

Part Three



THE MONITORING FUNCTION

.....Chapter V

BASIC PRINCIPLES OF MONITORING.....

Key concepts

Monitoring should aim to reinforce State responsibility to protect human rights — not to replace this responsibility.

There are a number of basic principles of monitoring, which human rights officers performing monitoring functions should keep in mind and respect at all times. They are essential for the effective fulfilment of the monitoring mandate.

Human rights officers should not only observe developments, collect information, and perceive patterns of conduct, but should identify problems, diagnose their causes, consider potential solutions, and assist in problem solving.

A. Introduction

1. This chapter identifies **eighteen basic principles of monitoring** which HROs should keep in mind as they pursue their monitoring functions as described in the following chapters, including information gathering, interviewing, visits to persons in detention, visits to internally displaced persons and/or refugees in camps, monitoring the return of refugees and/or internally displaced persons, trial observation, election observation, monitoring demonstrations, monitoring economic, social and cultural rights, monitoring during periods of armed conflict, verification and assessment of the information collected, and use of the information to address human rights problems.

B. Monitoring as a method of improving the protection of human rights

2. Monitoring is a method of improving the protection of human rights. The principal **objective** of human rights monitoring is to **reinforce State responsibility to**

protect human rights. HROs can also perform a **preventative role** through their presence. When a Government official or other responsible actor is monitored, s/he becomes more careful about her/his conduct.

3. HROs must relate their work to the overall objective of human rights protection. They can record observations and collect information for immediate action and later use. They can communicate the information to the appropriate authorities or other bodies. HROs should not only observe developments, collect information, and perceive patterns of conduct, but should, as far as their mandate allows and their competence permits, identify problems, diagnose their causes, consider potential solutions, and assist in problem solving. While exercising good judgement at all times, HROs should take initiative in solving problems and, provided they are acting within their authority and competence, should not wait for a specific instruction or express permission before acting.

C. Do no harm

4. HROs and the operation they are assigned to should make every effort to address effectively each situation arising under their mandate. Yet, in reality, HROs will **not** be in a position to **guarantee the human rights and safety of all persons.** Despite their best intentions and efforts, HROs may not have the means to ensure the safety of victims and witnesses of violations. It is critical to remember that the **foremost duty of the officer is to the victims and potential victims** of human rights violations. For example, a possible conflict of interest is created by the HRO's need for information and the potential risk to an informant (victim or witness of the violation). The HRO should **keep in mind the safety of the people who provide information.** At a minimum, the action or inaction of HROs should not jeopardize the safety of victims, witnesses or other individuals with whom they come into contact, or the sound functioning of the human rights operation.

D. Respect the mandate

5. A detailed mandate facilitates dealing with UN headquarters, other UN bodies (especially those less sensitive to human rights imperatives), and all other involved parties. Every **HRO should** make an effort to **understand the mandate**, bear it in mind at all times, and learn how to apply and interpret it in the particular situations s/he will encounter. In evaluating the situation, HROs should consider such questions as: What are the relevant terms of the mandate? What are the relevant international standards underlying and explicating the mandate? How will the mandate be served by making a particular inquiry, by pursuing discussions with the authorities, or by taking any other course of action? What action am I authorized to undertake under the mandate? What are the ethical implications, if any, of that course of action? How will the action being considered by the HRO be received by the host Government? What potential harm could be caused by the action under consideration?

E. Know the standards

6. HROs should be fully familiar with the international human rights standards which are relevant to their mandate and applicable to the country of operation. International human rights standards not only define the HROs' mandate, but also provide sound legal basis and legitimacy to the work of the HRO and the UN operation in a specific country, in that they reflect the will (or the agreement) of the international community and define the legal obligations of the Government.

F. Exercise good judgement

7. Whatever their number, their relevance and their precision, **rules cannot substitute for the good personal judgement** and common sense of the human rights officer. HROs should exercise their good judgement at all times and in all circumstances.

G. Seek consultation

8. Wisdom springs from discussion and consultation. When an HRO is **dealing with a difficult case**, a case on the borderline of the mandate or a case which could be doubtful, it is always **wise to consult other officers** and, whenever possible, superiors. Similarly, HROs will ordinarily work in the field with several UN and other humanitarian organizations; they should consult or make sure that there has been appropriate consultation with those organizations to avoid duplication or potentially contradictory activity.

H. Respect the authorities

9. HROs should keep in mind that one of their objectives and the **principal role of the UN operation is to encourage the authorities to improve their behaviour**. In general, the role envisaged for HROs does **not** call for officers to **take over governmental responsibilities** or services. Instead, HROs should respect the proper functioning of the authorities, should welcome improvements, should seek ways to encourage governmental policies and practices which will continue to implement human rights after the operation has completed its work.

I. Credibility

10. The HRO's credibility is crucial to successful monitoring. HROs should be sure not to make any promises they are unlikely or unable to keep and to follow through on any promise that they make. Individuals must trust the HROs or they will not be as willing to cooperate and to produce reliable information. When interviewing victims and witnesses of violations, the HRO should introduce him/herself, briefly explain the mandate, describe what can and cannot be done by the HRO, emphasize the confidentiality of the information received, and stress the importance of obtaining as many details as possible to establish the facts (for example, whether there has been a human rights violation).

J. Confidentiality

11. **Respect for the confidentiality of information** is essential because any breach of this principle could have very serious consequences: (a) for the person interviewed and for the victim; (b) for the HROs' credibility and safety; (c) for the level of confidence enjoyed by the operation in the minds of the local population; and thus (d) for the effectiveness of the operation. The HRO should assure the witness that the information s/he is communicating will be treated as strictly confidential. The HRO should ask persons they interview whether they would consent to the use of information they provide for human rights reporting or other purposes. If the individual would not want the information attributed to him or her, s/he might agree that the information may be used in some other, more generalized fashion which does not reveal the source. The HRO should take care not to communicate his/her judgements or conclusions on the specific case to those s/he interviews.

12. Special measures should also be taken to **safeguard the confidentiality of recorded information**, including identities of victims, witnesses, etc. The use of coded language and passwords, as well as keeping documents which identify persons in separate records from facts about those persons, may be useful means to protect the confidentiality of information collected.

K. Security

13. This basic principle refers both to the security of the HRO and of the persons who come in contact with him/her. As discussed in **Chapter V-K: "Security"** of this Manual, HROs should protect themselves by taking **common-sense security measures**, such as avoiding travelling alone, reducing risks of getting lost, and getting caught in cross-fire during an armed conflict.

