
.....Chapter XVI
**MONITORING DURING
PERIODS OF ARMED
CONFLICT**

Key concepts

Some human rights obligations, including the duty to avoid arbitrary deprivations of life, torture, slavery and discrimination, are not subject to derogation during periods of armed conflict.

Human rights officers should be aware of the various levels of applicability of international human rights and humanitarian law — and the protection they offer — based on the level and nature of the conflict.

Common Article 3 to the Geneva Conventions provides “fundamental principles of humanitarian law,” which deal explicitly with non-international armed conflicts, but which have now been recognized as constituting a minimum standard applicable in all circumstances, including international armed conflicts.

If mandated to do so, there are several basic principles in monitoring and contacting armed opposition groups, which a UN human rights field operation should consider:

- | *Avoid giving recognition to armed opposition groups;*
- | *Be transparent in talking with the Government and opposition groups;*
- | *Preserve its impartiality;*
- | *Assess serious security concerns in making contacts;*
- | *Avoid interfering with other humanitarian organizations;*
- | *Become aware of who can speak for or influence non-State actors;*
- | *Explain its mandate and its reasons for wishing to keep in touch;*
- | *Engage in broadly based human rights promotion activities;*
- | *Determine what arguments will persuade armed opposition groups;*
- | *Be aware of inherent conflicts in monitoring and other efforts; and*
- | *Mediate by keeping lines of communication open between the parties.*

A. Introduction¹

1. Frequently, international armed conflict, civil wars, and other internal conflicts are the occasion for and consequence of State fragmentation; the erosion of civil society; the loss of respect for both local law and international standards; the erosion of traditional values and kinship ties caused by a breakdown of community structures; loss of respect and effectiveness of traditional authorities and the legal structure including the judicial system; grave humanitarian crises which cause massive suffering; devastating deprivation of food, clean water, health services, education and economic resources; forced dislocation of large numbers of people; restrictions on travel; destruction of roads, bridges, markets, schools and infrastructure; the rise of sometimes several competing armed opposition groups; pervasive human rights abuses by both government forces and non-State entities; a general culture of violence; and the use of violence against civilians, prisoners, human rights monitors and humanitarian staff as a deliberate tactic of war or because they are sometimes perceived to assist one side or another and even seen to prolong the conflict.

2. Human rights field operations may operate in country situations characterized by different levels of conflict and violence. This chapter deals with three problems arising in this context. *First*, in order to gather and assess facts HROs **must be aware of the human rights and humanitarian rules and principles** which are **applicable** to different kinds of armed conflict. *Second*, in order to work effectively and with credibility against human rights abuses, officers must be able to gather and assess the relevant facts. **Armed conflict situations may hinder monitoring work** and thus impair the officers' ability to respond to human rights violations during periods of armed conflict. *Third*, if its mandate indicates that a human rights field operation should undertake **to monitor the activities of and make contact with armed opposition groups**; such efforts require skills and approaches which are somewhat different from monitoring and contacting governments. This chapter suggests several *basic principles for such work with regard to armed opposition groups*.

B. Determining the existence and classification of an armed conflict

1. Human rights and humanitarian law in periods of armed conflict

3. **Both human rights and humanitarian law apply to periods of armed conflict.** As discussed in detail in **Chapter III: "Applicable International Human**

¹For a more detailed examination of this topic, see David Weissbrodt, "The Role of International Organizations in the Implementation of Human Rights and Humanitarian Law in Situations of Armed Conflict", 21 *Vanderbilt Journal of Transnational Law* 313 (1988).

Rights and Humanitarian Law: The Framework”, Article 4 of the Covenant on Civil and Political Rights allows governments to derogate from their obligations under the Covenant during periods of public emergency which threaten the life of the nation and the existence of which is officially proclaimed, but only to the extent strictly required by the exigencies of the situation. In addition, **some human rights obligations are not derogable at any time**, including the duty to comply with other obligations under international law (*including the Geneva Conventions and Protocols*) and to avoid arbitrary deprivation of life, torture, slavery, freedom of opinion and discrimination on the ground of race, colour, sex, language, religion or social origin.² **Hence, many very fundamental human rights norms apply during periods of armed conflict.**

4. Nonetheless, *international humanitarian law is often more persuasive during wartime because it was specifically designed to limit human rights violations during periods of armed conflict against protected persons*, such as soldiers who are wounded or otherwise *hors de combat*, and against the civilian population. Also, military officers are more often trained to respect humanitarian law, which they often call “laws of war.” Moreover, humanitarian law clearly applies to all sides of an armed conflict and thus gives the parties a sense of fairness in its application. Relatedly, the parties can often see the benefit in obeying humanitarian law, so that the other side will sense a reciprocal obligation to avoid violations. In addition, the *Geneva Conventions of 1949 and the two additional protocols of 1977*, which form the core of humanitarian law, have been more *widely ratified* than most human rights treaties.

2. Categories of armed conflict

5. International humanitarian law distinguishes four types of armed conflicts with different rules and instruments applicable to each:

- (1) **international armed conflict** to which the four Geneva Conventions of 1949, the Additional Protocol I of 1977, the Hague rules and other legal principles apply;
- (2) **international armed conflicts amounting to wars of national liberation** which are principally defined by and made subject to *Additional Protocol I* of 1977;
- (3) **non-international armed conflicts** which are subjected to the regulation of **Common Article 3** in the four Geneva Conventions, and to some customary norms; and
- (4) **non-international armed conflicts** which are narrowly defined and regulated by **Additional Protocol II** of 1977.

6. For a more detailed examination of international humanitarian law, see **Chapter III: “Applicable International Human Rights and Humanitarian Law: The Framework”** and **Chapter XI: “Monitoring and Protecting the Human Rights of Returnees and Internally Displaced Persons (IDPs)”**.

²The prohibition of imprisonment on the ground of inability to fulfil a contractual obligation and the right to recognition as a person before the law are also non-derogable rights.

7. One of the difficulties of monitoring as to human rights violations during periods of armed conflict relates to the various categories of armed conflict. HROs do not normally collect information about the sort of facts necessary to determine the existence or non-existence of an armed conflict. Yet the *application of humanitarian law hinges on the characterization of the armed conflict*. The human rights operation (including particularly its legal office) must distinguish between international armed conflicts, wars of national liberation, non-international armed conflicts under Common Article 3 of the Geneva Conventions, non-international armed conflicts under Additional Protocol II, and other situations. In trying to apply humanitarian law to human rights violations occurring during the above described situations, the human rights field operation will have to make an **internal assessment** about the kind of conflict going on in the country, in order to be able **to refer to the appropriate body of international law** in its monitoring and reporting functions. It is important to note, in this regard, that levels of conflict may change as the situation evolves. **It is, however, not the job of the human rights operation to make public and final determinations about the kind of conflict occurring in a certain country.**

a. *International armed conflict*

8. In order to classify the type of armed conflict, human rights operation should conduct a careful analysis. The human rights operation may begin by *reviewing the international humanitarian and/or human rights law instruments ratified* by and applicable to the country or countries. Next, the human rights operation should determine whether an **international armed conflict** exists. The authoritative ICRC commentary on the Geneva Conventions defines international armed conflict as **any “difference arising between two states and leading to the intervention of members of the armed forces... even if one of the Parties denies the existence of a state of war. It makes no difference how long the conflict lasts, or... the number of victims.”**³

9. Furthermore, **Additional Protocol I to the four Geneva Conventions** adds that international armed conflicts **include:**

armed conflicts in which peoples are **fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination**, as enshrined in the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations.

b. *Non-international armed conflict*

10. **Common Article 3 to the Geneva Conventions** provides “fundamental principles of humanitarian law,” which deal explicitly with **non-international armed conflicts**.⁴ Common Article 3 states,

³Jean Pictet, *Commentary on the Geneva Conventions of 12 August 1949* at 28 (1960).

⁴These “fundamental principles of humanitarian law” have *now been recognized as constituting a minimum standard applicable in all circumstances, including international armed conflicts*. See Rosemary Abi-Saab, “The “General Principles” of humanitarian law according to the International Court of Justice”, 259 *International Review of the Red Cross* 367 (July-August 1987). Indeed, the minimum standard established by Common Article 3 is intended to be applicable in all circumstances and is independent of “the more elaborate rules which are also to apply to international conflicts.” See *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, I.C.J. Reports 1986, para. 218.

