INSTITUTE FOR THE ADVANCEMENT OF JUSTICE & HUMAN RIGHTS

Prosecutorial Misconduct and UNCAT Accountability

An IAJ Analytical Standard on Ethical Failure, Evidence Integrity, Execution-Architecture Abandonment, and State-Party Compliance

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Companion to A Guide to Domestic Criminal Enforcement of Torture and Cruel, Inhuman, or Degrading Treatment in the United States; the IAJ Collaborative Prosecution Framework; the IAJ Prosecutor Memorandum and Record of Notice; the IAJ Psychological Investigation Standard; and UNCAT and jus cogens: A contemporary perspective.

Prepared as an educational legal supplement for federal and state prosecutors, attorneys general, inspectors general, civil rights units, public integrity sections, judicial conduct authorities, and oversight personnel.

I. PURPOSE AND RELATIONSHIP TO THE PROSECUTOR'S GUIDE

This Standard addresses prosecutorial misconduct as a subject in its own right and situates it within the IAJ's torture and cruel, inhuman, or degrading treatment (CIDT) accountability framework. It is a companion to the IAJ Prosecutor's Guide. The Guide establishes the State Party's obligation to investigate, charge, and document torture and CIDT, and it treats prosecutors in two roles: as officials responsible for investigating prohibited conduct committed by others, and as officials whose own conduct may cause, prolong, conceal, or aggravate prohibited suffering. This Standard develops the second role comprehensively, and adds the structural problem that arises when the office responsible for receiving and investigating a complaint is itself implicated in the underlying wrong.

The IAJ states the positions in this Standard as its own considered analytic conclusions, drawn from the structure of the Convention against Torture, the relevant customary international law, and the authoritative interpretations of the Committee against Torture. Authorities cited support those conclusions; they do not themselves decide them. The IAJ's interpretive standard for the Convention and the peremptory norm is stated in its thesis UNCAT and jus cogens: A contemporary perspective, a companion to this Standard, and this Standard applies it. The Standard maintains the Two-Plane Framework used throughout the IAJ corpus: Plane A is the content of the universal human-rights obligation, independent of any question of domestic enforceability; Plane B is domestic enforcement doctrine. The Standard does not assert that any treaty provision is directly enforceable in a United States court, and it does not displace the domestic enforcement architecture the Guide describes.

II. WHY PROSECUTORIAL MISCONDUCT BEARS ON UNCAT COMPLIANCE

Prosecutorial misconduct strengthens, rather than defeats, the proposition that a formal legal system may possess statutes, rules, and remedies while failing to deliver the prevention, investigation, punishment, and redress the Convention requires. Domestic equivalence to UNCAT is not established merely by the existence of criminal statutes, discovery rules, ethical canons, appellate remedies, and bar discipline. The equivalence question is whether those safeguards actually prevent, expose, correct, and punish official abuse. Repeated ethical violations without meaningful discipline are evidence that formal mechanisms exist while operational protection, remedy, and punishment remain absent.

A. Six ways misconduct affects the analysis

First, it exposes the self-policing problem. Where the official responsible for receiving, preserving, investigating, charging, and documenting a torture or CIDT allegation is also participating in the underlying harm or concealing it, that official cannot provide the prompt and impartial investigation the Convention requires. This is not merely another example of misconduct; it affects the institutional architecture of compliance and requires an explicit conflict and independent-referral rule.

Second, it shows that a declination may itself be unreliable. A purportedly reasoned declination may be tainted by suppressed or mischaracterized evidence, fabricated or incomplete records, retaliatory motive, conflicts of interest, protection of colleagues, or deliberate failure to pursue obvious investigative steps. Only a good-faith, adequately investigated declination deserves ordinary deference as a prosecutorial judgment.

Third, it makes professional ethics part of the equivalence test. Suppression of exculpatory evidence, late disclosure, witness pressure, misleading courts, retaliation, manipulation of expert access, and continued defense of convictions known to be unreliable demonstrate that equivalence cannot be measured by asking only whether a statute exists.

Fourth, it broadens the relevant forms of official harm. Prosecutorial conduct can contribute to torture or CIDT analysis where it causes or prolongs wrongful detention, coercive plea pressure, threats against family members, knowing exposure to dangerous detention conditions, deprivation of necessary medical or disability accommodations, retaliatory prosecution, prolonged uncertainty and severe psychological injury, obstruction of innocence evidence, or punishment for petitioning or seeking accommodation. The correct proposition is not that such conduct is automatically CIDT, but that it must be evaluated under the same fact-specific framework as any other official conduct.

Fifth, it strengthens the need for independent evidence preservation. Where the prosecution office controls the evidence and is itself implicated, the ordinary instruction to preserve evidence of abuse by others is inadequate. A complaint alleging prosecutorial misconduct requires immediate preservation of the prosecution's own records.

Sixth, it may create a false implementation gap by abandoning the execution architecture. The Executive represented, and the Senate accepted in giving advice and consent, that existing federal and state law already covered most UNCAT obligations; Congress then enacted § 2340A before deposit to fill the specific extraterritorial jurisdiction gaps the record identified. A prosecutor who observes that no statute bears the title 'torture' or 'CIDT,' and then declines or documents a gap without first analyzing whether the original execution statutes and later reinforcement statutes can fairly reach the conduct, has not completed the enforcement analysis. The omission matters because the prosecutor is the State Party's officer before the court. An IAJ amicus or other independent civil-society submission may support, evidence, and sharpen the treaty-compliance argument, but it does not replace the prosecutor's duty to plead and preserve the issue where a domestic charge is reasonably available.