14. HROs should always **bear in mind the security of the people who provide information**. They should obtain the consent of witnesses to interview and assure them about confidentiality. Security measures should also be put in place to protect the

identity of informants, interviewees, witnesses, etc. The human rights officer should *not offer unrealistic guarantees concerning the safety of a witness or other individual*, should avoid raising false hopes, and should be sure that any undertakings (such as keeping in touch) to protect the victim or witness can be kept.

L. Understand the country

15. HROs should endeavour to understand the country in which they work, including its **people, history, governmental structure, culture, customs, language**, etc. (See **Chapter II: “The Local Context”**.) HROs will be more effective, and more likely to receive the cooperation of the local population, the deeper their understanding of the country.

M. Need for consistency, persistence and patience

16. The collection of sound and precise information to document human rights situations can be a long and difficult process. Generally, a variety of sources will have to be approached and the **information** received from them will have to be **examined carefully, compared and verified**. Immediate results cannot always be expected. The HRO should continue his/her efforts until a comprehensive and thorough inquiry has been completed, all possible sources of information have been explored, and a clear understanding of the situation has been obtained. Persistence may be particularly necessary in raising concerns with the Government. Of course, cases will arise in which urgent action is required (e.g., if there is evidence of an imminent threat to a particular individual or group). The HRO should **promptly respond** to such **urgent cases**.

N. Accuracy and precision

17. A central goal of the HRO is to **provide sound and precise information**. The information produced by the HRO will serve as the basis for the officer’s immediate or future action with the local authorities, or the action of his/her superiors, or action by the Headquarters of the operation, or by other UN bodies. The provision of sound and precise information requires thorough and **well-documented reports**. The HRO should always be sure to ask precise questions (e.g., not just whether a person was beaten, but how many times, with what weapon, to what parts of the body, with what consequences, by whom, etc.)

18. **Written communication** is always **essential** to avoid lack of precision, rumours and misunderstandings. Reports prepared by HROs should reflect thorough inquiries, should be promptly submitted, and should contain specific facts, careful

analysis and useful recommendations. Reports should avoid vague allusions and general descriptions. All conclusions should be based on detailed information included in the report.

O. Impartiality

19. The HRO should keep in mind that the UN operation is an impartial body. Each task or interview should be approached with an attitude of impartiality **with regard to the application of the mandate and the underlying international standards**. Violations and/or abuses by all parties should be investigated with equal thoroughness. The HRO should not be seen as siding with one party over another.

P. Objectivity

20. The HRO should maintain an objective **attitude and appearance at all times**. When collecting and weighing information, the HRO should **objectively consider all the facts**. The HRO should apply the standard adopted by the UN operation to the information received in an unbiased and impartial way.

Q. Sensitivity

21. When interviewing victims and witnesses, the HRO should be sensitive **to the suffering which an individual may have experienced**, as well as to the need to take the necessary steps to protect the security of the individual — at least by keeping in contact. The HRO must be particularly sensitive to the **problems of retraumatization and vicarious victimization** discussed in **Chapter VIII: “Interviewing”** and **Chapter XXIII: “Stress, Vicarious Trauma and Burn-out”**. HROs should also be very careful about any conduct or words/phrases which might indicate that their concern for human rights is not impartial or that they are prejudiced.

R. Integrity

22. The HRO should treat all informants, interviewees and co-workers with **decency and respect**. In addition, the officer should carry out the tasks assigned to him/her in an **honest and honourable manner**. (See **Chapter XXII: “Norms Applicable to UN Human Rights Officers and Other Staff”**.)

S. Professionalism

24. The HRO should approach each task with a professional manner. The officer should be **knowledgeable, diligent, competent and** fastidious about details.

T. Visibility

25. HROs should **be sure that both the authorities and the local population are aware of the work** pursued by the UN operation. The presence of visible HROs can deter human rights violations. As a general rule, a visibly active monitoring presence on the ground can provide some degree of protection to the local population since potential violators do not want to be observed. Also, a highly visible monitoring presence can reassure individuals or groups who are potential victims. Moreover, a visible monitoring presence can help to inspire confidence in crucial post-conflict processes, such as elections, reconstruction and development. Hence, **effective monitoring means both seeing and being seen.**

.....Chapter VI
**IDENTIFICATION AND
PRIORITIZATION OF
EFFORTS REGARDING
HUMAN RIGHTS
VIOLATIONS**

Key concepts

The human rights officer should analyse each violation (1) by identifying whether it fits within the mandate of the human rights operation and (2) by breaking down the definition of the particular right into its component elements to determine if it fits the situation.

The human rights operation may need to prioritize its efforts not only as to the rights and issues it will focus on, but even as to specific rights — particularly where there are a large number of violations, for example, using a test case approach.

The human rights operation needs to prioritize its efforts for long-term results in considering what it will leave in terms of human rights capacities and institutions when it departs, so that it can help to build those institutions and capacities.

A. Process of determining what rights have been violated

1. Identifying violations is a crucial part of the HRO's job. If an incident qualifies under the **definition of a particular human rights violation**, further investigation and reporting should be done. Of course, different sorts of violations should produce appropriate responses, depending upon the mandate of the monitoring operation. For example, particularly serious violations such as arbitrary killings, torture and large scale forced evictions would ordinarily deserve particular attention and rapid follow-up.

2. When conducting monitoring, it is crucial for the HRO to *analyse a violation by identifying whether it falls within the mandate of the operation and by breaking down the definition of the particular right into its component elements*. The HRO must be sure that the facts would support the existence of each element before reporting the presence of a human rights violation. Each of the rights defined in **Chapter III: “Applicable International Human Rights and Humanitarian Law: The Framework”** may be divided into their composite elements. The most effective way of teaching the subject is to use case studies which require the officer to identify the elements of each human rights violation. Examples of such case studies may be found in the corresponding chapter of **OHCHR Trainer’s Guide on Human Rights Monitoring**.

B. Process of deciding which rights to target

3. An HRO or the field operation as a whole may feel overwhelmed by the sheer number of violations which may potentially require inquiry. Prioritization of efforts as to violations thus becomes critical. Obviously, the mandate must be the first criterion for deciding on which rights to focus. The terms of reference of the mandate may be very broad or relatively narrow. If the mandate is broad or permits choice, the leadership of the human rights operation must determine which rights require the most attention. Therefore, such decision about prioritization of violations does not rely exclusively on the individual HRO.