“In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, **each Party to the conflict** shall be bound to **apply, as a minimum**, the following provisions:

(1) **Persons taking no active part in the hostilities** [...] shall in all circumstances be **treated humanely, without any adverse distinction** founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the **following acts are and shall remain prohibited at any time** and in any place whatsoever with respect to the above-mentioned persons:

(a) **violence to life and person**, in particular murder of all kinds, mutilation, cruel treatment and torture;

(b) **taking of hostages**;

(c) **outrages upon personal dignity**, in particular humiliating and degrading treatment;

(d) 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.

(2) **The wounded and sick shall be collected and cared for** [...].”

11. It is important to note that Common Article 3 establishes **legal responsibilities** not only for the Government forces, but also for **non-State actors engaged in the armed conflict**.

12. Common Article 3 does not provide a definition of “non-international armed conflict”. **Additional Protocol II**, however, clarifies at its article 1 that the Protocol applies to armed conflicts which take place in the territory of a Party **between its armed forces and dissident armed forces** or other organized armed groups which: (1) are under **responsible command**; (2) exercise **control over part of its territory**; (3) are able to carry out **sustained and concerted military operations** and to implement the Protocol.

13. It is extremely important to note that the Protocol “**does not apply to situations of internal disturbances and tensions**, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflict”. In all such situations, **human rights law continues to be the only applicable body of international law**.

14. Therefore, in determining whether a situation fits the criteria for non-international armed conflict, several factors should be considered, including whether the insurgents possess an organized military force, an authority responsible for its conduct, and the means of respecting humanitarian law. In other words, how many fighters are the insurgents fielding and do they have a command structure? Are the insurgents acting within a determinate territory and with a unified strategy? Are they acting like a Government?

15. In addition, the human rights operation may want to consider whether the *de jure* Government has been obliged to deploy regular military forces against the insurgents. Furthermore, have the insurgents been recognized by the *de jure* Government as belligerents? Has the United Nations recognized the conflict as a threat to international peace and security?⁵

16. Moreover, *governments are often reluctant to accept the characterization of a conflict as non-international* because they are concerned that there might be some implied recognition of the belligerents, even though **Common Article 3 and Protocol II clearly indicate that the application of those provisions should not affect the legal status of the parties.**

17. Once the human rights operation has determined what law applies or that it will rely upon the very basic standards in Common Article 3 and non-derogable human rights, there remains the application of the specific provisions of human rights and humanitarian law to the situation at hand. For example, HROs initially and later the human rights operation may need to determine whether particular deaths occurred during an armed conflict between combatants or were arbitrary killings, for example, of civilians. In this regard, the HRO may wish to refer to **Chapter IV-B: “Right not to be arbitrarily deprived of life”**. For ease of reference, the chart reproduced in **Chapter III: “Applicable International Human Rights and Humanitarian Law: The Framework”** on the applicability of international human rights and humanitarian law at various levels of conflict is also reproduced here on the next page.

C. Factors affecting monitoring in periods of armed conflict

18. There are several factors which ordinarily affect an HRO’s ability to gather information from any particular country on human rights violations.⁶ Situations of armed conflict may have a significant impact upon several of these factors.

a. Whether there exists a general climate of fear or whether an individual can report a violation without inordinate risk of reprisal

19. *Armed conflict and internal strife will certainly increase the level of fear which exists in a society and make more individuals afraid of reporting human rights violations.* As violence increases the fear of arbitrary detention or killing makes it less likely that information will be communicated. Indeed, information may be considered by the parties to the conflict as defence secrets or security matters, so that the release of information may conceivably be viewed as espionage.

⁵For an example of how these factors have been applied to an armed conflict not of an international character in the Philippines, see International Commission of Jurists, *The Failed Promise: Human Rights in the Philippines Since the Revolution of 1986* 144-47 (1991).

⁶Most of these factors were identified by Stefanie Grant in the testimony she prepared for Hearing on Africa: Human Rights Problems before two subcommittees of the U.S. House Committee on Foreign Affairs, October 31, 1979.

Applicability of Human Rights and Humanitarian Law⁷

Situation	Applicable Law
<p>1. International Armed Conflict</p> <p>Including wars between States, and against colonial domination, alien occupation, racist regimes, in exercise of the right to self-determination.</p>	<p>Four Geneva Conventions of 1949</p> <p>(1) Wounded and sick in the field (2) Shipwrecked (3) Prisoners of War (4) Civilian Persons (under occupation)</p> <p>Additional Protocol I of 1977</p> <p>Other human rights provisions (insofar as non-derogable or no emergency declared)</p>
<p>2. Non-International Armed Conflict</p> <p>Civil war or other situation in which organized armed forces, under responsible command, exercise such control over part of the territory so as to permit sustained and concerted military operations and to implement humanitarian law.</p>	<p>Common Article 3 of the Geneva Conventions (applies to Government and armed opposition force)</p> <p>Additional Protocol II of 1977 (more restrictive field of application)</p> <p>Other human rights provisions (insofar as non-derogable or no emergency declared)</p>
<p>3. State of Emergency</p> <p>Disturbances, riots, isolated and sporadic acts of violence, and other public emergency which threaten the life of the nation, in which measures normally compatible with the Constitution and laws are inadequate to address the situation.</p> <p>State of emergency must be officially declared</p>	<p>All human rights, with the following exceptions:</p> <ul style="list-style-type: none"> 1 Derogations from certain rights may be permissible to the extent strictly required by the exigencies of the situation, and only if not inconsistent with other requirements under international law (including Geneva Conventions and Protocols). 1 No discrimination solely on the basis of race, colour, sex, language, religion, or social origin. 1 No derogation is permissible with regard to arbitrary deprivation of life, torture, slavery, or imprisonment for failure to fulfil a contractual obligation.
<p>4. Other Internal Tensions</p> <p>Disturbances, riots, and isolated acts of violence which do not qualify as public emergency threatening the life of the nation.</p> <p>No state of emergency declared</p>	<p>All human rights (but as to each right, see any relevant limitation. Rights can be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others, and of meeting the just requirements of morality, public order and the general welfare in a democratic society).</p>
<p>5. Normal Situations</p>	<p>All human rights (but as to each right, see any relevant limitation. Rights can be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others, and of meeting the just requirements of morality, public order and the general welfare in a democratic society).</p>

⁷Standard OHCHR Training Packages for Police and for Peace-keepers.

b. Whether there exists a popular awareness of human rights norms and whether there exists an expectation that basic rights should not be violated

20. With armed conflict and internal strife often comes a breakdown of legal constraints on violence and a decrease in the expectation that anything can be done about human rights violations.

c. Whether there exists an independent judiciary which can respond to reports of human rights violations from an independent bar

21. Court proceedings and lawyers are ordinarily a significant source of information about human rights violations. An increase in the general level of lawlessness may adversely affect the independence of the legal profession.

d. Whether there exist domestic organizations which concern themselves with human rights

22. Domestic organizations, which ordinarily provide information, may become the subject of Government opposition and/or repression such that they are unable to function, gather information, and/or communicate it. Or such organizations may become so involved in the conflict that their information becomes suspect.

e. Whether the local media can report human rights matters freely

23. *Press censorship ordinarily increases during wartime.* At the same time the war may attract foreign journalists. The presence of international television coverage may have a distorting effect on the conduct of the parties and the possibility of engaging in human rights monitoring.

f. Whether human rights information can be regarded as reliable

24. Human rights data can become suspect and/or less available because of its use as propaganda during periods of armed conflict or internal strife. For example, Amnesty International's 1984 report of El Salvador observed, "The civil conflict also creates a context where allegations as to responsibility for violent deaths may also be expected to be manipulated by all sides for political ends."⁸

25. Furthermore, there is a considerable *risk that much of the information gathered during periods of armed conflict may have been filtered through one party or another.* Indeed, that party may have been publicizing the same information through other channels, such as the media. In such circumstances the credibility of the information may be doubted and may be seen as war propaganda. In the absence of the HRO's own authoritative and independent inquiries, the HRO's role might be reduced to that of a "rubber stamp" or supporter for one party's propaganda campaign.⁹

⁸Amnesty International, *Extrajudicial Executions in El Salvador*, AI Index: AMR 29/14/84, at 15 (1984). Americas Watch apparently encountered similar difficulties in assessing evidence with regard to human rights violations in Nicaragua. Americas Watch, *Human Rights in Nicaragua 1985-1986* (1986).

