

**Public**

**ANNEX 1  
to Updated Victims' Appeal Brief**

## **INTERNATIONAL HUMAN RIGHTS CASES CONCERNING THE RIGHT OF VICTIMS TO AN EFFECTIVE INVESTIGATION IN CASES OF UNLAWFUL KILLING AND TORTURE**

International human rights courts have long recognized that a failure to investigate or prosecute criminal conduct may constitute a violation of internationally recognized human rights, including the right to life, the prohibition on torture, the right to a fair trial, the right to judicial protection and the right to an effective remedy. Below is a representative, non-exhaustive sample of such cases decided by the European Court of Human Rights and the Inter-American Court of Human Rights. The relevant articles from the European Convention on Human Rights and the Inter-American Convention on Human Rights are reproduced below.

Further relevant jurisprudence from the European Court of Human Rights is contained at pages 29-43 of the [‘Guide on Article 2 of the European Convention on Human Rights’](#), updated on 31 August 2019, published by the Council of Europe.

### **European Court of Human Rights**

<b>Case</b>	<b>Facts</b>	<b>Court decision</b>
<a href="#"><i>McCann v. United Kingdom</i></a> (1995)	Applicants were relatives of three persons fatally shot by UK soldiers. The soldiers were part of a mission to prevent an alleged IRA bombing plot in Gibraltar. The soldiers shot the three believing they were reaching for bomb detonators. The High Court of Justice of Northern Ireland dismissed the case against the two soldiers holding that their actions were justified. The Applicants appealed to the ECtHR.	In examining a State’s Article 2 obligations to conduct an effective investigation, the Court held “the State must provide an effective ex post facto procedure for establishing the facts surrounding a killing by agents of the State through an independent judicial process to which relatives must have full access.” States are expected to carry out “thorough, impartial and careful examination of the circumstances surrounding the killings.” The State, however, violated Article 2 by failing to keep the suspects from travelling to Gibraltar, relying on questionable intelligence and resorting to lethal force against the three men.
<a href="#"><i>Aksoy v. Turkey</i></a> (1996)	Applicant brought the case on behalf of his deceased son, who was allegedly detained, tortured, and	State violated Article 3 by subjecting the deceased to “Palestinian hanging,” which suspends the subject by his or her arms while tying the arms behind his or her back. A

Case	Facts	Court decision
	subsequently killed by the government.	violation of Article 13 was found in part based on the State's decision not to open the investigation to examine the allegations of torture despite the evidence before the prosecutor.
<a href="#">Kaya v. Turkey</a> (1998)	Applicant brought suit for his brother's death by government security forces in the course of a military operation. He claimed the investigation did not meet the minimum formalities required of forensic examinations, autopsies, and other inquiries. State defended its actions on account of the deceased's participation in terrorist activities, and argued that the threshold for investigation should be lowered.	State violated Article 2 and Article 13 by assuming the legality of the security forces' actions and failing to conduct an effective investigation.
<a href="#">Jordan v. United Kingdom</a> (2001)	Applicant brought an action following the fatal shooting of his son by the police in Northern Ireland. Following an investigation, the Director of Public Prosecutions ('DPP') determined there was insufficient evidence to pursue prosecution against the implicated police officers.	State violated Article 2 ensuring a right to life by failing to conduct an effective investigation. Reading Article 2 together with the Article 1 duty to secure people's rights and freedoms under the Convention, there is an obligation to conduct an effective investigation particularly following the lethal use of force. The Court stated that "The essential purpose of such investigation is to secure the <i>effective</i> implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, <i>to ensure their accountability for deaths</i> occurring under their responsibility."