4. If the mandate is very broad — for example, to promote and protect human rights —, the human rights operation must consider: (1) **What rights** should be the principal focus since it is not possible to deal with all rights equally; (2) What are the most critical human rights **problems**?; (3) What groups or individuals appear to be the **most vulnerable**?; (4) Does it appear from the UN Security Council resolution, the agreement with the host country, UN Commission on Human Rights resolutions, the needs assessment, or other sources that particular rights, problems, groups/individuals, etc. were within the **intendment of the UN or the parties** who established the operation?; (5) What are the expected **capacities of the operation** in terms of numbers of personnel, skills and resources, such that one might assess how the UN human rights operation might make a **useful contribution**?; (6) What are **other organizations** doing in the field of operations?; (7) How can the UN human rights operation **make a contribution** in light of those other activities?

5. UN human rights monitoring experience illustrates how the decision to target certain rights is made. For example, in **Cambodia**, the human rights component of UNTAC (United Nations Transitional Authority in Cambodia) had a very broad mandate to promote and protect human rights. The operation considered the kinds of violations which were occurring and, in view of the overall objectives of the operation, focused primarily on: (1) political violence; (2) prison conditions; and (3) freedom of association and speech, as well as other rights required for free and fair elections.

6. During the initial period of its existence, another human rights monitoring operation targeted: (1) rights related to free and fair elections; (2) the right to personal

integrity; and (3) rights relating to detention. The operation did not focus on the very significant problems of ethnic discrimination in employment and forced removals from places of abode. While there had been cases of torture and ill-treatment when the operation was established, problems of torture and detention conditions diminished. The operation eventually shifted its emphasis to the human rights conditions which were most important in the particular situation at the time.

7. One of the reasons that an operation might not prioritize acts or omissions resulting in violations of economic, social and cultural rights such as employment and housing discrimination may relate to their concern at becoming overwhelmed by the sheer number of violations potentially within their mandate. In this context it is often useful to **share responsibility and prioritize efforts among the various international organizations** so as to provide a better overall response to the human rights situation. For example, in 1996 the UN monitoring operation in Rwanda (Human Rights Field Operation in Rwanda — HRFOR) consulted with the International Committee of the Red Cross as to which detention facilities and which detention-related problems each would take responsibility. Such sharing of responsibility might, for example, anticipate that the ICRC would take responsibility for detention facilities which would then permit the UN human rights monitoring operation to pursue other important issues, including for example issues of discrimination in housing, movement and employment.

8. There still remains the problem of **prioritization** of efforts with regard to particular rights: where a large number of cases have been presented to the human rights operation, how does the operation decide which cases to investigate? It is possible to make strategic choices as to which cases or which kinds of cases to pursue in order to have the **greatest impact**. One important factor in making such strategic choices is the **ability to achieve a visible success**, which will have an impact on the human rights situation. For example, the human rights operation can **select cases which are visible, very clear with regard to the facts, representative of the problems which others are suffering, and likely to have a positive result in a relatively short period**. An illustration of this situation may be seen with the problem of ethnic discrimination. The human rights operation might focus on the dismissal of a highly visible member of an ethnic group from employment at a major factory for reasons which are clearly related to ethnicity. Once the operation has 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 also be protected, putting additional pressure on the manager of the factory or the authorities. (See **Chapter XVII: “Monitoring Economic, Social and Cultural Rights”**.)

9. Another important factor in developing priorities for the human rights operation relates to its long-term objectives. The human rights operation will not remain indefinitely in the country. Within the terms of its overall mandate, the operation must consider **what it will leave in the way of human rights capacities and institutions when it departs**. The operation will ordinarily need to work with the Government so that the Government can define its needs in terms of human rights institutions and capacities. The operation may then be able to assist the Government by selecting tasks which will ultimately *build those institutions and capacities*. The human rights operation should seek ways to *reinforce State responsibility* to protect human rights and *not to replace it*.

.....Chapter VII INFORMATION GATHERING.....

Key concepts

Effective human rights monitoring requires an active information-gathering approach by the HROs.

An active information-gathering approach requires:

- | *identifying which problems to pursue*
- | *developing contacts*
- | *establishing a presence at all levels of the society, generally before a crisis arises*
- | *assessing the perspective of contacts*
- | *collecting accurate and precise information, through receiving complaints, inquiries and interviews*
- | *verifying information mainly by checking their consistency with independent sources*
- | *analysing the information*
- | *following-up to encourage authorities to act diligently in responding to the problem, and reporting.*

HROs should be particularly careful in coordinating their information-gathering and investigative action with criminal investigations conducted by international or national tribunals, in order not to jeopardize the work of such bodies. The form and ways of such coordination is a policy issue to be decided by the leadership of the human rights operation.

A. The information-gathering process

1. The **principal objective of monitoring is to reinforce State responsibility** to protect human rights. Human rights monitors collect *prima facie* information about human rights problems and illustrative patterns of violations. The process of collecting such information requires considerable effort. While the word “monitoring” might

superficially imply a passive process of observing and reporting, HROs will need to establish a more **active information-gathering approach**. HROs rarely are direct witnesses to serious violations, so that they can accurately report incidents they see. Instead, HROs learn of such incidents from victims or other witnesses. Accordingly, monitoring requires careful techniques for **collecting accurate and precise information**. Information gathering requires thorough **inquiries, follow-up and analysis**; sound information is essential to producing well-documented reports, which can then be used to encourage action by the authorities.

2. Indeed, HROs do not restrict their work simply to observing and reporting, because the human rights operation's objective is generally to help redress human rights problems and prevent future violations. The human rights operation should have a presence at all levels of the society. The local authorities should be aware that the operation reports not only human rights violations which have occurred but also the follow-up action taken by local authorities to redress the situation. Hence, the monitoring and reporting carried out by HROs can help to put pressure on local authorities to address and follow up on particular human rights problems. Often, this **follow-up action** will not only **redress** human rights violations, but also serve to **prevent** human rights violations in the future.

3. After identification of the human rights problems to be monitored under the mandate, human rights monitoring is principally pursued by means of **inquiries** to amass the elements of information, allowing *prima facie* assessments on the existence or non-existence of violations. These inquiries include a number of phases and dimensions:

- (a) **identifying which problems to pursue** under the mandate;
- (b) **developing contacts and establishing a presence** in the community;
- (c) **collecting testimonies** and complaints;
- (d) pursuing an inquiry meant to **verify information** concerning the violation, as well as the **response of the authorities**, including the military, police, and the legal system as relevant;
- (e) **if** at this point, it is established that **no** human rights **violation** occurred, the **case is closed**;
- (f) **if** the inquiry establishes that there has been a **violation**, the HROs will make **recommendations** and will take **steps** required by their mandate. (Note that different levels of information may be needed to take increasingly assertive action.) (See **Chapter XIX: "Following-Up and Seeking Corrective Action"**.)
- (g) during the entire process, HROs will seek to **make sure that the responsible authorities are acting diligently and efficiently**. They will especially monitor the conduct of the police and/or military in respecting human rights and the respect of legal procedures with regard to arrest, detention and trial as well as the guarantee of security for witnesses. (See **Chapter XIII: "Trial Observation and Monitoring the Administration of Justice"**.)