III. THE CONTROLLING DISTINCTION: RELEVANCE WITHOUT AUTOMATIC CONVERSION

The central rule of this Standard is that prosecutorial misconduct may be relevant official conduct without automatically constituting torture, CIDT, a criminal conspiracy, obstruction, or a criminal civil-rights offense. Each of those is a distinct legal category with its own elements. A *Brady* violation—the suppression of material favorable evidence—is a domestic constitutional category governed by its own suppression, favorability, and materiality doctrines. A *Giglio* violation—the suppression of impeachment evidence—is governed by the same line. Neither establishes, by its existence, an Article 1 enumerated purpose, Article 16 ill-treatment, the causation of any particular suffering, the requisite knowledge or culpability, or criminal liability under any federal or state statute.

What can be said is narrower and more durable. Knowing suppression or destruction of material evidence; deliberate and unjustified interference with lawful defense access to witnesses, experts, evidence, or testing; retaliatory charging; coercive use of detention, family threats, or charge escalation; knowing presentation or preservation of false evidence; and continued obstruction of material exculpatory, impeachment, forensic, or post-conviction evidence capable of materially undermining confidence in guilt or in the validity of continued detention—each of these may cause, prolong, conceal, or aggravate prohibited suffering, and each must be assessed under the framework set out in Part V.

A. Two scenarios kept analytically distinct

Underlying-case misconduct occurs in a criminal case against a defendant. It may cause or aggravate suffering and may independently violate constitutional, ethical, obstruction, or criminal-law duties. **Review-stage misconduct** occurs when a prosecutor mishandles or obstructs the review of a torture or CIDT allegation. It compromises the State Party's response under Articles 12 and 13 and can transform a deficient investigation into a second institutional failure. The two overlap but are analytically different, and a reader assessing a given allegation should identify which scenario—or both—is present.

B. Execution-architecture abandonment as a distinct review-stage failure

Execution-architecture abandonment occurs when a prosecutor treats torture- or CIDT-relevant conduct as domestically unreachable without first analyzing and, where reasonably available, litigating the pre-existing domestic statutes that formed the United States' asserted implementation architecture at ratification. This is distinct from ordinary declination. It includes cross-sovereign abandonment: a state prosecutor who closes a credible matter as "federal" or "a treaty matter" without testing state vehicles — statutes, retained common-law crimes where preserved, and state constitutional and public-office doctrine — or referring the federal constitutional-crimes pathway, and a federal prosecutor who closes a credible matter as "local" without §§ 241–242 analysis or state-law referral, have each abandoned the combined state–federal execution architecture the ratification record represents. It equally includes closure by referral: recording a referral to the other sovereign and closing without obtaining and recording that sovereign's disposition, and serial re-referral between offices without a coordinated determination, are execution-architecture abandonment in referral form. Referral transfers work, never responsibility; the matter remains the referring office's until a joint disposition record exists. See the IAJ Collaborative Prosecution Framework. A prosecutor may ethically decline where the evidence is insufficient, the elements cannot be proved, fair-warning limits prevent the charge, the statutory text cannot fairly bear the construction, or supervisory authority lawfully forecloses prosecution. But a prosecutor does not complete the UNCAT analysis by saying only that the Convention is non-self-executing or that no statute is titled 'torture' or 'CIDT.' Non-self-execution was accepted on the premise that domestic execution already existed.

The omission becomes legally significant where the prosecutor fails to identify the relevant original execution statutes; fails to distinguish later reinforcement statutes from original execution statutes; fails to analyze whether those statutes can fairly reach the conduct; fails to plead or preserve the UNCAT-consistent construction argument where a charge is reasonably available; or writes a gap memorandum that treats domestic law as unavailable without disclosing that the execution architecture was never tested.

This category must remain disciplined. Execution-architecture abandonment is not automatic criminal liability, not automatic CIDT, and not automatic torture. It is evidence relevant to professional competence, candor, documentation integrity, institutional policy, and Plane A acquiescence. Where combined with concealment, retaliation, falsification, conflict, or coordinated suppression, it may also become evidence relevant to obstruction, civil-rights, conspiracy, or professional-discipline theories.

IV. A DISCIPLINED TAXONOMY OF PROSECUTORIAL MISCONDUCT

The categories below organize the recognized forms of prosecutorial misconduct for issue-spotting and documentation. They are not a legal classification. Four different kinds of item appear in any comprehensive catalogue and must not be conflated: established constitutional or ethical violations; conduct that may or may not be misconduct depending on purpose, materiality, and governing law; structural conditions such as immunity and conviction-based incentives; and psychological mechanisms such as confirmation bias, which are possible explanations rather than findings about any individual. This Standard marks the difference where it matters and treats the catalogue as a research and coding framework, not as authority.

A. Evidence suppression and discovery violations

Established constitutional or ethical violations. Withholding material exculpatory evidence; withholding impeachment evidence regarding police, witnesses, or informants; failing to disclose forensic laboratory error rates, contamination, or analyst misconduct; failing to disclose officer disciplinary or credibility history; withholding witness recantations or statements inconsistent with trial testimony; failing to preserve evidence and then asserting it never existed. These are the most documented and most consequential forms.