⁹See the problems discussed in Americas Watch, *Managing the Facts, How the Administration Deals with Reports of Human Rights Abuses in El Salvador* (1985).

g. Whether the common language is easily understood by foreigners so that information about human rights violations can be communicated

26. This factor will not be significantly affected by armed conflict; but if the language of the country is not ordinarily understood by foreigners such that the regular flow of information is feeble, armed conflict will diminish the information flow even further.

h. Whether there exists a communication infrastructure (e.g., telephone, letters, fax, Internet, business travel, etc.) linking the country to the outside world

27. Normal means of communication may become difficult during periods of armed conflict and thus reduce sources of useful information. With fewer sources of information the HRO cannot easily cross-check material and assure reliability.

i. Whether there exists a substantial refugee or expatriate community with access to human rights information and to human rights organizations abroad

28. Wars ordinarily increase the flow of refugees, but such refugees may not have contact with HROs depending upon access to refugee camps for the officers — possibly located in the source country rather than in the country where the camps are found. See **Chapter X: “Monitoring and Protecting the Human Rights of Refugees and/or Internally Displaced Persons Living in Camps”**.

j. Whether there is a possibility of mounting monitoring on-site activities or to places where refugees may be found

29. During periods of armed conflict it may be difficult to gain *access to areas of active conflict*. Travel in some areas may be hazardous without Government or opposition group assistance, which may in turn undermine the credibility of the monitoring exercise.

30. Despite all the difficulties, human rights monitoring is possible during armed conflict situations — particularly if a more activist fact-gathering approach is used. Indeed, in some cases armed conflicts may make monitoring easier in drawing world attention to the situation. While specific information on the events in areas of conflict has been impeded by the fighting, the disruptions of war, and by the repression of domestic human rights monitoring organizations, the increased level of international attention has to some extent compensated for these impediments.

D. Monitoring human rights abuses by and contacting armed opposition groups

31. As will be discussed in **Part Four: “Following-Up and Reporting”**, once an HRO has gathered and to some extent verified information, it may be necessary to contact the authority responsible. Chapter V discusses the need to understand the structure of the Government and the appropriate officials who might be contacted about various problems. In dealing with armed opposition groups, however, such follow-up is considerably more difficult.

1. Avoiding giving recognition to armed opposition groups

32. With regard to contacting a Government official, it should already be clear that the Government has ratified or otherwise accepted certain human rights norms and is responsible for ensuring and protecting the human rights of individuals within its territory or under its jurisdiction. In *contacting an armed opposition group*, however, it is not only unclear who to contact, but also it may be difficult to ascertain their **legal responsibility or the legal consequences of making contact**. Nonetheless, one can draw from the experience of past human rights field operations, the International Committee of the Red Cross, the UNHCR, UNICEF, and various non-governmental organizations some basic principles which might be useful for the leadership of human rights field operations to consider in pursuing such follow-up activities.

33. One can infer *one basic principle* from Common Article 3 of the Geneva Conventions, which states that its application “shall not affect the legal status of the Parties to the conflict.” In other words, it should be made **clear that monitoring and contacting armed opposition groups would not give them a greater international status or official recognition**.

34. Even if the human rights operation follows and refers to Common Article 3 in not recognizing non-State entities, the entities may nonetheless claim that their relations with the UN human rights operation, the ICRC or other humanitarian organizations give them some form of “recognition”. The human rights operation needs to anticipate this claim, seek to avoid giving visible support to the claim, and refer regularly to the non-recognition approach of Common Article 3, but must be aware that the non-State actors may nonetheless make the claim of UN “recognition”.

35. Although field operations should not “recognize” non-State entities, they may need to “acknowledge” their existence in order to contact them, if they meet criteria based upon the provisions of humanitarian law. For example, based on humanitarian law and practice, UNICEF¹⁰ has apparently developed a number of factors for deciding

¹⁰This paragraph and other portions of the present section are principally based on Iain Levine, *Promoting humanitarian principles: the southern Sudan experience* (1997), reflecting the experience of UNICEF, as well as interviews with regard to the experience of the ICRC, the UNHCR, the Friends World Committee for Consultation, and others.

whether to establish working arrangements for the purpose of delivering some forms of humanitarian assistance in Sudan:

- ✓ the group must have independent control of territory and population;
- ✓ it must have a recognized structure;
- ✓ it must have a political agenda and objectives;
- ✓ it must have a proper humanitarian wing;
- ✓ this humanitarian wing or entity must make a clear commitment to some form of basic humanitarian ground rules with UNICEF and the related NGO assistance community;
- ✓ this humanitarian wing should demonstrate the capacity to manage programmes with staff who can carry out these activities.

36. Such factors may not be necessary for delivering life-saving humanitarian assistance as distinguished from the other kinds of humanitarian assistance and relationships which UNICEF pursued in Sudan. Also, such factors may not be as necessary for human rights field operations as they were for UNICEF, because the operational needs of a humanitarian operation to deliver assistance are different from the monitoring and follow-up activities of a human rights field operation. Indeed, *human rights field operations should be in touch with all sectors of the society, including armed opposition groups*, churches, other religious bodies, local communities groups, women’s leaders and others to seek respect for human rights.

2. Transparency

37. A *second*, related, and extremely *important principle* would be that of **transparency**. *Both the Government and armed opposition groups should be aware that the human rights field operation is having discussions with each side and that the field operation is saying pretty much the same thing to both*. Of course, the UN human rights field operation may have different concerns as to the conduct of each side in a conflict, so that transparency does not require that the field operation express precisely the same concerns to each side. Also, transparency does not imply that the field operation ignore security concerns about contacting armed opposition leaders or other responsible representatives. In seeking to establish discussions, the field operation should be aware that they are likely to be subjected to surveillance and take precautions for their own safety — as well as to avoid jeopardizing the safety or betraying the whereabouts of such responsible persons.

3. Preserving impartiality

38. *Third*, the concerns of the human rights field operation may be different with regard to the Government and armed opposition groups, but the human rights field operation should be perceived by each to be **impartial**. Sometimes this principle is characterized as neutrality. While it is correct that the human rights field operation should not be seen by any party as preferring their side or the other side, the field operation should always make clear that it is committed to the impartial protection of human rights in all circumstances. It should insist that all sides at least comply with the “fundamental general principles of humanitarian law” enunciated in Common Article 3

and the minimum standards of non-derogable rights. The UN human rights field operation should reserve the right to express concerns about the conduct of each side without being accused of breaching neutrality. Hence, the term *impartiality* is preferable to neutrality, although both ideas focus on similar objectives.

4. Assessing security concerns

39. *Fourth*, even if a UN human rights field operation can avoid giving formal recognition to an armed opposition group, can be transparent in its communications with the Government and the opposition group, and can preserve its impartiality, there are **serious security concerns** in pursuing contacts with armed opposition groups. These security concerns must be carefully assessed before undertaking contacts.

5. Avoiding interference with other humanitarian organizations

40. *Fifth*, the UN human rights field operation should be aware of the work of the International Committee of the Red Cross and other humanitarian organizations in the field which are likely to have far more experience in dealing with armed opposition groups. The UN human rights field operation **should not interfere with or otherwise obstruct ongoing discussions with other experienced humanitarian organizations**.

6. Understanding the structure of non-State actors

41. *Sixth*, in order to communicate the concerns of the human rights field operation, it is necessary for the operation to become *aware of who can speak for or have influence with the non-State actor*. In many contexts an armed opposition group has established a spokesperson or representative outside the area of conflict or even outside the country who can represent the non-State actor, its humanitarian wing or its political presence. For example, opposition groups may have the support — covert or otherwise — of governments, as occurred in the case of UNITA in Angola or the Nicaraguan Contras.¹¹ Similarly opposition movements may have their own humanitarian wings to provide an acceptable, caring face to the outside world and represent a legitimate channel for humanitarian assistance.¹² Such representatives may not, however, have sufficient influence with the leadership of the armed opposition group. Just as with complex governmental structures, it is **necessary to develop an understanding of the structure of any non-State actor and who might be appropriately contacted** to identify and reach responsible persons who can influence their human rights conduct without placing those individuals at undue risk.

¹¹*Id.*

¹²*Id.*

7. Explaining the mandates and objectives

42. *Seventh*, once contact has been initiated, it will be necessary for the **human rights field operation to explain its mandate and its reasons for wishing to keep in touch** with the non-State actor. While such an explanation of the mandate would be routine with regard to contacting Government officials, it is far more critical to overcome suspicions and misunderstandings on the part of opposition groups. Since the human rights field operation has already been working for some time with the Government and probably has a working relationship with many Government officials, the opposition group may perceive the UN field operation as somehow connected with the Government. The leadership of the opposition group will need to be reassured about the impartiality and transparency of the human rights field operation.