- (h) In general, HROs do **not attempt to gather evidence for criminal prosecution**. When they are confronted with such evidence, they should ordinarily submit the evidence to those authorities who can be expected to investigate further and bring the matter to justice. (See this chapter, **section I: “Evidence for criminal prosecution”** below.)

B. Developing contacts and establishing a presence in the community

4. In order for HROs to collect information and gain an understanding about the situation, officers must **develop contacts with knowledgeable individuals**, human rights **organizations**, other non-governmental organizations, **local government officials**, and other relevant actors working in their area. Lawyers and journalists may be particularly good sources of information because they are usually aware of relevant developments. HROs should be sensitive to the fact that violations against certain vulnerable groups — for example women — may be more difficult to detect through traditional channels for information gathering. They may therefore need to expand their search in order to ensure that certain groups or categories of persons are given proper attention and sufficient information is gathered on possible violations against them. Developing contacts requires active efforts to contact individuals and organizations, to arrange periodic meetings, etc. Moreover, HROs must *use* the sources that they cultivate. They should repeatedly return to their on-site contacts for more information.

5. In this context HROs should develop **relations with local Government officials**, including police and military officials, judges and other officials concerned with the administration of justice. Such contacts and a visible presence will help to discourage violations. Such governmental contacts will help identify which officials can be helpful when different problems arise. In addition, HROs should **regularly visit** prisons, hospitals, morgues, and areas where the population is most at risk (such as slums, working class districts and rural communities).

6. As mentioned above, **non-governmental organizations** (NGOs) can usually provide much valuable information and can assist the human rights operation in many ways. Some human rights NGOs focus particularly on increasing general public awareness on human rights, educating the public on human rights, lobbying for improved human rights standards, working for minorities, working for women’s human rights, protecting the rights of the child and/or monitoring specific categories of human rights violations (*e.g.*, disappearances, torture, etc.). Other NGOs work in areas which are not precisely within the domain of human rights, but which have much in common, for example, protection of the environment, consumer rights, mine removal, etc. Some NGOs have an entirely local or national membership. Others function at the regional or international levels.

7. Human rights operations should cooperate and support the efforts of NGOs whose parallel activities can reinforce and assist the UN human rights operation. This is particularly important in view of the usually limited human and financial resources of field operations. In these cases, it is crucial for the operation to develop networks with relevant local organizations who are able to provide information so as to be able to best conduct its monitoring functions. At the same time, in dealing with non-governmental organizations, field operations should pay particular attention to ensure that their work **reinforce NGOs' capacity** *vis-à-vis* national governments, and to avoid duplicating their functions, replacing their activities, or usurping their legitimate role in national societies.

8. Human rights operations should promptly **identify the NGOs** active in the country to determine which can provide information, which can handle matters outside the mandate of the operation (*e.g.*, child abuse, food assistance), which can help with human rights education and promotion, etc.

9. It is important to **develop contacts before a crisis situation** arises. Once the problem has arisen it will be more difficult to develop the relationships necessary for contacts to be useful.

10. In developing and using contacts, HROs should **assess the perspective of the contacts**. Ideally, officers should identify at least some contacts who have the least apparent bias as to human rights issues which may arise. In any case, HROs need to understand and compensate for the bias of contact persons who may provide information.

C. Collecting testimony

11. Information gathering requires actively pursuing all credible leads regarding human rights abuses. HROs must be **available and ready to move at any time to receive information** from a person who considers himself or herself to be a victim of a violation. When HROs learn of a situation (such as a demonstration, verified enforced disappearance, forced eviction or mass arrest), they should take steps to gather relevant information from indirect sources and then to identify and interview witnesses. HROs should consider carefully whether going to the scene of an event will assist with the inquiry or might endanger sources of information and, in case of doubt, always consult with other relevant persons in the operation. In general, it is wise to be somewhat circumspect about visiting the site of an incident until the HRO knows enough to determine whether the benefit will considerably outweigh any potential risk to the officer or sources of information.

12. For more detailed information on identifying and interviewing witnesses, see **Chapter VIII: "Interviewing"**.

D. Receiving complaints

13. Often individuals identify themselves by coming forward in search of protection or recourse for past violations of human rights. The **number of individual communications reaching the HROs depends on their credibility with the local population**, NGOs, churches and other organizations. The need for credibility and information provides another reason why officers should develop good relations with human rights and other organizations working in their area.

14. The **objective of an inquiry is to ascertain the circumstances and acts that led to an alleged violation**, for example suspicious death, an illegal detention, internal displacement, a discriminatory eviction or other human rights violation. Such an inquiry is necessary, whatever the category of violation communicated to the HROs. The **response, however, will vary according to the kind of violation** which must be established, for example, death of a victim; disappearance; torture; cruel, inhuman or degrading treatment; serious and frequent threats to individual liberty and security; discriminatory discharge from employment; violence against women; or the exercise of the right of expression and association. The nature of the response **will also vary depending upon the degree of certainty indicated by the information** available. For example, a relatively small amount of information may only require discreet inquiries with regular contacts. A greater degree of information may require more direct inquiry with other witnesses. More information may indicate the need for the preparation and ultimately the undertaking of an on-site visit. If HROs encounter an urgent and grave situation, the response may by necessity be quicker and less circumspect.

15. After a significant amount of information has been collected, HROs may need to make **inquiries with the authorities** as to their response. Depending upon the response of the authorities to the inquiry and the situation, **more information may be needed or other steps** should be considered, for example, appeals to higher level officials in the local Government, invoking the assistance of higher level officers within the human rights field operation, various forms of publicity, etc. Several such follow-up measures must be determined by the head of the field operation.

16. Depending on the various aspects of their mandate, HROs may have special forms used for inquiries with regard to individual complaints. In some situations, **complaint forms** may be used to decide on the admissibility of the case, based on the seriousness of the matter, and on the precision of the inquiry. It is therefore usually important to complete the inquiry forms properly. A sample form has been provided in **Appendix 1 to Chapter XX**. It should be modified to fit the monitoring operation's mandate.

17. When interviewing victims or witnesses, the HRO need **not pose questions in the sequence of the form**. It is, however, essential to keep in mind the content of the case form, so that no point will be overlooked during the interview even if some points remain without answer.

18. After the interview, HROs can complete the forms based on their interview notes. It is particularly important to **reorganize the facts and events chronologically** regardless of the order in which the victim or witness presented the information. (See **Chapter XX: "Human Rights Reporting"**.)