Conduct dependent on facts and governing law. The timing and manner of disclosure—including voluminous late production—may or may not be misconduct depending on the governing rules, the materiality of the items, and whether the timing was designed to impede review. The label attaches to the purpose and effect, not to the volume alone.

B. Manipulation of timing and procedure

Weaponizing the calendar can include late disclosures that prevent expert review, rushed trial dates that prevent investigation, delay that exhausts a defendant financially or psychologically, opposition to continuances necessitated by the prosecution's own late disclosures, strategically timed filings that limit response, and superseding charges sought for the purpose of resetting deadlines. Whether any one of these is misconduct depends on the facts, the governing law, and the purpose. Filing late, opposing a continuance, or seeking a superseding indictment is not categorically improper; the analysis turns on justification, materiality, and intent.

C. Witness and expert interference

Coaching witnesses to shape testimony; threatening witnesses with charges for testifying for the defense; offering undisclosed benefits; using informants known to fabricate; discouraging officers from disclosing exculpatory facts; pressuring experts to alter conclusions; and unjustified obstruction of lawful defense access to witnesses or experts. The qualifier matters: not every limitation on access is misconduct, and the impropriety lies in unjustified interference with lawful access, undisclosed inducement, or knowing presentation of unreliable testimony.

D. Charging abuse

Overcharging to coerce pleas; charging conduct not criminal under the statute; duplicative charges to inflate exposure; threatening family members to force cooperation; and retaliatory charges after a defendant asserts rights. Charging discretion is broad, and the line between vigorous and abusive charging depends on probable cause, statutory fit, proportionality, and purpose. Retaliatory charging directed at the assertion of a protected right is the clearest case.

E. Courtroom misconduct

Misstating evidence in argument; vouching for witnesses or expressing personal belief in guilt; introducing inadmissible evidence intending the jury to hear it; misrepresenting the law; and using inflammatory rhetoric designed to prejudice the jury. These corrupt the trial itself and are governed by established doctrine on prosecutorial argument and curative instruction.

F. Reliance on and concealment of police misconduct

Ignoring perjury; using illegally obtained evidence and concealing the illegality; failing to disclose officer misconduct histories; coordinating to shape narratives before evidence is reviewed; and permitting destruction of notes containing exculpatory information. Where such conduct is coordinated across multiple officials with knowledge of severe consequences, it may inform a structural-acquiescence analysis under the Guide—though, as Part V explains, structural acquiescence is evidence bearing on the elements of a conspiracy offense, not an automatic substitute for proof of agreement and intent.

G. Misuse of forensic science

Using unvalidated or discredited methods; pressuring analysts to produce favorable results; failing to disclose error rates or misconduct; presenting law-enforcement-employed experts as neutral; and obstructing defense access to evidence or testing. Forensic misuse is a documented driver of wrongful convictions and is closely tied to the evidence-integrity concerns at the center of this Standard.

H. Plea-stage misconduct

Concealing exculpatory evidence while extracting a plea; misrepresenting the strength of the evidence to induce a plea; conditioning offers on the waiver of rights to appeal or to pursue suppression claims; and using pretrial detention as leverage. Plea bargaining is the least regulated stage, and misconduct there is correspondingly difficult to detect and remedy.

I. Post-conviction misconduct

Opposing testing capable of establishing innocence; misrepresenting the record in appellate or habeas filings; defending convictions obtained through known misconduct rather than correcting them; withholding evidence in collateral proceedings; and asserting procedural default to avoid reaching a substantial innocence claim. Misconduct does not end at conviction, and the duty of candor and disclosure continues.

J. Structural conditions and psychological mechanisms

Absolute civil immunity for in-court advocacy, the rarity of professional discipline, conviction-rate incentives, close institutional relationships, and political pressures are *structural conditions* that enable misconduct; they are not themselves proof that any particular prosecutor acted unethically. Authority bias, confirmation bias, in-group loyalty, moral disengagement, and tunnel vision are *possible mechanisms*, not findings about an individual. This Standard treats both as context for pattern analysis and institutional reform, not as evidence of individual culpability in a particular case.

K. Execution-architecture abandonment and premature gap creation

Execution-architecture abandonment occurs when a prosecutor declines, narrows, or documents a torture or CIDT matter as unreachable without first analyzing whether existing domestic statutes and precedents may fairly be construed consistently with UNCAT, the United States' equivalence assurances, Charming Betsy, jus cogens, fair-warning doctrine, lenity, and ex post facto avoidance. Premature gap creation occurs when the prosecutor documents non-equivalence before testing the execution architecture. The resulting 'gap' may not be a true statutory gap at all; it may be the product of prosecutorial omission — the failure to invoke the statutes the Executive represented, the Senate accepted, and Congress supplemented as the domestic pathway for UNCAT execution.

This is not misconduct merely because the prosecutor declines after a good-faith legal analysis, and not misconduct merely because a court rejects the argument. It becomes misconduct or implementation failure when the prosecutor never performs the analysis, never preserves it, misstates the law as unreachable without presenting the construction question, or documents a gap that exists only because the prosecutor failed to plead and preserve the available anti-impunity argument.