8. Engaging in promotion activities

43. *Eighth*, in order to develop contacts with opposition groups and to explain the mandate of the field operation, as well as to achieve its basic human rights objectives, the field operation may need to **engage in broadly based human rights promotion activities**. The ICRC often undertakes public education and media coverage about the Red Cross symbol and the need for general respect of its humanitarian meaning so that everyone will recognize Red Cross staff and activities. The ICRC also broadly disseminates information about humanitarian principles and the need to respect them. UNICEF in southern Sudan developed a dissemination programme on humanitarian law and the Convention on the Rights of the Child particularly for influential individuals — such as military, civilian and humanitarian officials, religious leaders; women leaders; Sudanese NGOs; traditional chiefs and elders; and the staff of the other humanitarian agencies.¹³ UNICEF found, for example, that when talking about the recruitment of children into the military, it was important to tell both the military commanders and the parents of the children *together* that such recruitment was not allowed under the Convention on the Rights of the Child. The UNICEF dissemination activities reached more than 3,500 people in 35 different locations. UNICEF found it useful to understand and refer to traditional cultural values as largely consistent with humanitarian principles. UNICEF also learned that focusing on the rights of children was an effective way of disseminating human rights and humanitarian law.

9. Determining persuasive arguments

44. *Ninth*, armed opposition groups may differ considerably with regard to the **sorts of argumentation that may encourage them to keep in contact with the human rights field operation**. Some armed opposition groups see themselves as representing a clear political alternative to the present Government, such that they are seeking governmental power and responsibility. It should be relatively easy to persuade such politically ambitious opposition groups that it is in their long-term and short-term interest to respect the norms of human rights and humanitarian law. They should be

¹³*Id.*

persuaded by traditional arguments about how they **cannot aspire to be considered as part of the international community unless they follow some basic human/humanitarian principles**. UNICEF has even engaged in a process in southern Sudan of negotiating *Ground Rules* with the principal armed opposition groups by which the groups make formal and written commitments to certain treaties, though these commitments would not be recognized in any international context.¹⁴ A copy of the UNICEF/Southern Sudan Ground Rules is reproduced in **Appendix 1**. The Ground Rules not only committed the armed opposition groups to comply with humanitarian law and the Convention on the Rights of the Child, but they also gave the humanitarian assistance staff sufficient assurances to pursue their work. In this way, UNICEF was able to help protect human rights and at the same time curb opposition group efforts to exploit humanitarian assistance for their own benefit, manipulate population movements, deny access, divert or loot supplies, tax the population or aid agencies through demands for bribes, exact checkpoint payments, threaten staff, etc. The Ground Rules provide a mechanism for resolving concerns about violations by opposition group leaders without publicity, but do not specify any sanction for violations. Nonetheless, outside the context of the Ground Rules, UNICEF or any other humanitarian agency would always have the right to withdraw assistance or its presence in particularly serious situations.

45. In pursuing such ground rules, it is important, however, to **avoid renegotiating, watering down, or otherwise compromising the substance of fundamental human rights and humanitarian law norms**. Those norms, such as found in Common Article 3, **should be taken as a minimum for developing ground rules** and should then be the subject of elaboration and augmentation as required by the circumstances and as anticipated by human rights and humanitarian law instruments.

46. It is much harder to develop such a high level of understanding and communication with a group which has no broader political ambitions and is not controlling populations, but is terrorizing a broad area. Such a group may not have a formal structure with which to hold discussions and from which one can seek accountability. Indeed, even in the presence of very well organized armed opposition groups, there may be less disciplined splinter groups which are not easily addressed. But if an armed opposition group is significant, it is likely to have structures and responsible individuals with whom the UN human rights field operation can have contact. If the human rights field operation believes that it would be worthwhile to engage in contacts and follow-up efforts with such non-State entities, the operation must consider carefully what sorts of arguments might be persuasive in encouraging respect for human rights norms. In some circumstances, for example, **it may be possible to urge compliance with human rights and humanitarian norms so that the armed opposition group can maintain credibility and legitimacy in the eyes of the population or can maintain discipline and control of the organization's personnel and partisans**. Similarly, it might be argued that power is the exercise of energy and the armed opposition group should not want to waste energy upon activities which may be counterproductive. The UN field operation may suggest other reasons of self-interest, religious loyalties, the desire for an exchange of information, etc. to convince armed opposition groups to comply with human rights and humanitarian law.

¹⁴*Id.*

UNICEF has found that offering human rights education together with humanitarian assistance may provide a sufficient incentive in southern Sudan. Others have found that it is necessary to separate programmes for the provision of humanitarian assistance or for the development/reinforcement of the administration of justice from monitoring/reporting activities or from mediation efforts.

10. Reconciling monitoring and other efforts

47. *Tenth*, even in dealing with governments, there are often **inherent conflicts between monitoring and the public revelation of human rights abuses** on the one hand, and human rights capacity-building and other forms of assistance on the other. Governments have generally committed themselves to human rights treaties and other norms; they have international relationships which impose obligations and which make them somewhat willing to accept both monitoring with the possibility of publicity for serious violations on the one hand, and human rights advisory services and capacity-building programmes on the other. *Non-State actors may be much less willing to accept such dual-edged activities by the human rights field operation.* Certainly, armed opposition groups would be unlikely to see a UN human rights field operation as sufficiently neutral, if other UN organs and personnel are engaged in active peace-enforcement with armed forces in the area. In any case, a pragmatic approach to such dual roles may be required in concrete situations.

11. Mediating

48. *Eleventh*, as will be discussed in **Chapter XXI: “Conciliation and Mediation in the Field”**, there may be occasions in which the human rights field operation is asked by both sides of a dispute to provide a means of communication. This role is often fulfilled in UN operations by the Special Representative of the Secretary-General and if the field operation is requested to mediate between an armed opposition group and the Government, consultation at the highest levels of the field operation and other UN structures may be required. The Special Representative of the Secretary-General may perceive mediation and other activities of the human rights field operation as distracting and possibly interfering with the achievement of an overall settlement. While the human rights field operation may properly assert its obligation to continue monitoring human rights, it may need to **defer to the judgement of the Special Representative or similar high-level officials with regard to requests for mediation and conciliation involving armed opposition groups.** Nonetheless, if such mediation and/or conciliation activities are authorized or occur, many of the principles suggested above and the ideas in **Chapter XXI: “Conciliation and Mediation in the Field”** may be useful.

49. In such a mediation as to important differences between the Government and the opposition group, it may be less likely that the field operation could usefully make suggestions for resolving the dispute. But *the field operation would perform a very useful function if it can keep the lines of communication open between the parties and provide each side with a way of understanding the other and getting a sense of their human dimension.* In armed conflicts the opponents often lose sight of the humanity of their opposition. Usually both sides have families and parallel aspirations. Mediation can communicate those similarities and

possibly bring the parties to resolve the differences which gave rise to the armed conflict and the resulting human suffering.

50. The above tentative principles do not close this *very difficult subject*, but may provide the basis for further experience and insight.

Appendix 1 to Chapter XVI

Agreement on Ground Rules between the Sudan People's Liberation Movement/Army (SPLM/A) and Operation Lifeline Sudan (OLS)(UNICEF)

[NB. The example which follows is the agreement signed between the SPLM/A and OLS. Although signed separately, the content of the agreements with other movements was, to all intents and purposes, the same.]

This agreement is intended to lay out the basic principles upon which Operation Lifeline Sudan (OLS) works and to lay out the rules and regulations resulting from such principles. It seeks to define the minimum acceptable standards of conduct for the activities of OLS agencies and Sudan Relief and Rehabilitation Association (SRRA), as the official counterpart in areas controlled by the Sudan People's Liberation Movement/Army (SPLM/A).

We, the undersigned, enter into this agreement in a spirit of good faith and mutual cooperation in order to improve the delivery of humanitarian assistance to and protection of civilians in need.

In signing this agreement, we express our support for the following international humanitarian conventions and their principles, namely:

- i. Convention on the Rights of the Child 1989
- ii. Geneva Conventions of 1949 and the 1977 Protocols additional to the Geneva Conventions

A. Statement of Humanitarian Principles

1. The fundamental objective of OLS and SRRA is the provision of humanitarian assistance to populations in need wherever they may be. Such humanitarian assistance seeks to save life, to ease suffering, to promote self-reliance, self-sufficiency and the maintenance of livelihoods. The right to receive humanitarian assistance and to offer it is a fundamental humanitarian principle.
2. The guiding principle of OLS and SRRA is that of humanitarian neutrality — an independent status for humanitarian work beyond political or military considerations. In other words:
 - i. Humanitarian aid must be given according to considerations of human need alone. Its granting, or its acceptance must not be made dependent on political factors or upon race, religion, ethnicity or nationality. It must not seek to advance any political agenda. Where humanitarian assistance is inadequate to meet the needs of all, priority must be given to the most vulnerable.