19. The information requested in the form is the most important but is not exhaustive. Additional information can be provided on a separate sheet of paper, or can be attached to the form, as long as the extra pages are identified by the file number but not the victim's name.

E. Verification of information

20. After having received a communication, the HROs must **check the information received**. It is essential to verify the accuracy of the reported human rights violations before taking any steps. The officers should verify the substance of the complaint with any human rights organization or association having knowledge of the matter. Furthermore, the officers may request assistance from any human rights organization or entity with knowledge of the case under scrutiny.

21. In addition, the HROs should determine whether the family, friends and neighbours of the apparent victim, as well as **other witnesses, can corroborate** the facts in the complaint. The witnesses should be **individually interviewed** as promptly as possible and should be assured that the HROs will **remain in frequent contact** with them. They must be informed that the HROs will endeavour to assure their protection during and after the inquiry, but that their safety cannot be guaranteed. Additionally, the witnesses should be asked whether they wish to remain anonymous. More details on interviewing victims and witnesses of human rights violations are provided in **Chapter VIII: "Interviewing"**.

F. Analysis of information

22. A recurring problem with fact-finding regarding human rights abuses is difficulty in evaluating the information obtained during on-site visits or interviews. HROs, after all, lack the capacity to verify every detail of the information they receive. Indeed, it is rare for the HRO to "get to the bottom" of most violations as would occur in the criminal justice system. In general, however, the HRO seeks to develop at least a ***prima facie* analysis based upon the degree of relevance, veracity, reliability and probity of the information** which has been collected.

23. The most commonly applied rule of reliability in human rights fact-finding is the principle that **information should be consistent with material collected from independent sources**. Related to the idea of consistency of information collected is the concept that reliability can be assessed by the degree to which a **particular piece of information fits in context** with other materials which have been amassed. Hence, the HRO must consider not only the specific information gathered, but also the officer's sense of whether the whole story seems credible when all the pieces of the puzzle are put together.

24. Another aspect of reliability relates to the degree of certainty which should be applied. The completeness expected from the HROs' fact-finding procedures will vary

considerably depending upon the purpose for collecting the information. Instead of a specific “burden of proof” as might be applicable in the criminal justice system, there exists a **continuum of degree of certainty and quantity of information in relation to the action to be taken**.

25. For example, if the HRO attempts to gather complaints and other information so as to inform a lower level Government official of the allegations with the hope that the Government will initiate an investigation, the degree of care and completeness of the fact-finding procedure might be necessarily abbreviated. This lower level of certainty would only require the need for further inquiry at different levels of visibility. It should be recalled, however, that even an inquiry does carry some degree of implied criticism and visibility. The highest level of certainty would be required for the most coercive and visible actions. Hence, for a finding that human rights abuses have been perpetrated, the most complete process and a greater level of certainty would be required. To identify a perpetrator publicly the human rights operation may need to possess very substantial information (possibly even enough to meet the beyond-a-reasonable-doubt standard applied in the criminal justice system), because such a public identification may result in prosecution or possibly reprisals. In any case, such an identification of the perpetrator would represent a significant policy issue for the leadership of the human rights operation and would not be determined by the individual HRO.

G. Evaluating direct testimony

26. HROs can use a wide range of **techniques to corroborate** the direct testimony of victims and eyewitnesses. During the interview itself, the interviewer should test the **internal consistency and coherence of the testimony**. The interviewer can probe for inconsistencies by returning to the same subject several times but with different questions. The HRO should be careful to note, however, that often communication difficulties can create inconsistencies. The interviewee should be given the opportunity to provide clarifying information.¹

27. In general, oral testimony is evaluated based upon the demeanour and overall credibility of the witness. The HRO should, however, be sensitive to the fact that cultural differences and the nature of the testimony may create embarrassment and difficulty in communication. For more detailed information on assessing the credibility of an interviewee, see **Chapter VIII: “Interviewing”**.

28. HROs should remember to factor into their analysis the perspective or bias of a witness. For example, a victim may exaggerate in order to justify their conduct and to get revenge against the person who injured them. Political tendencies may obscure or reorder the truth. Refugees may exaggerate the persecution they may have suffered in order to qualify for refugee status or simply to justify their decision to flee. Ideally, the HRO will be able to obtain consistent information from individuals with different political backgrounds and life experiences. The HROs’ **use of reliable and**

¹Diane Orentlicher, “Bearing Witness: The Art and Science of Human Rights Fact-Finding”, 3, *Harvard Human Rights Journal* 83, 118-19 (1990).

uninvolved contacts, as well as their own good sense, are particularly helpful in this context.

H. Other forms of information

29. While direct testimony from victims and eye-witnesses is the principal source of information for HROs, officers can **also use second-hand testimony**. When using the second-hand testimony of remote witnesses, however, field officers should remain aware that indirect information is **more unreliable than direct testimony**. The reliability of hearsay or second-hand information from several unrelated sources, though, will increase its probative value. Nonetheless, the officers should carefully consider hearsay or second-hand testimony before accepting it as fact.

30. Other forms of information can provide corroboration for allegations of human rights abuses. HROs can use **physical and psychological symptoms** observed during the interview and/or medical examination **as indicators of reliability**. If possible, HROs should seek the assistance of medical professionals for assessing medical and psychological symptoms of victims. (See **Chapter VIII-I: “Interviewing special groups and individuals with particular characteristics”**.) If such professionals are not immediately available, however, careful observation and description of symptoms may assist a medical professional in assessing the information at a later time. The HRO, as advised by a medical professional, should consider whether the information obtained during the interview and examination are consistent or inconsistent with the ill-treatment alleged. If the description of physical symptoms immediately after torture and any physical symptoms, including scars, that remain on the victim accord with the known pattern of symptoms for the types of torture alleged, then the HRO may consider the findings consistent with the allegations.

31. Other **physical corroboration of allegations can occur during on-site visits**, which provide an opportunity to verify witnesses’ descriptions of buildings and rooms and possibly to take photographs — particularly when there is a concern that the scene may be changed before the criminal justice professionals can arrive.

32. Real evidence can include clothes, personal effects, fingernails, under-nail scrapings, blood and hair belonging to the victim. Weapons used to inflict the injuries and foreign objects (projectiles, projectile fragments, pellets, knives and fibres) removed from the victim’s body may also be used as evidence. Other examples of real evidence include chemical samples, fingerprints that identify the person responsible, photographs/film of the incident and/or scene, and photographs/sketches of torture marks on the victim’s body.