V. THE FACT-SPECIFIC TORTURE AND CIDT FRAMEWORK

Any allegation that prosecutorial conduct caused, prolonged, concealed, or aggravated prohibited suffering must be assessed under the same elements-based framework the Guide applies to all official conduct. The framework attends to the nature, severity, duration, and cumulative effect of the suffering; the prosecutor's knowledge, purpose, and acts; causation; the complainant's vulnerability and practical powerlessness; any legitimate law-enforcement justification and the availability of less harmful alternatives; the requirements of the applicable domestic offense; and the distinction the Convention draws between Article 1 and Article 16.

A. Article 1 and Article 16 remain distinct

Article 16 covers cruel, inhuman, or degrading treatment or punishment that does not amount to torture as defined in Article 1. It does not textually reproduce Article 1's enumerated-purpose element, and conduct that falls short of the Article 1 threshold may still constitute or contribute to Article 16 ill-treatment after fact-specific analysis. The Standard does not collapse the two: describing all relevant misconduct as torture, or importing Article 1's purpose requirement into Article 16, is an analytical error the Guide and this Standard both avoid.

B. Civil immunity is not criminal immunity

The functional-immunity cases—*Imbler v. Pachtman*, *Burns v. Reed*, *Buckley v. Fitzsimmons*, and *Kalina v. Fletcher*—distinguish advocacy conduct from investigative and administrative conduct for the purpose of civil immunity from damages. A prosecutor's entitlement to absolute civil immunity for advocacy conduct does not create criminal immunity, and qualified immunity is not the standard for a criminal prosecution. Neither absolute nor qualified civil immunity is itself a defense to an otherwise valid criminal prosecution. Criminal or disciplinary accountability still requires independent proof of every governing element, the applicable mens rea, and fair warning under the governing standard.

C. Conspiracy requires agreement and intent

Where a conspiracy offense such as 18 U.S.C. § 241 is invoked, parallel institutional conduct, professional solidarity, silence, or structural acquiescence does not by itself establish a criminal conspiracy. The offense requires proof of an agreement and the requisite intent directed toward interference with a federal right. Structural acquiescence is evidence that may bear on the existence of an agreement; it is not a substitute for it. The Guide preserves this distinction through the inferred-agreement authorities, and this Standard preserves it as well.

D. Attribution is layered

Individual misconduct, supervisory failure, an office custom or practice, and institutional State responsibility are distinct levels of attribution. A single ethical violation does not establish a systemic custom. Conversely, repeated similar violations, together with notice, failure to discipline, and concealment, can become evidence of institutional policy, tolerance, or implementation failure relevant to the State Party's compliance on Plane A. This layering tracks the Guide's treatment of municipal-liability doctrine and structural non-equivalence. Evidence of execution-architecture abandonment feeds this layered analysis directly: an office-level pattern of construction-avoidance, after notice, is relevant to the 'consent or acquiescence' limb of the Article 1 analysis and to institutional custom on Plane A.

VI. THE SELF-POLICING PROBLEM: CONFLICT, PRESERVATION, AND INDEPENDENT REVIEW

A distinct structural problem arises where the prosecutor or office assigned to receive, preserve, investigate, charge, or document a torture or CIDT complaint is itself credibly implicated in the underlying conduct, its concealment, retaliation connected to it, or destruction of evidence relating to it. An implicated reviewer cannot supply the impartial assessment the complaint requires, and an implicated supervisory chain should not be the body that closes the matter. The governing question, however, is functional independence—not the physical location of the reviewer.

A. Functional independence is the test

A review conducted within the affected office does not satisfy the Article 12 prompt-and-impartial standard unless the reviewing structure is demonstrably independent of the implicated personnel, chain of command, evidence custodians, and institutional interests. Functional independence may be achieved through an unconflicted internal unit, a specially appointed independent reviewer, a separate regional component, an inspector general, an outside special prosecutor, or another agency with separate supervision. What matters is demonstrable independence from the implicated interests, not whether the reviewer is technically inside or outside the same institution.

B. The conflict presumption

A supervisory chain credibly implicated in the alleged conduct, concealment, retaliation, or evidence handling should be treated as conflicted and should not make the final merits or closure determination without demonstrably independent review. This is a conflict presumption, not an absolute factual conclusion about any individual; it governs who may decide, and on what showing of independence.

C. The escalation threshold

The trigger for conflict screening and independent referral is specific, credible information—not a bare accusation. A disappointed complainant could otherwise disqualify any office merely by alleging misconduct after a declination. The Standard distinguishes a bare accusation, a plausible allegation, a credible and particularized conflict indicator, and information requiring preservation or referral. The specific-credible-information threshold is low enough to protect evidence but high enough to prevent automatic disqualification through unsupported accusation.

D. The minimum operational response

Where specific, credible information indicates implication, the prompt-and-impartial standard requires, at a minimum:

- conflict screening at intake;
- immediate preservation of all potentially relevant prosecution, disclosure, witness, expert, police-prosecutor, scheduling, plea, and post-conviction records within the office's possession, custody, or control, subject to lawful privilege review that does not permit destruction, alteration, or concealment;
- independent referral of the matter outside the implicated chain of command to the extent lawful authority permits, with external referral where a larger department cannot supply functional independence;
- a contemporaneous record of the conflict and the referral outcome.

This is an institutional-impartiality rule about the State Party's compliance architecture under Article 12. It is independent of, and does not presuppose, any finding of personal criminal liability against the implicated prosecutor. The same institutional-impartiality logic governs the execution-architecture analysis: where the allegations implicate the reviewing office itself, the decision not to plead or litigate the UNCAT-consistent construction cannot be made within the implicated chain of command, and the conflict, the referral, and the construction analysis must each be contemporaneously recorded.