Case	Facts	Court decision
<p><a href="#"><i>Kelly and Others v. United Kingdom</i></a> (2001)</p>	<p>The applicants were relatives of nine men killed during a security force operation.</p> <p>The DPP failed to charge any of the soldiers after the investigation found that the evidence did not support prosecutions. The applicants claimed the men had been killed unjustifiably and challenged the lack of an effective remedy before the ECtHR.</p>	<p>The Court affirmed that an investigation must be effective “in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances and to the identification and punishment of those responsible.” Although no specific procedure is required, an effective investigation is generally reasonably prompt, open to public scrutiny, and one that ensures application of domestic laws and accountability of State actors involved. The Court found that the State’s lack of transparency and effectiveness violated its procedural obligations under Article 2.</p>
<p><a href="#"><i>Akkum and Others v. Turkey</i></a> (2005)</p>	<p>Families of the applicants were mutilated and killed for venturing into areas where soldiers held military operations. Seven soldiers and officers were indicted for the crime. The criminal case was later transferred to the military court, where all seven defendants were acquitted.</p>	<p>Given the fundamental importance of the right to protection of life, Articles 2, 3, and 13 require a thorough and effective investigation into the deaths of the applicants’ families. The investigations performed in this case were insufficient.</p>
<p><a href="#"><i>Khashiyev and Akayeva v. Russia</i></a> (2005)</p>	<p>Applicants left the country due to political turmoil and returned to find family members who remained behind killed and their bodies mutilated.</p>	<p>State failed to carry out an adequate and effective investigation into the circumstances of the applicants’ relatives’ deaths (Article 2) and the allegations of torture (Article 3). State violated Article 13 due to its violations of Articles 2 and 3. An effective investigation would have resulted in an identification and punishment of those responsible for the deprivation of life and infliction of torture as</p>

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		well as adequate compensation to the applicants.
<a href="#"><i>Koku v. Turkey</i></a> (2005)	Applicant brought action for the abduction, torture, and killing of his brother as a result of the brother's political beliefs and leadership standing within a political party. The brother's body was found days after his disappearance, decomposing, decapitated, and cut into pieces. Prosecutor, Security Director and local police refused to investigate between the disappearance and finding the body.	State violated Article 2 by failing to protect the brother's right to life and by failing to carry out an adequate and effective investigation into the disappearance and murder of the brother. State violated Article 13, under which the criteria for inadequate and ineffective investigation are broader than under Article 2.
<a href="#"><i>Armani Da Silva v. the United Kingdom</i></a> (2016)	Two weeks after four suicide bombers detonated explosions on the London transport network, and following intelligence that terrorists were actively planning further attacks, police shot dead an unarmed civilian on a London Underground train. Within days of the shooting, it had become apparent that he had not been involved in the attempted terror attacks. The applicant was a cousin of the deceased and sued for <i>inter alia</i> violation of the right to life in Article 2 of the European Court of Human Rights.	The State's obligation to carry out an effective investigation has in the Court's case-law been considered as an obligation inherent in Article 2, which requires, <i>inter alia</i> , that the right to life be "protected by law". For an investigation into alleged unlawful killing by State agents to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events. This means not only a lack of hierarchical or institutional connection but also a practical independence. The authorities must take whatever reasonable steps they can to secure the evidence concerning the incident.

**Inter-American Court of Human Rights**

<b>Case</b>	<b>Relevant facts</b>	<b>Court decision</b>
<p><a href="#"><u>Case of the Gómez-Paquiyaqui Brothers v. Peru</u></a> (2004)</p>	<p>Two brothers, both minors, were allegedly tortured and executed by agents of the National Police. While the State conducted an investigation and convicted the police officers who arrested the boys, higher level officials behind the incident were never tried or punished. The IACtHR recommended in 2001 that the State conduct an impartial investigation, but the State failed to do so.</p>	<p>State failed to adequately investigate and prosecute the disappearances of the victims, in violation of its positive obligations under the Convention.</p>
<p><a href="#"><u>Case of Huilca-Tecse v. Peru</u></a> (2005)</p>	<p>Labor union leader was extrajudicially executed by a death squadron linked to the State's army intelligence services. State failed to adequately investigate or bring charges in the twelve years after the killing.</p>	<p>State violated its positive obligations under the Convention by failing to bring adequate and timely investigations and prosecutions. Court also found there to be a culture of impunity, evidenced by the inadequate investigation.</p>
<p><a href="#"><u>Gomez-Palomina v. Peru</u></a> (2005)</p>	<p>Family of disappeared person brought action against the government for failure to adequately investigate disappearance and probable murder. Investigators had made almost no progress after 13 years.</p>	<p>State violated its positive obligations under the Convention when it failed to adequately investigate the disappearance.</p>
<p><a href="#"><u>Moiwana Community v. Suriname</u></a> (2005)</p>	<p>A village was attacked, and many villagers killed and displaced. An inspector looking into the attack was also killed. The State's investigation of both the attack on the village and</p>	<p>The manner in which the State conducted the investigations, and especially the many years of delay in investigation without producing any results, violated the Convention.</p>