- ii. The passage of humanitarian assistance to populations in need should not be denied even if this requires that aid passes through an area controlled by one party in order to reach the needy in another area, provided that such passage is not used for military advantage.
 - iii. Relief assistance is provided solely on the basis of need; those providing assistance do not affiliate themselves to any side in the ongoing conflict.
 - iv. The only constraints on responding to humanitarian need should be those of resources and practicality.
3. All humanitarian assistance provided is for the use of identified civilian beneficiaries. Priority must at all time be given to women and children and other vulnerable groups such as the elderly, disabled and displaced people.
4. Those carrying out relief activities under the auspices of OLS must be accountable to the beneficiaries and their representative structures in [the] first place, and to those who fund the activities. This places the following obligations on the various parties:
 - i. those rendering humanitarian aid have a duty to ensure its appropriate end use. This includes a right to monitor and participate in the distribution of humanitarian aid on the ground in partnership with SRRA.
 - ii. local authorities, through the SRRA, must ensure that aid is distributed fairly to civilian beneficiaries. Diversion of aid from intended beneficiaries is regarded as a breach of humanitarian principles.
 - iii. decision-making on the selection of beneficiaries and the monitoring of the use of inputs and resources must be, and be seen to be, transparent and responsive to broad-based decision-making at the level of affected communities. Local authorities and relief agencies should involve local representatives of communities in the processes of targeting and monitoring of aid. Where possible, this should be done through the Joint Relief and Rehabilitation Committees which include elected community representatives.
5. OLS is based on the complete transparency of all its activities. This means that local authorities have the right to expect that OLS agencies provide full information regarding the resources to be provided. In return, it is expected that local authorities will report honestly and fairly in all their dealings with OLS with respect to needs identified, populations in need, use of resources, etc.
6. All humanitarian actions should be tailored to local circumstances and aim to enhance, not supplant, locally available resources and mechanisms. Strengthening local capacity to prevent future crises and emergencies and to promote greater involvement of Sudanese institutions and individuals in all humanitarian actions is an integral part of OLS's humanitarian mandate.
7. The fundamental human right of all persons to live in safety and dignity must be affirmed and supported through appropriate measures of protection as well as relief. All those involved in OLS must respect and uphold international humanitarian law and fundamental human rights.
8. Bona fide staff members of OLS agencies and others living, working or travelling in Sudan under the auspices of OLS have the right to go about their business freely and without restraint provided that they adhere to these Ground Rules and to local laws and customs. In all their dealings, relief workers and local authorities must demonstrate mutual respect.

B. Mutual Obligations

1. All externally supported programmes and projects in SPLM/A-controlled areas, must be approved by the SRRA (both locally and at SRRA heads office) prior to their implementation. NGOs or UN agencies are responsible for ensuring that such approval is obtained in writing. Project implementation should be based upon a letter of understanding between the agency, SRRA and OLS which defines roles, responsibilities and commitments of all sides plus procedures for resolving differences and grievances.
2. All UN/NGO workers are expected to act in accordance with the humanitarian principles previously defined: provision of aid according to need; neutrality, impartiality, accountability and transparency. This includes non-involvement in political/military activity. NGOs and UN agencies must not act or divulge information in a manner that will jeopardize the security of the area.
3. All UN/NGO workers must show respect for cultural sensitivities and for local laws and customs. Relief agencies must ensure that their staff are familiar with these laws and customs.
4. UN agencies and NGOs shall strive to offer the highest possible standards of service to their beneficiaries. This means that all agencies commit themselves to recruiting only those staff judged to have adequate technical and personal skills and experience required for their work.
5. UN agencies and NGOs must ensure that all their staff living, working or visiting Sudan are bearers of valid entry passes from the respective political authorities.
6. The SRRA must commit itself to the humanitarian principles defined above and not allow itself to be motivated by political, military or strategic interests. It should seek to provide an efficient and effective coordinated information and planning service for relief and rehabilitation activities.
7. The SPLM/A recognises and respects the humanitarian and impartial nature of UN agencies and those NGOs who have signed a letter of understanding with UNICEF/OLS and SRRA.
8. The SRRA should facilitate the flow of relief goods and services and provide accurate and timely information regarding the needs and the situation of civilians in their areas.
9. Local authorities assume full responsibility, through the SRRA for the safety and protection of relief workers in areas under their control. This responsibility includes:
 - i. providing an immediate alert to relief workers in potentially insecure areas;
 - ii. facilitation of safe relocation when necessary;
 - iii. protection from any form of threat, harassment or hostility from any source;Relief staff or agencies are not expected to pay for such protection either of themselves or of their property.
10. UN/NGO compounds should be respected as property of these institutions. Those living in these compounds have the right to privacy and compounds should only be entered with the permission of their residents. No military or political activity should take place in these compounds and no personnel bearing arms may enter them except when the safety of their residents is threatened.

C. Use of Relief Property and Supplies

1.
 - i. All UN/NGO property, including vehicles and property hired by UN/NGOs, is to be controlled and moved at the discretion of UN/NGOs or their agencies, unless such property is formally donated to another party.

Project agreements between NGOs, SRRA and UN/OLS should clearly define which assets will remain the property of the agency concerned and which are project assets which must remain in Sudan even when the agency concerned leaves temporarily or permanently.
 - ii. Those assets defined as agency assets remain the effective property of the agency at all times and may be removed whenever a project terminates or an agency withdraws from a location for whatever reason.
 - iii. Project assets are those which are for direct use by project beneficiaries or are integral to the running and sustainability of the project. These goods remain the property of UN/NGO until formally handed over to the SRRA or local communities and their leaders. Decisions regarding the distribution and use of such items should be made, whenever possible, jointly between NGOs and local authorities, under the auspices of the Joint Relief and Rehabilitation Committee following the humanitarian principles stated above.
2. UN and NGO flags are for exclusive use by these agencies.
3. UN and NGO staff will be allowed unrestricted access to their communication equipment and to exercise normal property rights. Except for emergencies, all messages should be written and recorded. Use of UN/NGO radios or other communication equipment will be limited to information on relief activities only. All messages will be in the English language. Operation shall be by a locally designated radio operator seconded and selected jointly by the local authorities and relief agencies. Whenever necessary, UN/NGO personnel will be allowed to transmit their own messages.
4. No armed or uniformed personnel is allowed to travel on UN/NGO vehicles: planes, boats or cars. This includes those vehicles contracted by UN/NGOs.

D. Employment of Staff

1. All UN agencies and NGO have the right to hire their own staff as direct employees. These agencies should be encouraged to employ appropriately qualified and experienced Sudanese as part of a capacity building strategy.
2. In the cases of Sudanese staff seconded to an NGO supported project (e.g. health staff), appointments and dismissals are made by the local authority in consultation with the agency which is expected to support payment of that worker's incentives. The number of workers to be supported must be agreed jointly. An NGO or a UN agency may ask the local authorities to withdraw seconded staff considered incompetent, dishonest or otherwise unsuitable for their jobs.
3. Local authorities should ensure that the Sudanese staff of UN/NGOs and, especially, those staff who receive special training programmes to upgrade and improve their skills are exempted, whenever possible, from military or other service so that they can contribute to the welfare of the civilian population.

E. Rents, Taxes, Licences, Protection Money

1. No UN/NGO should be expected to pay rent for buildings or areas which are part of their work, for example, offices or stores when they have built these buildings themselves or where they are donated by the local authority.
2. In the case of public buildings which are being rented by an NGO as living accommodation, a reasonable rent may be paid by the NGO/UN agency to the civil administration. Genuine efforts should be made to make moves towards standardisation of these rents.
3. All OLS agencies shall be exempt from customs duties for supplies (including personal supplies) and equipment brought into Sudan. Any taxes to be paid will be agreed between the agency concerned and the local authority as part of the project agreement.

F. Implementation of this Agreement

1. All signatories to this agreement must accept responsibility for ensuring that it is disseminated to all their officials and staff working in Sudan. It should also be publicised in public places in Sudan to ensure that local communities and beneficiaries understand its principles and rules.
2. UNICEF/OLS, together with the SRRA will be responsible for ensuring the holding of workshops and meetings in all key locations in which the principles and rules of this agreement are explained and discussed with all relevant personnel.
3. The SRRA is fully responsible for ensuring compliance with this agreement by the local authorities and communities.
4. Joint Relief and Rehabilitation Committees established in all relief centres and involving all relevant actors should meet together on a regular basis to plan, implement and monitor the delivery of humanitarian assistance. These committees will be regarded as the custodians of the principles of this agreement at local level and responsible for ensuring that the rules are upheld and respected by all sides.