VII. DOCUMENTATION INTEGRITY: WHEN THE MEMORANDUM ITSELF IS COMPROMISED

The Guide relies on the reasoned declination and the gap-documentation memorandum as the mechanism by which an otherwise invisible implementation gap becomes part of the State Party's compliance record. Prosecutorial misconduct introduces a hazard the documentation model must confront directly: a written memorandum is not inherently trustworthy. False, incomplete, or self-protective documentation can itself become an instrument of concealment and a second implementation failure.

A gap memorandum is therefore not adequate merely because it exists. It must be assessed for the completeness of the evidence reviewed, disclosure of conflicts, accuracy of the statutory analysis, omitted investigative steps, treatment of contrary evidence, preservation of the record, and whether the author or the supervisory chain was itself implicated in the underlying conduct, its concealment, or evidence handling. The limitations analysis is a recurring failure point and must apply the correct period rather than the default assumption: prosecutions under §§ 241 and 242 may be commenced at any time where the charged offense is punishable by death — as both are where death results — because 18 U.S.C. § 3281 permits indictment at any time for any offense punishable by death; § 2340A prosecutions carry an eight-year period that falls away entirely where the offense resulted in, or created a foreseeable risk of, death or serious bodily injury (18 U.S.C. § 3286(b); United States v. Correa, No. 1:20-cr-00148, ECF No. 182 (D. Colo. Sept. 23, 2024) (order denying motion to dismiss)); and § 249 prosecutions, subject to a seven-year period otherwise, may be commenced at any time where death results (18 U.S.C. § 249(d)). A declination resting on a lapsed limitation period without applying these provisions to the facts is an inaccurate statutory analysis and a false gap. A memorandum prepared by an implicated or materially conflicted office or author is not sufficient on its face, and it must disclose the conflict and the independent-review arrangements made. A limitation period that has lawfully run may close a domestic prosecution on Plane B, but it does not close the UNCAT-compliance matter on Plane A: the Committee against Torture's position is that, on account of the continuous nature of the effects of torture, statutes of limitations should not be applicable (General Comment No. 3, ¶ 40; ¶ 38 lists them among the obstacles to redress under Article 14); a lapsed period is itself recorded as an equivalence-gap datum bearing on the performance of Articles 12 and 14; and the documentation, preservation, and reporting duties of this Standard survive the lapse in full.

A gap memorandum is also incomplete if it fails to state whether the prosecutor performed the execution-architecture and court-confrontation analysis before declaring the conduct unreachable. The memorandum must identify which original execution statutes were considered; which later reinforcement statutes were considered separately; whether the prosecutor pleaded or preserved the argument that existing domestic statutes and precedents must be construed consistently with UNCAT, the United States' equivalence assurances, Charming Betsy, jus cogens, fair-warning doctrine, lenity, and ex post facto avoidance; whether an IAJ amicus or other independent civil-society submission was offered, invited, opposed, ignored, or considered; whether the court accepted, rejected, narrowed, or avoided the construction question; and whether any remaining gap results from statutory impossibility, judicial rejection, fair-warning limits, evidentiary insufficiency, ordinary ethical charging standards, or prosecutorial omission.

VIII. BASELINE CONDUCT NORMS FOR TRUTHFUL AND DILIGENT UNCAT RESPONSE

The 2022 Istanbul Protocol does not address only clinicians and investigators. It states, with specificity, the professional duties of the legal actors through whom a State Party's UNCAT response is performed — prosecutors (¶¶ 138–141, 253–256), judges (¶¶ 135–137, 257), and lawyers (¶¶ 142–144) — and it incorporates the United Nations Guidelines on the Role of Prosecutors as the governing ethical baseline. This Part states the baseline conduct norms a truthful and diligent UNCAT response requires of a prosecuting authority, and identifies, for each norm, the characteristic breach, the Convention provisions the breach implicates, and the domestic professional-responsibility hooks. The norms are invoked on Plane A as the content of the universal obligation and as authoritative professional-ethics guidance; the domestic hooks operate on Plane B. Breach of a norm is assessed under the controlling distinction of Part III: it is relevant official conduct and State-Party compliance evidence without automatic conversion into torture, CIDT, or criminal liability.

A. The baseline norms

Ex officio initiation and prompt examination. A formal complaint is not required. An allegation suffices to engage prompt and impartial examination, and reasonable indications require ex officio investigation even without any complaint. The Committee against Torture has held that it is sufficient for torture to have been alleged for the State Party to be obligated to examine the allegation promptly and impartially, and that even without a complaint the State must investigate ex officio where there are reasonable indications that torture has occurred (2022 Istanbul Protocol, ¶ 15). Upon receiving a complaint, or otherwise learning of an allegation, prosecutors should immediately take measures to ensure a prompt, impartial, effective and gender- and child-sensitive investigation, and should reopen an inadequate investigation or commence a fresh one (¶ 256). Characteristic breach: intake avoidance, formality-based rejection, silent expiration (Part IV; the intake-avoidance failure mode of the companion Guide). Treaty provisions implicated: Articles 12 and 13, extended to CIDT by Article 16. Domestic hooks: office intake and docketing duties; Model Rule 8.4(d).