Case	Relevant facts	Court decision
	the murder of the inspector was inadequate, as the investigation was halted after the police inspector in charge was killed, and there was evidence of obstruction of the investigation, and through invoking an amnesty law.	
<a href="#"><i>Case of the Ituango Massacres v. Colombia</i></a> (2006)	At issue were three different massacres, allegedly carried out by paramilitary groups and with potentially 1,200 victims killed and many more displaced and harmed, and the State's response to the massacres. While approximately 30 people were believed to have perpetrated the massacres, criminal proceedings were filed against only three, and only one was serving a prison sentence.	State violated its positive obligations under the Convention in failing to timely and diligently prosecute the massacres, as it allowed three years to elapse from the incident before the Prosecutor General opened a pre-trial investigation. The Court also considered the lack of criminal proceedings and convictions as evidence of a lack of due diligence in prosecuting the crimes.
<a href="#"><i>Manuel Cepeda Vargas v. Colombia</i></a> (2010)	A senator was extrajudicially executed. Sixteen years after the execution, the State had not completed investigations into the execution.	State's incomplete investigations over a substantial period of time constituted a violation of the State's positive obligations under the Convention.
<a href="#"><i>Rosendo Cantú et al. v. Mexico</i></a> (2010)	The victim was raped by members of the military and brought a complaint which was transferred from the civil courts to the military courts. The victim's challenge to the transfer of the case was rejected, as on appeal the court accepted the lack of subject matter jurisdiction of the civilian courts.	State, in denying the victim's petition to transfer her case from the military court to the civilian criminal courts, violated her rights under the Convention, as civilians have their rights protected under the civilian courts. State also had a positive obligation to investigate human rights abuses and stated that the State violated this obligation by not investigating the allegations of this case in a timely manner,

Case	Relevant facts	Court decision
		having taken more than eight years to investigate.
<p><a href="#"><i>Case of Gudiel Álvarez et al. (“Diario Militar”) v. Guatemala</i></a> (2012)</p>	<p>During 1983 and 1985, twenty-six victims, as detailed in the Military's diary, were held captive from 15 to 106 days. Some were tortured and extrajudicially executed. Fact-gathering investigations were commenced by different prosecutors upon receipt of a complaint by the victims and went on for 13 years. The investigations were not unified until six years after they had begun.</p>	<p>State failed to initiate an investigation of its own accord, failed to conduct a serious and effective investigation upon receipt of a complaint by the victims and failed to identify or punish the perpetrators. These failures violated the Convention.</p>
<p><a href="#"><i>González Medina and Family v. Dominican Republic</i></a> (2012)</p>	<p>A university professor who was publicly critical of the government, the president and a fraudulent political election was disappeared. A “police board” found that no responsible individual could be found. Victim’s family and friends complained to the police about the inadequate investigation. A “joint board” was formed which failed to identify who was responsible. An investigating court examined the case for 9 years, named a General as possibly responsible, but declined to try him. Twelve years after the disappearance, the Public Prosecutor reinvestigated, but found “no new elements that would permit its making progress in the investigation”.</p>	<p>State failed to adequately investigate and prosecute the disappearance of the victim, in violation of its positive obligations under the Convention.</p>