33. In general, **HROs should leave crime scenes untouched and should not attempt to substitute themselves for the police authorities**. HROs should not gather or tamper with the sort of physical evidence that would be used in a criminal investigation, because the officers should try to avoid disrupting the criminal justice system. If, however, the HRO does encounter such evidence, it should be reported to authorities if they would be likely to pursue proper criminal justice investigations. If an HRO has no alternative and comes into possession of physical evidence, the officer

should make sure that the evidence is collected, handled, packaged, labelled and stored in the proper manner to prevent contamination and loss. Each piece of real evidence should carry a separate statement detailing when and where it was taken/found. The statement should say who took/found the evidence, and it should be signed by that person. This procedure is important to preserve the continuity of evidence.² The handling of such evidence ordinarily requires *professional forensic training*.

34. Ultimately, HROs must rely on their common sense to assess the credibility of all information based on its consistency, the reliability of the testimonies, and the probity of the other material collected.

I. Evidence for criminal prosecution

35. HROs should be aware of contexts in which the information they encounter may potentially be useful for criminal prosecutions — either in **international criminal tribunals** for such places as the Former Yugoslavia, Rwanda, and any other place where the jurisdiction of the International Criminal Court may arise in the future — or by **national courts**.³ In general, the lawyers and investigators for such tribunals prefer to do their own investigations and have difficulty relying upon information collected by others.⁴ Hence, if personnel from a relevant tribunal or court are available, **HROs should promptly inform them of information which might fall within their mandate**. Rule 70 of the Rules of Procedure and Evidence of the international criminal tribunals on the Former Yugoslavia and Rwanda permits the tribunal's prosecutor to receive confidential information and prohibits the prosecutor from revealing the identity of the informant or the information without previously obtaining the informant's permission. While no Rules of Procedure for the International Criminal Court exist yet, article 54 of its Statute authorizes the Prosecutor to agree not to disclose, at any stage of the proceedings, documents or information that the Prosecutor obtains on the condition of confidentiality and solely for the purpose of generating new evidence, unless the provider of the information consents and take necessary measures to ensure the confidentiality of information, the protection of any person or evidence.

36. Most of the evidence collected for such tribunals comes from interviewing witnesses, visits to crime scenes, collection of physical evidence, and searches for documents. Evidence for criminal prosecutions usually needs to be more carefully handled than information obtained for human rights reports. Physical evidence must not only be preserved but the chain of custody must be carefully recorded, so that the evidence can later be verified. As indicated above, HROs should avoid disrupting

²Kathryn English and Adam Stapleton, *The Human Rights Handbook: A Practical Guide to Monitoring Human Rights* 158 (1995).

³The UN Security Council established the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991 and the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda. Security Council resolutions 827 of 25 May 1993 and 955 of 8 November 1994 (see **Chapter XIX: "Following-Up and Seeking Corrective Action"**).

⁴Graham T. Blewitt, *The relationship between NGOs and the International Criminal Tribunals* (1996).

criminal justice investigations and should generally avoid gathering physical evidence. Such issues raise significant policy decisions which can only be determined by the leadership of the human rights operation and not by individual HROs. Such policy decisions may wish to distinguish between the needs of (1) national or local criminal justice procedures, (2) reporting by any truth and justice commission, and (3) investigation for any relevant international criminal tribunal. (See **Chapter XIX-G: “More long-term follow-up: truth commissions and tribunals”**.)

37. Similarly, the leadership of the human rights operation may decide that HROs should be particularly careful in interviewing witnesses who later may be required to testify in national and/or international criminal proceedings. The records of such interviews may be produced in the trial and thus must be very carefully prepared. If a witness has evidence which should be adduced in a criminal proceeding, the **human rights operation** may wish to defer interviewing the witness so as to avoid influencing the testimony and **should inform prosecutors of potential witnesses** or may wish to work closely with the officials who are responsible for investigating the criminal offence.

38. In all cases, in order to decide a policy on these matters the leadership of the human rights operation will need to consult with relevant staff of the tribunals, and any policy decided will have to be consistent with applicable rules of procedure.

.....Chapter VIII

INTERVIEWING

Key concepts

*The human rights officer should consider **who** to interview, **how** to protect them, **who** should conduct the interview, in **what language**, **who** will translate, **where** the interview should be done so as to protect the witness, **how** the interview should be **recorded** so as to protect the **security** of the information, **what** the interviewer needs to **know** before the interview, **how** to deal with **cultural differences** which inhibit communication, and **how** to **initiate** the interview.*

*The human rights officer should **develop a rapport**, **introduce** him/herself and the interpreter, **explain the mandate** of the UN human rights field operation, establish the purpose of the interview, discuss the **ground rules** for the interview, talk about how the witness may be **protected** after the interview, anticipate the **use which will be made of the information**, and encourage the witness to **tell his/her story** in his/her own words before asking specific questions.*

The human rights officer should be aware of the particular needs and characteristics of some categories of interviewees — including for example victims of torture, women, children, refugees and internally displaced persons, rural populations, indigenous communities and lower-income groups — and be adequately prepared before interviewing them.

A. Introduction

1. **Interviewing** is the most common **method of collecting information** about alleged human rights abuses. In addition, oral evidence is often necessary to supplement written information. In this section, various aspects of interviewing will be discussed. The basic techniques of preparing for, initiating and conducting the interview will be examined in this chapter. Topics include using interpreters, verifying information, and interviewing individuals with particular characteristics. It is important to keep in mind that interviews occur in many different contexts — office, prison, in the field and on the road. The interview process should be tailored to fit each situation. Also, HROs should think strategically about what information they need to collect.

Where can they get it? Who would know? What are the witnesses' interests in coming forward and telling their stories?

B. Identifying individuals for interviewing

1. Identification of witnesses

2. Often individuals identify themselves by coming forward in search of protection or recourse for past violations of human rights. Yet it is common for witnesses and victims to feel that it is useless or dangerous for them to identify themselves. For particular types of violations, for example sexual abuses or other forms of violence against women, the victims' reluctance to report violations may be even greater. It may be necessary, therefore, for HROs to be **pro-active** rather than passive **in determining whom to interview**. It is indispensable that fact-finders develop good relations with human rights and other organizations working in their area. This task implies active efforts to contact the organizations, to arrange periodic meetings, etc. Local human rights and other organizations can put HROs in touch with victims and witnesses of human rights violations. Clinics and treatment centres may also serve as a starting point. In addition, lawyers and journalists may be able to identify potential interviewees.

3. As indicated above, HROs must be available and **ready to leave their office** and go to where they can receive information from a person who considers himself or herself to be a victim of a violation. HROs must **regularly visit** prisons, hospitals, morgues and areas where the population is most at risk (such as slums, working class districts and rural communities). When moving into remote rural areas, HROs should choose between several approaches. One approach is to establish and follow a schedule of visits to allow witnesses to contact them. Another possibility is to visit irregularly and arrive unexpectedly. A third approach is to schedule occasional visits through a trusted third party, such as a member of the clergy.