Due attention to official crime, and charging equal to the evidence. Prosecutors "shall give due attention to the prosecution of crimes committed by public officials, particularly corruption, abuse of power, grave violations of human rights and other crimes recognized by international law" (Guidelines on the Role of Prosecutors, para. 15, quoted at 2022 Istanbul Protocol, ¶¶ 138 and 253), performing an active role in criminal proceedings (Guidelines, para. 11; ¶ 253). Where sufficient evidence exists, prosecutors should institute proceedings and bring charges for torture or ill-treatment or relevant similar offences; where the evidence is insufficient for those charges, they should consider lesser charges or disciplinary referral, and should seek punishment commensurate with gravity, attentive to the rights and views of victims (¶ 256). Characteristic breach: categorical declination of official-abuse matters; strategic undercharging that understates the conduct (Part IV.D); execution-architecture abandonment (Part IV.K). Treaty provisions implicated: Articles 4, 7, 12, and 16. Domestic hooks: Model Rule 3.8; the charging and parity disciplines of the companion Guide. The due-attention duty operates across the combined state–federal execution architecture: closure of a credible domestic matter without the joint enforcement analysis of the IAJ Collaborative Prosecution Framework is a characteristic breach.

The exclusionary duty, with its affirmative accountability component. Prosecutors must refuse to use evidence that they know or believe on reasonable grounds was obtained through torture or ill-treatment, except against those who used such methods; must inform the court of such evidence; and must take all necessary steps to ensure that those responsible are brought to justice (Guidelines, para. 16, quoted at ¶¶ 139 and 254; Convention Article 15). A prosecution must not rest solely on a confession, and proposed evidence must be examined to ascertain whether it was lawfully obtained (¶ 139). To avoid conflicts of interest, the investigation into whether evidence was unlawfully obtained should be conducted by a prosecutor other than the one in charge of the initial criminal investigation (¶ 139, citing E/CN.4/2001/66/Add.2, para. 102). Characteristic breach: tendering or defending tainted statements; silence to the tribunal about known coercion; failure to refer the coercion itself for accountability. Treaty provisions implicated: Articles 15, 12, and 13; knowing use feeds the Article 1 and Article 16 acquiescence analysis. Domestic hooks: Model Rules 3.3 and 3.8; the Napue and suppression lines.

Supervision, prevention, and control of investigative methods. Prosecutors shall ensure that State authorities respect the prohibition: they should give precise instructions against illegal or improper evidence-gathering methods to investigators and staff under their charge and supervise their conduct; conduct regular visits to places of detention and police stations; and require that confessions be taken in the presence of a judge or magistrate (¶ 141, supported by Convention Article 11). They bear a special obligation to take all necessary steps to bring to justice those suspected of torture and ill-treatment (¶ 141). These functions assume a prosecutorial system with supervisory authority over detention, interrogation, and investigative methods; where a United States prosecutor lacks that institutional authority, the norm operates on Plane A as an allocation question — the function belongs to the competent oversight authority, and its absence from every office is itself documented as an institutional-allocation gap. Characteristic breach: reliance on and concealment of police misconduct (Part IV.F); willful blindness to the methods producing the evidence presented. Treaty provisions implicated: Articles 2, 11, 12, and 16. Domestic hooks: Model Rules 5.1 and 5.3 by analogy for supervised staff; supervisory-failure attribution under Part V.D.

Impartiality, objectivity, and non-complicity. Prosecutors must perform their duties fairly, consistently and expeditiously, respect and protect human dignity, and uphold human rights (Guidelines, paras. 4 and 12, quoted at ¶¶ 140 and 254), avoiding discrimination (Guidelines, para. 13 (a)), and must exercise their discretion in a manner that fully upholds the prohibition of torture throughout any legal proceeding, becoming complicit neither in the enabling or commission of torture or ill-treatment nor in impunity for such acts (¶ 253). Characteristic breach: retaliatory charging (Part IV.D); discriminatory declination; merits or closure decisions made within an implicated chain of command (Part VI). Treaty provisions implicated: Articles 1 (consent or acquiescence), 12, 13, and 16. Domestic hooks: Model Rules 3.8 (a) and 8.4 (d); equal-protection doctrine.

Protection of complainants, witnesses, and experts. Throughout proceedings, prosecutors should take all possible measures to ensure the protection of victims and witnesses (¶ 256), in operation of Article 13's second sentence; the protection extends, in the IAJ's application, to the documenting experts without whom the conduct cannot be substantiated, and to the perishable evidence those experts produce: where the infliction is psychological, the failure to preserve the contemporaneous psychological record — affect, the trigger-to-onset interval, and functional impairment — while it remains recoverable, and before the coercive environment is removed and memory fades, is itself a protection and documentation-integrity failure, because Article 1 makes mental suffering co-equal with physical and that evidence is the most perishable in the matter. The method and standards for documenting that harm are stated in the IAJ Psychological Investigation Standard. Characteristic breach: witness and expert interference (Part IV.C); retaliatory prosecution of complainants; disclosure of complainant identity to the implicated agency in advance of protective steps. Treaty provisions implicated: Article 13; Article 16. Domestic hooks: §§ 1512 and 1513 as set out in the companion Guide; protective-order and witness-protection channels.