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<p><a href="#"><u>Massacres of El Mozote and Nearby Places v. El Salvador</u></a> (2012)</p>	<p>A much-publicized massacre by armed forces took place in late 1981. By 1990 no investigation had been initiated by the State. An investigation was opened upon the complaint of a survivor nine years after the massacres took place. The investigation never progressed further than exhuming bodies and no prosecutions ever took place.</p>	<p>State violated its positive obligations under the Convention by not initiating an official investigation on its own accord. The investigation that took place upon the victim's complaint lacked due diligence, as the investigation never progressed past the exhumation of the bodies, which also violated the State's positive obligations.</p>
<p><a href="#"><u>Landaeta Mejías Brothers et al. v. Venezuela</u></a> (2014)</p>	<p>Victims' family alleged that two victims, one a minor, were extrajudicially killed by the Venezuelan police. In one case, the case was dismissed by the appellate court and the prosecutors did not seek to appeal the dismissal, stating that the victim should have sought to appeal. In the other case, the criminal proceedings had been going on for more than 16 years without conclusion.</p>	<p>There were several deficiencies in the manner in which the investigation was carried out for both victims, including the methods of investigation and the delays in investigating. There were also deficiencies in the prosecution, including the prosecutor's "passive attitude" in appealing the acquittal and the delays in the criminal procedure. State therefore failed to fulfill its positive obligations under the Convention when it failed to adequately investigate and prosecute the deaths of the victims.</p>
<p><a href="#"><u>Herzog et al., v. Brazil</u></a> (2018)</p>	<p>Journalist was detained, tortured and murdered by State agents on 25 October 1975. Military justice authorities concluded that the journalist had killed himself. Judicial authorities opened investigations in 1992 and 2007 but closed them on the basis of an amnesty law.</p>	<p>Brazil violated the victims' rights to judicial guarantees and protection, as well as their right to know the truth and to personal integrity.</p>

## **RELEVANT HUMAN RIGHTS TREATY PROVISIONS**

### **European Convention on Human Rights**

#### **Article 2. Right to Life.**

1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution for a sentence of a court following his conviction of a crime for which this penalty is provided by law.

2. Deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary:

- a. in defence of any person from unlawful violence;
- b. in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- c. in action lawfully taken for the purpose of quelling a riot or insurrection.

#### **Article 3. Prohibition of Torture.**

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

#### **Article 13. Right to an Effective Remedy.**

Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity.

### **Inter-American Convention on Human Rights**

#### **Article 8. Right to a Fair Trial.**

1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.

2. Every person accused of a criminal offense has the right to be presumed innocent so long as his guilt has not been proven according to law. During the proceedings, every person is entitled, with full equality, to the following minimum guarantees:

- a. the right of the accused to be assisted without charge by a translator or interpreter, if he does not understand or does not speak the language of the tribunal or court;
- b. prior notification in detail to the accused of the charges against him;
- c. adequate time and means for the preparation of his defense;

- d. the right of the accused to defend himself personally or to be assisted by legal counsel of his own choosing, and to communicate freely and privately with his counsel;
  - e. the inalienable right to be assisted by counsel provided by the state, paid or not as the domestic law provides, if the accused does not defend himself personally or engage his own counsel within the time period established by law;
  - f. the right of the defense to examine witnesses present in the court and to obtain the appearance, as witnesses, of experts or other persons who may throw light on the facts;
  - g. the right not to be compelled to be a witness against himself or to plead guilty; and
  - h. the right to appeal the judgment to a higher court.
3. A confession of guilt by the accused shall be valid only if it is made without coercion of any kind.
  4. An accused person acquitted by a nonappealable judgment shall not be subjected to a new trial for the same cause.
  5. Criminal proceedings shall be public, except insofar as may be necessary to protect the interests of justice.

#### **Article 25. Right to Judicial Protection.**

1. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this Convention, even though such violation may have been committed by persons acting in the course of their official duties.
2. The States Parties undertake:
  - a. to ensure that any person claiming such remedy shall have his rights determined by the competent authority provided for by the legal system of the state;
  - b. to develop the possibilities of judicial remedy; and
  - c. to ensure that the competent authorities shall enforce such remedies when granted.