G. Mechanisms for Resolving Alleged Violations of Ground Rules

1. In cases where allegations of non-compliance with this agreement are made, all parties commit themselves to resolving differences as speedily as possible in an attitude of good faith.
2. Where alleged violations of Ground Rules have occurred, the allegation should be documented in writing by the complainant.
3. The issue should then be taken to the local Joint Relief and Rehabilitation Committee where this exists.
4. If unresolved, it should then be discussed at local level with meetings between the area secretary of the SRRA, the county Commissioner and the local head of the UN/NGO, together with the UNICEF/OLS Resident Project Officer, where appropriate.
5. If the issue remains unresolved at local level, it should be referred to central authorities in writing to be dealt with by the senior officials of the agencies concerned, i.e. the SRRA head office, the head of the NGO and, if appropriate, the UNICEF/OLS coordinator.

.....Chapter XVII
**MONITORING
ECONOMIC, SOCIAL AND
CULTURAL RIGHTS**

Key concepts

The Covenant on Economic, Social and Cultural Rights does not require a Government immediately to feed, clothe and house its residents, but it does require the Government to take steps towards the full realization of those rights, to avoid measures which would diminish those rights, and to forbid discrimination with regard to those rights.

The Committee on Economic, Social and Cultural Rights has also begun to define “minimum core obligation to ensure the satisfaction of each of, at the very least, minimum essential levels of each of the rights” (emphasis added). A State party that is unable to fulfil this obligation must “demonstrate that every effort has been made to use all resources at its disposition in an effort to satisfy as a matter of priority those minimum obligations”.

Field operations have generally given a lower priority to monitoring economic, social and cultural rights, but forced evictions and employment discrimination are most likely to require monitoring because they go to the core of the ethnic violence and other grave violations often facing human rights operations.

A. Introduction

1. Human rights field operations are occasionally given a broad mandate to promote and protect all human rights. Indeed, the High Commissioner for Human Rights has principal responsibility for UN activities to implement *all* human rights, including “[p]romoting and protecting the effective enjoyment by all of all civil, cultural, economic, political and social rights.”¹

¹High Commissioner for the Promotion and Protection of All Human Rights, G.A. res. 48/141, 48 UN GAOR (No. 49) at 411, UN Doc. A/48/49 (1993).

2. Despite the High Commissioner’s broad mandate and the significance of all human rights, several **human rights field operations** with a similarly broad mandate **have given a higher priority to promoting economic, social and cultural rights than to monitoring those rights**. There are several economic rights, such as the *right to be free from forced eviction*, which have *received greater attention in monitoring*. This chapter provides a basic introduction to economic, social and cultural rights and then discusses some of the issues which arise with regard to the priority given to monitoring those rights. (See also **Chapter IV-I: “Right to property”** and **Chapter IV-J: “Right to housing and other economic, social and cultural rights”**.)

B. Summary of economic, social and cultural rights

1. UN Charter

3. Article 55 of the UN Charter prescribes that:
- the United Nations shall promote:
- a. higher standards of living, full employment, and conditions of economic and social progress and development;
 - b. solutions of international economic, social, health and related problems; and international cultural and educational co-operation; and
 - c. universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.
4. In Article 56, all members pledge “to take joint and separate action in co-operation with the [United Nations] for the achievement of the purposes set forth in Article 55.”

2. Universal Declaration of Human Rights

5. The 1948 Universal Declaration of Human Rights added specificity to those goals. In its Article 22, the General Assembly proclaimed that

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international cooperation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

6. The Declaration also proclaims that everyone has the right to: work and join trade unions (Article 23), rest and leisure (Article 24), an adequate standard of living (Article 25), education (Article 26), and participate freely in cultural life (Article 27).

3. International Covenant on Economic, Social and Cultural Rights

a. Nature of State obligations under the Covenant

7. Though the earlier agreements broadly defined the scope of economic, social and cultural rights, the principal source of international obligations now is the International Covenant on Economic, Social and Cultural Rights².

8. Article 2(1) of the Covenant on Economic, Social and Cultural Rights contains the **basic obligation of all governments** which ratify that treaty; it reads as follows:

Each State Party to the present Covenant undertakes **to take steps**, individually and through international assistance and co-operation, especially economic and technical, **to the maximum of its available resources**, with a view to **achieving progressively the full realization of the rights** recognized in the present Covenant **by all appropriate means**, including particularly the adoption of legislative measures.

9. While the Covenant on Economic, Social and Cultural Rights *does not require a Government immediately to feed, clothe and house its residents*, it does require that the Government take steps towards the full realization of those economic, social and cultural rights and certainly a *Government would likely violate the Covenant if it took measures which would diminish those rights*.³ The Covenant **also forbids discrimination** with regard to economic, social and cultural rights on the basis of “race, colour, sex, language, political or other opinion, national or social origin, property, birth or other status.”

b. Rights guaranteed by the Covenant

10. The Covenant provides for such specific **rights** as the

- ✓ “equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the... Covenant”(Art. 3);
- ✓ “right of everyone to the opportunity to gain his[/her] living by work which [s/]he freely chooses or accepts” (Art 6);
- ✓ “right of everyone to the enjoyment of **just and favourable conditions of work**” including “[f]air wages and equal remuneration for work of equal value”; “a decent living for themselves and their families”; [s]afe and healthy working conditions”;
- ✓ “[e]qual opportunity for everyone to be promoted” in employment; “**[r]est, leisure** and reasonable limitation of working hours and periodic holidays with pay” (Art. 7);
- ✓ “right of everyone to form **trade unions** and join the trade union of his[/her] choice”; the right of trade unions to establish national and international federations or confederations; the “right of trade unions to function freely”; and the “right to strike” (Art. 8);

²G.A. res. 2200A (XXI), 21 UN GAOR Supp. (No. 16) at 49, UN Doc. A/6316 (1966), 993 UNT.S. 3. The International Covenant on Economic, Social and Cultural Rights *entered into force* Jan. 3, 1976.

³Committee on Economic, Social and Cultural Rights, General Comment 3, The nature of States parties obligations (Art. 2, para.1 of the Covenant) (Fifth session, 1990), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.1 at 45 (1994).

- ✓ “right of everyone to **social security**, including social insurance” (Art. 9);
- ✓ “widest possible protection and assistance... to the **family**”; “[m]arriage must be entered into with the free consent of the intending spouses; “[s]pecial protection... to mothers during a reasonable period before and after childbirth”; “[s]pecial measures of protection and assistance... of all children and young persons without any discrimination for reasons of parentage or other conditions”; “[c]hildren and young persons should be protected from economic and social exploitation[,]... employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development... [and] child labour” (Art. 10);
- ✓ “right of everyone to an **adequate standard of living** for [him/herself and his/her] family, including adequate **food, clothing and housing**, and to the continuous improvement of living conditions”; “right of everyone to be free from hunger”; to “improve methods of production, conservation and distribution of food”; “to ensure an equitable distribution of world food supplies in relation to need” (Art. 11);
- ✓ “right of everyone to the enjoyment of the **highest attainable standard of physical and mental health**”; “reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child”; “improvement of all aspects of environmental and industrial hygiene;” “prevention, treatment and control of epidemic, endemic, occupational and other diseases;” “creation of conditions which would assure to all medical service and medical attention in the event of sickness” (Art. 12);
- ✓ “right of everyone to **education**... to the full development of the human personality and the sense of its dignity, and [to] strengthen the respect for human rights and fundamental freedoms; [to] enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace”; “[p]rimary education shall be compulsory and available free to all;” “[s]econdary education... [and] “[h]igher education shall be made equally accessible to all by the progressive introduction of free education;” “development of a system of schools at all levels... an adequate fellowship system... and the material conditions of teaching staff”; “liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities” (Art. 13);
- ✓ “right of everyone: [to] take part in **cultural life**;... enjoy the benefits of scientific progress...; benefit from the protection of the moral and material interests resulting from... author[ship]”; “conservation, the development and the diffusion of science and culture”; “freedom indispensable for scientific and creative activity”; “encouragement and development of international contacts and cooperation in the scientific and cultural fields. (Art. 15)

11. The *Committee on Economic, Social and Cultural Rights* has been established by the Economic and Social Council to implement the Covenant. The Committee has issued several General Comments indicating how it interprets the provisions of the treaty. For example, the Committee, *interpreting States obligations* under the Covenant, has declared that **States parties have a “minimum core obligation to ensure the satisfaction of each of, at the very least, minimum essential levels of each of the rights”**.⁴ A State

⁴*Id.*

party that is unable to fulfil this obligation must “**demonstrate that every effort has been made to use all resources at its disposition in an effort to satisfy as a matter of priority those minimum obligations**”.