Truthful documentation and candor. The documentation-integrity requirements of Part VII are the recording face of these norms. A declination or gap memorandum that misstates the statutory analysis, conceals a conflict, omits the execution-architecture and court-confrontation analysis, or is authored within an implicated chain without disclosure is itself a departure from the diligence these norms require, and a second implementation failure. Treaty provisions implicated: Articles 12 and 13 (the examination the record must evidence) and Article 19 (the reporting record the documentation feeds). Domestic hooks: Model Rules 3.3 and 8.4 (c); 18 U.S.C. § 1519 where falsification, destruction, or concealment is present.

Competence and Protocol literacy. Prosecutors exercising the investigative duty should have adequate knowledge of, and apply, the Istanbul Protocol and its Principles (¶ 138), and must be professionally qualified, trained, resourced, independent, and protected for that role (¶ 255). The judicial counterparts — the judge's duty to apply the Protocol in proceedings, to exclude evidence the prosecution cannot show was untainted, and to suspend proceedings where a confession is prima facie the product of torture — are stated at ¶¶ 136–137 and 257, and the lawyer's duties at ¶¶ 142–144; both are addressed operationally in the companion Guide. Characteristic breach: evaluation of torture-specific evidence without Protocol-informed method; failure to externalize medical and psychological assessment to qualified independent experts. Treaty provisions implicated: Articles 10, 12, and 16. Domestic hooks: competence under Model Rule 1.1; office training policy.

B. The Applicable Ethics Regime: State and Federal

The baseline norms of subsection A operate within a layered domestic ethics regime, and the layers differ in coercive force. The binding disciplinary stratum is the Rules of Professional Conduct as adopted in each State. The prosecutor-specific core is Rule 3.8: the probable-cause charging limit of Rule 3.8 (a); the disclosure duty of Rule 3.8 (d), which is broader than the constitutional materiality standard; the extrajudicial-statement limits of Rule 3.8 (f); and, where adopted, the post-conviction new-evidence and innocence duties of Rules 3.8 (g) and (h). Surrounding it stand Rules 3.1, 3.3, 3.4, 4.1, 4.2, 5.1 and 5.3 (supervision of subordinate lawyers and nonlawyer assistants), 8.3, and 8.4. Federal prosecutors are bound to these State rules by statute: under 28 U.S.C. § 530B, an attorney for the Government is subject to the State laws and rules of professional responsibility of the State where the attorney engages in that attorney's duties, implemented by 28 C.F.R. Part 77, and the local rules of the federal district courts independently adopt State rules as standards of court discipline. Federal prosecutors are additionally governed, as executive officers, by the Standards of Ethical Conduct for Employees of the Executive Branch (5 C.F.R. Part 2635), the Department of Justice supplemental standards (5 C.F.R. Part 3801), and the recusal rule for personal and political conflicts (28 C.F.R. § 45.2) — and by the oaths of office (28 U.S.C. § 544; 5 U.S.C. § 3331), with State constitutional and statutory oaths as the counterpart for State prosecutors.

The second stratum is binding internal policy, enforceable institutionally rather than in court. For federal prosecutors, the Justice Manual states the Principles of Federal Prosecution (§ 9-27.000); a disclosure policy that expressly requires disclosure beyond the constitutional and Rule 3.8 (d) minima (§ 9-5.001); the policy governing disclosure of potential impeachment information concerning law-enforcement witnesses (§ 9-5.100); and general standards of conduct (§ 1-4.000), with the Office of Professional Responsibility as the enforcement channel. State counterparts include attorney-general and district-attorney office manuals and, where adopted, formal State prosecution standards; the Connecticut Division of Criminal Justice's published Prosecution Standards, which key each standard expressly to the NDAA National Prosecution Standards, the ABA Criminal Justice Standards, Rules of Professional Conduct 3.8, 8.3 and 8.4, and State statutes, are a working model of the layering this Part describes.

The third stratum is professional standards — hortatory rather than disciplinary, but the benchmarks courts and disciplinary bodies cite when evaluating prosecutorial conduct. The principal instruments are the ABA Criminal Justice Standards for the Prosecution Function (4th ed., adopted 2015), including the minister-of-justice architecture, the recognition that the duty to defend a conviction is not absolute (Standard 3-8.1), and the duties on new or newly discovered evidence (Standard 3-8.3); the ABA Standards on Prosecutorial Investigations (3d ed. 2014); the National District Attorneys Association's National Prosecution Standards (4th ed., January 2023); and ABA Formal Opinion 09-454, which construes Rule 3.8 (d) as a disclosure duty independent of constitutional materiality.

The fourth stratum is doctrinal: the conduct baselines the Constitution itself enforces. Berger v. United States, 295 U.S. 78, 88 (1935), states the office's governing interest — not that it shall win a case, but that justice shall be done. The disclosure-and-candor line of Brady v. Maryland, Giglio v. United States, Napue v. Illinois, and Kyles v. Whitley, and the vindictive-prosecution limits of Blackledge v. Perry and Bordenkircher v. Hayes, convert core departures from the baseline into constitutional error.