4. HROs should **never pay for testimony**, but should consider providing for the travel costs of witnesses who have to travel long distances. One reason not to pay for an interview is concern that the interviewee will tell the story that s/he thinks the HRO wants to hear.

2. Protection of witnesses

5. Another consideration for interviewing witnesses — especially interviewing conducted by human rights field operations — is the **need to protect witnesses**. The subject of protecting witnesses needs to be considered in the context of all the measures which should be taken — from the first stages of arranging for the interview through post-interview communications.

6. While there can be no complete assurance that witnesses will be protected after they have been interviewed, one partial solution to the problem of retaliation against witnesses, used chiefly by intergovernmental organizations (IGOs), is an agreement by the Government not to undertake retaliatory measures. For example, Article 58 of the Regulations of the Inter-American Commission requires the government to bind itself not to take reprisals against witnesses as a condition of the mission. The “Agreement on the establishment of an Office of the United Nations High Commissioner for Human Rights in Colombia” states at art. 31 that “[t]he Government undertakes [...] to ensure that no person who has had contact with the Office is subjected to abuse, threats, reprisals or legal proceedings on those grounds alone.”

7. In the absence of a protection agreement or in any case, several measures may be taken to protect the witness:

- (a) Interviews should be undertaken in a context in which the field operation would **not focus unnecessary attention** on the witness. HROs should try to interview a significant number of people in a community so as to avoid focusing attention on a few individuals.
- (b) The interviews should occur in a **place where surveillance is minimal**. Governmental surveillance is less likely to be a problem if HROs are mobile and travel around the countryside.
- (c) The interviewer should **never refer explicitly to statements made by one witness when interviewing another witness**. Such an error may endanger the first witness and will make the second witness uncomfortable about the confidentiality of the information which is provided. Indeed, it is best to avoid revealing the identity of other people who have provided information. Contacts should be very carefully protected and their identity should not be divulged except under complete assurances of safety.
- (d) The interviewer should inquire as to whether the witness is in danger, and **what security measures the witness believes should be taken**.
- (e) Briefly at the beginning of the interview and more thoroughly at the end, the interviewer should inquire as to what precautions may be taken to give some protection to the witness after the interview. Some witnesses may want to have a card indicating that they have been interviewed so that they can show that card to authorities indicating that the UN will care if any harm befalls them. Others will view such cards as dangerous to possess because they may attract the attention of authorities. These witnesses may, instead, want to **develop some method of keeping in contact**. Some interviewees may prefer to remain anonymous. In any case, it should be made **clear that the HRO cannot assure the safety of the witness**.

8. In order to protect the persons interviewed, it is crucial to **keep all records in a secure location at all times**. Files might as an extra precaution be **identified by number and not by the name of the individual**. Lists identifying the interviewees would then be kept separate from the substantive files and records of interviews. When additional information becomes available, the HRO should mark it with the number of the file, and not the name of the victim. Duplicate copies of all records should be made and kept in a secure location.

C. Preparing for an interview

9. In preparing for the interview, the HRO should consider *who* to interview, *how* to protect them, *who* should conduct the interview, in *what* language will the interview be conducted, *who* will translate into and from local languages, *where* the interview should be done, *how* the interview should be *recorded*, *what* the interviewer needs to *know* before the interview, and *how* the interview should be initiated.

10. Because of a reticence to discuss traumatic experiences with others present, it is the practice of most organizations to **interview witnesses and victims individually**. The UN Draft Model Rules, for example, exclude witnesses from the hearing room while others are testifying if the testifying witness so requests. Amnesty International also follows this pattern. It is worth noting, however, that in a prison context, the ICRC often interviews several people together in one prison cell. This approach gives the interviewer a general view of what people in the group are willing to tell before s/he decides whom to interview individually.

1. Who will conduct the interview

a. Number of interviewers

11. In general, it is best to have **two persons** do the interview. One person can maintain eye contact and ask questions. The other interviewer can discreetly take notes and may identify missed questions. It may, however, be practically impossible to have two interviewers present for all or even most interviews. If there is only one interviewer, s/he should take limited notes and then prepare more complete notes after the session. Also, if an interpreter is necessary, three individuals may be too large a group of listeners. In general, people are willing to be more candid when there are fewer people present. Witnesses may be reluctant to speak in front of a panel of listeners.

b. Language skills

12. The UN human rights field operation should determine which if any members of the UN operation **speak the relevant local languages**. Many of the people who are suffering speak only a local language; UN HROs should learn the local language, if at all possible.

c. Cross-cultural differences

13. Cultural differences between interviewer and interviewee can cause **communication problems**. These cross-cultural differences include attitudes about the meaning of the traumatic experience, gender and status roles, and appropriate topics of conversation. Even culturally specific ideas about physical interaction (eye contact, personal space) can lead to misunderstandings. It is crucial that the interviewer be sensitive to these cultural differences, be patient with the interviewee and attempt to learn more about the interviewee's culture.¹

¹Glenn Randal and Ellen Lutz, *Serving Survivors of Torture* 64-67 (1991)

14. Another cultural difference may be the extent to which politics is a factor in the life of the interviewee. The interviewee may be extremely committed to a particular political view or party, and may describe in detail their political activities. The interviewer should respectfully listen and record this testimony, even though s/he may not agree with the views expressed.

2. Interpreters

15. It is a much *better practice* for HROs to *speak the language* spoken by the people of the country or area in which they work. If HROs must use interpreters, they will not be able to get as full an understanding of the information they receive. Also, many people will be more reluctant to speak with the HROs through an interpreter — particularly if the interpreter is from the country in which the operation is established. If **interpreters** are required, they **must be vetted as to their background** to make sure that the work of the UN human rights field operation is not infiltrated by informers from the Government or opposition groups. Care should also be taken to **make sure that interpreters are not intimidating to the interviewees**. For example, former members of the military or individuals of the same ethnicity as the persecutors should be avoided. In addition, female interpreters may be less threatening than males in the interview context. Also, HROs should be sure that the interpreter speaks the same local variation or dialect as the interviewee.

16. Guidelines should be developed regarding the use of interpreters. If an interpreter is used for an interview, the interviewer should **explain the ground rules to the interpreter** in private, before the interview begins. The interpreter should be **asked to relay questions exactly**, word for word to the extent possible. If the questions are unclear or if the witness does not understand them, the interviewer should ask the interpreter to let the interviewer know, so that questions can be rephrased. The interviewer should speak in concise sentences, which are easy to understand and translate. The interpreter should relay *questions or statements one at a time* so as to make sure that the witness understands them. The interviewer should repeat questions several times, if needed, until comprehension is achieved. The interviewer should look at and speak directly to the witness, rather than to the interpreter.