12. **Chapter IV-J: “Right to housing and other economic, social and cultural rights”** provides a sample of the Committee’s approach in its General Comments, for example, as to the right to adequate housing.

4. Declaration on the Right to Development

13. The UN General Assembly has also adopted the Declaration on the Right to Development⁵, which provides in Article 1: “The **right to development** is an inalienable human right by virtue of which every human person and all peoples are **entitled to participate in, contribute to and enjoy economic, social, cultural and political development**, in which all human rights and fundamental freedoms can be fully realized...”. Article 2 states, “The human person is the central subject of development and should be the active participant and beneficiary of the right to development...”.

14. The Vienna Declaration and Programme of Action⁶ “reaffirms the right to development, as established in the Declaration on the Right to Development, as a **universal and inalienable right and an integral part of fundamental human rights**... While development facilitates the enjoyment of all human rights, the lack of development may not be invoked to justify the abridgement of internationally recognized human rights.”

C. An approach to monitoring economic, social and cultural rights in field operations

15. Human rights field operations have given a lower priority to monitoring economic, social and cultural rights principally because they: (1) have been faced with political killings, disappearances, torture, widespread detention, and other issues which seemed to require more immediate attention; (2) have considered economic rights to be susceptible of only long-term resolution while some of the more serious violations of the rights of personal integrity were capable of more prompt action; and (3) have been quite concerned about the magnitude of economic problems and the difficulties of knowing where to begin improving the economic situation of very poor people or of resolving a myriad of complicated property disputes.

⁵G.A. res. 41/128, 41 UN GAOR Supp. (No. 53) at 186, UN Doc. A/41/53 (1986).

⁶UN Doc. A/CONF.157/24 (Part I), World Conference on Human Rights, Vienna, 14-25 June 1993 at 20 (1993).

1. Consequences of violations of economic, social and cultural rights

16. There are important reasons and occasions for human rights operations to consider the usefulness of establishing monitoring and promotion activities related to economic, social and cultural rights. *First*, there are **some economic, social and cultural rights which may go to the core of the ethnic violence and other grave human rights violations** which face some human rights operations. For example, when the members of a farming family are removed from their ancestral lands because of their ethnic background, grievances arise which can erupt into violence and other instances of ethnic discrimination. When workers are removed from their employment because of discrimination and “ethnic cleansing”, there are very serious consequences for the workers and their families. In such situations not only are economic rights implicated but so is the fundamental right to be free from discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status — which is guaranteed by the Covenant on Civil and Political Rights, Art. 26, and by the Covenant on Economic, Social and Cultural Rights, Art. 2.

17. Indeed, **violations of economic rights**, such as the destruction of food as a weapon in armed conflict or other violations of the right of everyone to an adequate standard of living, including adequate food, clothing, health and housing **can have consequences as serious as many violations of civil and political rights**. In addition, since problems of economic, social and cultural rights may be in the forefront of the concerns of the majority of people in the country where the operation is located, it is important for the operation to take action on those concerns. To do otherwise would make the field operation appear indifferent and therefore less credible.

2. Possible measures by the human rights field operation

18. *Second*, while most problems of economic rights may be principally susceptible of long-term approaches, there are **some more immediate measures** which **can and should be taken** by human rights operations. One important and relatively direct response to issues of economic rights is to acknowledge that they **are** rights and thus *should be included in programmes of human rights promotion and education*. Even if economic, social and cultural rights were unfortunately not included within the particular mandate of the human rights field operation as established by UN action or by agreement with the Government, the *operation should still acknowledge that rights not within the terms of reference are human rights deserving of respect and attention*.

19. If the mandate of the operation includes the promotion and protection of human rights, the field operation should consider what steps it can take to implement those rights. Taking more concrete actions on economic rights, however, raises the *third* difficulty of *knowing where to begin in the face of such complex, widespread, and often difficult problems*. Human rights field operations are *not generally equipped to provide immediate food, clothing and shelter*, etc. to individuals at risk. Human rights operations **can identify where there are individuals at risk and can encourage governments and**

international humanitarian assistance organizations to focus their resources on those particular problems. To the extent that the human rights field operation may be one of the few international presences on the ground in some locations, they can serve a very important function in identifying humanitarian crises and calling for needed assistance.

3. Assisting the Government to assess and meet needs

20. *If a human rights field operation decides to pursue its mandate to monitor economic, social and cultural rights more intensively*, HROs could assist the Government in developing a **needs assessment with regard to the economic, social and cultural problems** which are facing the country. For example, how many children are being denied their right to free primary education? With such a needs assessment, the Government should be encouraged to ensure that it refrain from taking actions which violate economic, social and cultural rights, that it stop others from violating those rights, and that it devote its resources to fulfilling its responsibilities. HROs might assist by helping the Government to develop cost estimates and plans for meeting its responsibilities. With such a needs assessment in mind, a human rights field operation might discourage the Government from taking deliberately retrogressive measures. Stated more positively, the human rights field operation could **encourage the Government to meet its “minimum core obligation”**, that is, to make sure that its residents do not need to survive below the threshold of decency — through the use of its own resources and through receiving international assistance.

21. *Another approach* a human rights operation might take in monitoring economic, social and cultural rights would be to **review the compliance of national legislation with international obligations**; provide assistance in redrafting laws to comply with those obligations; provide training to Government officials, lawyers, and others to implement the obligations; help develop cost estimates for the needs; and assist with applications for international assistance.

4. Test cases

22. There are several *economic rights problems which may be of particular concern to a human rights field operation*. Two relatively visible and unfortunately quite common problems are **discrimination in employment and forced evictions**. In dealing with those violations, human rights field operations might use a *test case approach* rather than becoming overwhelmed with the sheer magnitude of the problems. The field operation should identify particular cases which are (1) *very visible*, (2) *very clear with regard to the facts and rights at stake*, and (3) *apparently susceptible of successful intervention*.

23. *For example, a lead worker in a factory is dismissed because he belongs to an ethnic minority*. The dismissal has received a great deal of publicity in the community and is perceived to be a leading example of ethnic cleansing. No other plausible explanation exists for the dismissal. The factory is run by individuals closely associated with the ruling powers within the Government, and with whom the field operation has previously had good contacts. Or there exist reasonably reliable legal recourse for the dismissal which can be

invoked. If the human rights field operation can help to reinstate this individual, it will have a very significant demonstration effect with regard to other cases or in preventing further dismissals on ethnic grounds. That is, once the HROs have a visible success regarding this particular discriminatory dismissal, the manager of the factory and the authorities should get the message. Also, other workers will insist that their rights be protected, putting additional pressure on the manager of the factory or the authorities.

24. Such efforts by human rights field operations with regard to discrimination cases may be particularly sensible in circumstances in which there are several international agencies in the field with potentially or partially overlapping mandates. For example, in some countries there may be ICRC delegates working on issues relating to prison conditions; UN Civilian Police (CIVPOL) officers working on police conduct and the fairness of the administration of justice; UNHCR representatives working with refugees and the return of refugees or displaced persons; UNICEF working to protect children; Médecins sans Frontières, Save the Children, OXFAM and other voluntary agencies helping with the immediate needs for food, clothing, housing and medical care for elements of the population at risk. In such a context the *human rights field operation must consider how to avoid duplicating the work of other agencies and the Government itself*. The human rights field operation may be uniquely situated to handle major cases of discrimination regarding employment or forced evictions. Alternatively, the operation may be able to work with the Government and the legal system to develop procedures or improve the effectiveness of existing institutions for resolving claims of discrimination, land rights disputes, forced evictions, and other potentially serious issues which have broad implications for the protection of economic and other rights.

5. Common misconceptions about economic and social rights

25. Despite the clear recognition by the UN that human rights are universal, indivisible, interdependent and interrelated, there are several *arguments, which are sometimes raised to dissuade human rights field operations and others from paying attention to economic, social and cultural rights*. For example, some argue that economic, social and cultural rights are entirely progressive, while civil and political rights are immediately applicable. As can be seen from the above summary, however, **each Government under the Covenant has an immediate duty not to discriminate with regard to economic, social and cultural rights**. Furthermore, the Committee on Economic, Social and Cultural Rights has identified “minimum core obligations” with regard to those rights.

26. *Another somewhat misleading argument is that economic, social and cultural rights are costly, while civil and political rights are without cost*. It might suffice to refute that facile dichotomy to point out that the right to a fair trial in Article 14 of the Covenant on Civil and Political Rights requires a great investment in the training of judges, prosecutors, lawyers, and other staff concerned with the administration of justice. By contrast, a Government could forbid discrimination with regard to housing without much cost; enforcing that right and many civil or political rights would, of course, require the expenditure of funds.