The international stratum supplies the Plane A content the domestic strata implement: the United Nations Guidelines on the Role of Prosecutors (1990); the International Association of Prosecutors' Standards of Professional Responsibility and Statement of the Essential Duties and Rights of Prosecutors (1999) — annexed to Commission on Crime Prevention and Criminal Justice resolution 17/2 (2008), which recognized the IAP Standards as complementary to the Guidelines and invited Member States to encourage their prosecution services to take them into consideration when reviewing or developing rules for prosecutorial conduct; the UNODC–IAP guide, The Status and Role of Prosecutors (2014); the 2022 Istanbul Protocol (¶¶ 138–141, 253–256); Human Rights Council resolution 35/12; and the Special Rapporteur authorities cited in the companion Guide. These are invoked as the content of the universal obligation and as authoritative professional-ethics guidance, not as directly enforceable domestic law. Two boundary clarifications complete the map. The Bangalore Principles of Judicial Conduct (2002), with the 2007 UNODC Commentary, are the judicial counterpart — they govern judges, not prosecutors — and are addressed in the companion Guide's judicial-conduct treatment; and regional instruments such as the Council of Europe's Budapest Guidelines (2005) inform comparative context only and impose no obligation on United States prosecutors. For every norm in subsection A, the enforceable hook is located within this regime — the State rule, binding on federal prosecutors through § 530B; the internal policy; the professional standard; and the doctrinal baseline, in that order of coercive force.

C. How breach of the baseline bears on Convention compliance

The mapping is functional rather than automatic. Where the prosecutor is the competent domestic authority, or part of the competent response chain, through which the United States performs Articles 12 and 13 for the matter at issue, departure from the baseline may constitute or evidence non-performance of the implicated provisions, depending on function, jurisdiction, knowledge, and effect. In that setting, a departure from the baseline is not merely an ethics matter with incidental treaty relevance: intake avoidance and silent declination leave the Article 12 examination unperformed; use of or silence about coerced evidence breaches Article 15 and the candor the examination requires; failure to instruct and supervise investigative staff undermines the Article 2 and Article 11 preventive architecture; retaliation and non-protection defeat Article 13; false or incomplete documentation corrupts the Article 19 reporting record; and a sustained, noticed pattern of departure feeds the "consent or acquiescence" analysis under Article 1 and the institutional-custom attribution of Part V.D. Individual criminal exposure remains governed by the independent elements of the applicable domestic offenses, exactly as Part III and Part V require. What the baseline supplies is the standard of truthful and diligent response against which conduct is measured — and against which its documentation, under Part VII, must be candid. And because domestic performance is joint, no gap conclusion is complete when reached by one sovereign's office alone: the combined state–federal architecture must have been tested, or its testing referred and recorded, before departure from the baseline is assessed. The referral, disposition-tracking, and joint-record duties are administrative and supervisory functions: they are not advocacy before any tribunal, and their breach is assessed on the administrative side of the function ledger.

IX. ALIGNMENT WITH INTERNATIONAL STANDARDS

The propositions in this Standard align, on Plane A, with several international instruments that speak to the role of prosecutors and to fair-trial guarantees. These instruments are invoked as the content of the universal obligation, not as directly enforceable domestic law, and the alignment is interpretive rather than adjudicative.

A. Equality of arms

ICCPR Article 14 guarantees a fair hearing and, in its specific guarantees, adequate time and facilities for the preparation of a defense. A system in which the prosecution exploits superior access to evidence, institutional relationships with police, and procedural advantages to defeat a defense is in tension with the equality-of-arms principle that fair-trial guarantees express. Full disclosure, adequate time and facilities, and independent access to forensic capacity are the corresponding State obligations.

B. Freedom from coercion

ICCPR Article 14 protects against being compelled to confess guilt. Coercive plea pressure, threats against family members, and the use of pretrial detention purely as leverage stand in tension with that protection. The UN Guidelines on the Role of Prosecutors and the UN Basic Principles on the Role of Lawyers express the related expectation that prosecutors perform their functions fairly, consistently, and with respect for human dignity.

C. Investigation, remedy, and accountability

UNCAT Articles 12, 13, and 14 require prompt and impartial investigation, the right to complain without retaliation, and redress for victims. Where prosecutorial misconduct defeats investigation, punishes complaint, or forecloses remedy, it implicates each of these obligations. The State Party, not the individual prosecutor, is the respondent in the treaty-body and special-procedures mechanisms; individual accountability is a separate, concurrent question governed by domestic criminal, civil, and disciplinary law.

X. SOURCE-STATUS MARKER AND CORPUS INTEGRATION

This Standard records institutional positions reached by independent IAJ analysis. The authorities it cites support those positions; they do not decide them, and no United States court has adopted the IAJ's institutional conclusions as holdings. The Standard is persuasive on the content of the universal obligation under Plane A; it is not adjudicatively binding on any domestic court under Plane B.

The Standard is a companion to, and is governed by the same doctrinal commitments as, the IAJ Prosecutor's Guide: the Convention's prohibition is not confined to detention, custody, interrogation, or imprisonment settings; the distinction between Article 1 torture and Article 16 ill-treatment is maintained throughout; State responsibility and individual responsibility are concurrent rather than alternative; and the Vienna Convention on the Law of Treaties is invoked as customary international law, the United States not being a party. Operational application of these positions in a prosecutorial setting is governed by the Guide, in particular its treatment of direct prosecutorial conduct, intake avoidance, and the mandatory gap-documentation memorandum. This Standard also adopts the execution-architecture rule of A Guide to Domestic Criminal Enforcement of Torture and Cruel, Inhuman, or Degrading Treatment in the United States: the prosecutor may document a true implementation gap, but may not create one by abandoning the statutes and state-law vehicles the United States represented as sufficient when UNCAT was ratified. Failure to perform that analysis does not automatically create personal criminal liability, but it is relevant to professional competence, candor, documentation integrity, institutional policy, and the State Party's Plane A compliance record.

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