you performed a Google search to check whether any new developments have occurred since the factual research was undertaken? \*

Yes	
No	

Please recap (in the style of short bullet-points) the key actions that caused the violation of international law \*

Please recap (in the style of short bullet-points) the key principles of international law which have been violated \*

Please make a comprehensive list of all sources of information used (Don't forget to include sources provided by IAT researchers). \*  
Please provide the web-link (and where possible, the name and date of the source).