27. *Yet another argument is that economic, social and cultural rights are collective, while civil and political rights are exclusively individual.* Again, that distinction is rather simplistic. For example, articles relating to freedom of association, freedom of religion, the rights of minorities, and other provisions in the Covenant on Civil and Political Rights protect collective rights. The right to be free from economic discrimination or to attend primary school may be claimed by individuals on the basis of the Covenant on Economic, Social and Cultural Rights.

28. Moreover, it is said that economic, social and cultural rights are non-justiciable, while civil and political rights are justiciable. This issue is discussed above in **Chapter IV-E-15: “Role of the courts in protecting economic and social rights”**.

.....Chapter XVIII
**BACKGROUND OF UNITED
NATIONS MONITORING
STANDARDS**

Key concepts

Many of the monitoring principles and approaches set forth in this Manual have their origins in previous efforts of the United Nations and other international organizations to guide fact-finders. This chapter reviews the historical origins of such efforts and thus places the Manual in its historical context.

Efforts to codify rules for fact-finding can be traced back to 1907 (with the Hague Convention for the Pacific Settlement of Disputes). Within the United Nations, general rules are contained in the 1974 Model Rules of fact-finding procedure for UN bodies, in the 1992 Declaration on Fact-Finding by the UN in the Field of the Maintenance of International Peace and Security, and in a number of more recent guidelines for the operation of UN human rights field operations.

Several human rights field operations have received mandates similar to the United Nations Observer Mission for El Salvador (ONUSAL):

“The Mission’s mandate shall include the following powers:

- a. To verify the observance of human rights in El Salvador;*
- b. To receive communications from any individual, group of individuals or body in El Salvador, containing reports of human rights violations;*
- c. To visit any place or establishment freely and without prior notice;*
- d. To hold its meetings freely anywhere in the national territory;*
- e. To interview freely and privately any individual, group of individuals or members of bodies or institutions;*
- f. To collect by any means it deems appropriate such information as it considers relevant.”*

While such a procedural mandate appears to be quite comprehensive and adequate, the challenge facing most human rights operations has been actually employing these techniques in practice when faced with opposition from local authorities who are unaware of the mandate and covert resistance from national authorities who wish to test the resolve of the UN human rights field operation.

A. Introduction

1. Many of the monitoring principles and approaches set forth in this Manual have their origins in previous efforts of the United Nations and other international organizations to guide fact-finders. This chapter reviews the historical origins of such efforts and thus places this Manual in its historical context.

B. Evolution of United Nations monitoring standards

2. Various sets of rules of procedure exist to help guide fact-finders. The first international codification of fact-finding procedure was the **Hague Convention for the Pacific Settlement of Disputes of 1907**, 36 Stat. 2199, T.S. No. 536. It provided for a **commission of inquiry** that would be constituted by agreement between two disputing states and set out rules of procedure for the inquiry. Though the Hague Convention's inquiry mechanism received little use, the procedural rules continue to serve as a model for fact-finding which was used in the development of the present Manual.

3. In **1970** the Secretary-General issued **Draft Model Rules of fact-finding procedure for UN bodies dealing with violations of human rights**. Although these Draft Model Rules were adopted in 1974 in substantially abbreviated form by the UN Economic and Social Council, they have served as the framework for rules of fact-finding commissions. The 25 Draft Model Rules are divided into eleven sections covering applicability, constitution of the ad hoc body, agenda of meetings, officers, secretariat, languages, voting and conduct of business, cooperation with member States, oral and written testimony and other sources of information, records, and reports. The rules allow a commission to make recommendations and issue a minority report. They also permit the concerned State to submit evidence, to appoint a representative, and to put questions to witnesses, but they do not allow the State to make recommendations for the agenda or to place obstacles in the way of the attendance of witnesses. Consent of the concerned State is required for the ad hoc body to enter that State. All evidence is admissible, although its use is subject to the discretion of the commission. Witnesses are placed under oath and commission members swear to perform their duties "honourably, faithfully, impartially and conscientiously." A hearing may be conducted by one or more members.

4. A more recent statement of general standards can be found in the **Declaration on Fact-finding by the UN in the Field of the Maintenance of International Peace and Security**, UN Doc. A/RES/46/59, Annex (1992), which provides in part the following principles:

1. In performing their functions in relation to the maintenance of international peace and security, the competent organs of the United Nations should endeavour to have **full knowledge of all relevant facts**. To this end they should consider undertaking fact-finding activities.

2. For the purpose of the present Declaration **fact-finding means** any **activity designed to obtain detailed knowledge of the relevant facts of any dispute or situation** which the competent United Nations organs need in order to exercise effectively their functions in relation to the maintenance of international peace and security...
6. The sending of a United Nations fact-finding mission to the territory of any State requires the **prior consent of that State**, subject to relevant provisions of the Charter of the United Nations...
16. In considering the possibility of undertaking a fact-finding mission, the competent United Nations organ should bear in mind other relevant fact-finding efforts, including those undertaken by the States concerned and in the framework of regional arrangements or agencies.
17. The decision by the competent United Nations organ to undertake fact-finding should always contain a **clear mandate for the fact-finding mission** and precise requirements to be met by its report. The report should be limited to a presentation of findings of a factual nature...
25. Fact-finding missions have an obligation to act in **strict conformity with their mandate** and perform their task in an **impartial way**. Their members have an obligation **not to seek or receive instructions from any Government** or from any authority other than the competent United Nations organ. They should **keep the information acquired** in discharging their mandate **confidential** even after the mission has fulfilled its task.
26. The **States directly concerned** should be given an opportunity, at all stages of the fact-finding process, **to express their views** in respect of the facts the fact-finding mission has been entrusted to obtain. When the results of fact-finding are to be made public, the views expressed by the States directly concerned should, if they so wish, also be made public...
5. As experience has evolved in the various UN, OSCE, and other international human rights field operations, further monitoring standards have been developing. Those standards and practices have been summarized, for example, in *La Guía Metodológica para el Trabajo de la División de Derechos Humanos de la Misión de Observadores de las Naciones Unidas para El Salvador* (Guidelines for the Work of the Human Rights Division of the United Nations Observer Mission for El Salvador) (ONUSAL) (1992); *International Civilian Mission in Haiti — UN/OAS (MICIVIH)*, Manuel d'Haiti (1993), *UN Mission in Guatemala (MINIGUA)*, Manuel de Verificación (1994), *Human Rights Field Operation in Rwanda, HRFOR Field Guidance* (1996); *High Commissioner/Centre for Human Rights, Field Guide for International Police Task Force Monitors of the Peace Implementation Operation in Bosnia and Herzegovina and CIVPOL Officers of the United Nations Transitional Administration in Eastern Slavonia* (1996). Those standards, practices, and experiences have been the immediate basis for the present Manual.
6. Although each human rights field operation receives its own mandate from the Security Council or by agreement with the host Government, **several operations have received mandates similar to the United Nations Observer Mission for El Salvador** (ONUSAL):

The Mission's mandate shall include the following powers:

- a. To verify the observance of human rights in El Salvador;
- b. To receive communications from any individual, group of individuals or body in El Salvador, containing reports of human rights violations;
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- f. To collect by any means it deems appropriate such information as it considers relevant.

7. While such a procedural mandate appears to be quite comprehensive and adequate, the **challenge** facing most human rights operations has been actually **employing these techniques in practice when faced with opposition from local authorities** who are unaware of the mandate and covert resistance from national authorities who wish to test the resolve of the UN human rights field operation.

C. Non-United Nations monitoring standards

8. In addition, **regional organizations have implemented monitoring standards** to govern the fact-finding process. The **Inter-American Commission** has one of the best developed and respected procedures for on-site fact-finding. It has sponsored numerous on-site observations in conjunction with the investigation of human rights in Member States. (See Edmundo Vargas, "Visits on the Spot: The Experience of the Inter-American Commission on Human Rights", in *International Law and Fact-Finding in the Field of Human Rights* 137-150 (Bertie Ramcharan ed. 1982).)

9. Many intergovernmental organizations have formulated their own fact-finding procedures. In addition, the **International Law Association** met in Belgrade during **1980** and adopted by consensus a set of rules ostensibly designed for use by both intergovernmental organizations and non-governmental organizations, but actually more applicable to intergovernmental fact-finding efforts (*The Belgrade Minimum Rules of Procedure for International Human Rights Fact-finding Visits*", 75 Am. J. Int'l L. 163 (1981)).

10. Several authors have written about fact-finding procedures. For a more detailed examination of monitoring standards relevant to fact-finding investigations, see the references contained in the **bibliography** to this Manual.