17. Like all other employees of the UN, **interpreters need to be protected**. It might be helpful to recruit interpreters from areas outside of the place where they are asked to work. The reliability of interpreters and drivers is very important to the credibility of the work of the officers and the UN.

18. When working with interpreters, it is important to keep in mind the potential for interpreters to learn too much. In the worst case scenario, **interpreters may become or be pressured** into becoming informants for the persecutors; at the very least, interpreters may become so familiar with certain facts or country conditions that they translate carelessly, incompletely or inaccurately. One possible solution to this problem, used by the European Community Monitors in the former Yugoslavia, is the use of university students as interpreters for only two weeks at a time. Other interpreters are then rotated in as replacements.

3. Location and privacy

19. The interview should be conducted in a **location** which will present the **least risk of eavesdropping and of retaliation** against the witness. The greatest risk arises in places such as hotels where interviews may be overheard and where there is a considerable likelihood of surveillance. The selected interview location should raise the least suspicion among persons who see the participants enter or see them talking. Similarly, the location should establish the proper atmosphere for the interview, so that frank discussion can occur without undue interruptions. As with so many other issues, the interviewers should **consult their contacts to get advice** as to the best locations for interviews.

4. Recording the interview

20. **Tape recording** in most circumstances **presents grave security concerns** and should not be pursued. In some countries, however, where security conditions permit, the interviewer should consider the use of a tape recorder. A tape recorder can **only be used with the express consent of the interviewee**. They can therefore only be used where the witness develops a considerable degree of trust in the interviewer. Tape recorders are particularly useful where there is only one interviewer and thus note taking is very difficult. Also, tape recorders are helpful where translation/interpretation is needed. The only way to verify the interpretation may be to record the interview, so that it can be considered at a later moment. The tape recorder should not be introduced until after the interviewer has established his/her credibility and reassured the witness about the objectives of the interview and the confidentiality of the information. The witness should be asked whether s/he would permit tape recording, so as to assist the interviewer in recalling the information. There **should never be a hidden tape recorder**. A tape should never contain the name of the individual who is interviewed. The identity of the witness should be recorded in another place and in a coded manner so that **no visible connection can be made between the taped interview and the name of the individual**. After the tape has been made, the tape should be hidden, so that it cannot be confiscated or be related easily to the witness.

21. **Cameras** are even more problematic. There is a considerable **risk of retaliation** against individuals as a result of photographs. Some witnesses may want their wounds from torture to be photographed. Even such a photograph **should not indicate the identity** (for example, by showing the face) of the witness. If permission is obtained to take a photo, the witness should be asked about publishing or otherwise disseminating the photo. A very visible individual who is at great risk of death may want to be photographed as a means of self-protection. Nonetheless, most witnesses will probably not want to be photographed.

22. **Video recording** is more **dangerous** for interviews, because they will inhibit obtaining information and will place the witness at considerable risk, **if found and confiscated**. Video recording may be somewhat more useful in recording demonstrations or similar public events, but creates security risks. It is important to keep in mind that in some cases the video camera may, in fact, precipitate an event or demonstration. The HRO should take care not to endanger people or distort events by video recording.

5. Preparatory research

23. The interviewer should **prepare for the interview by learning** as much as possible about the witness and the relevant circumstances. If a dossier has already been prepared, the interviewer should read the dossier and other **background material**. The interviewer should also become familiar with terms and acronyms relevant to the situation.

24. The interviewer should prepare for interviews (particularly important ones) by setting out an **outline of the interview** (including a list of the topics to be covered in the order in which they should be addressed). The interviewer might even write out key questions. Some of the key questions are suggested below with regard to the information necessary to sustain a complaint. Preparing the list of queries helps the interviewer develop a strategy for the interview. The interviewer should commit the questions to memory or should avoid relying too heavily on the list of topics. *Eye contact and establishing rapport are more important than adhering to a particular order of questions.* The list of topics might be used as a memory refresher at the end of the interview to be sure that the major questions have been asked. The HRO should be careful to avoid allowing the list of questions to become an artificial barrier to communication with the witness.

D. Initiating the interview

25. Prior to the interview, the interviewer should have already met with the interpreter and discussed the ground rules for the interview. At the beginning of the interview, the interviewer should greet the individual in a friendly way (smile, shake hands, etc. according to local customs). Before asking any questions in the interview, the interviewer should **introduce** him/herself and the interpreter, **explain the mandate** of the UN human rights field operation, **establish the purpose of the interview**, **discuss the ground rules** for the interview, talk about how the **witness may be protected** after the interview, and anticipate the **use which will be made** of the information. The HRO should stress that it is crucial to obtain as many details as possible in order to establish the facts, for example, that there has been a human rights violation.

26. The interviewer should project an attitude of **professionalism, sincerity** and **sensitivity**. The interviewer must also explain to the interviewee the different steps the information will go through, and the uses that will be made of it.

27. In order to **establish an initial rapport** with the individual to be interviewed, the interviewer might wish to offer water, coffee, soda or other refreshment. (It is often useful to have a supply of water and tissues available during the interview.) The interviewer should speak directly to the witness and try to maintain eye contact, even if an interpreter is being used.

28. The interviewer should **explain their mandate**. One problem about explaining the mandate in any detail is that the witness may tailor their story to fit or even mimic the violations mentioned by the introduction of the mandate. The interviewer should explain that the UN human rights field operation is entirely **separate from the**

Government. Unless unavoidable, HROs should **generally not travel in Government vehicles** or accept military escorts. The UN operation may need to monitor military activities, but the HROs should keep their distance. As with many other aspects of this manual, HROs should seek policy guidance from the leadership of the human rights operation on such questions.

29. Similarly, the interviewer should *assure the witness that information will be kept in confidence and explain how* the confidential nature of the information will be preserved. (Interviews with Government officials, however, are generally not confidential.) Non-governmental witnesses need to be reassured about the objectives of the interview and why the witness should take the risk of providing information. The witness should be aware that notes are being taken of the interview, but the notes will be kept confidential. The **witness should be able to give permission as to the use of the material**, whether names and details will be cited, etc. The witness should also be reassured about how the notes of the interview will be protected. The witness should be encouraged to provide as much detail as possible. The witness will want to know how the information will be used and the interviewer should ask the witness what the witness thinks ought to be done. The witness should be asked about how the UN human rights field operation can keep in touch after the interview in order to provide some assurance that the witness will not be harmed. At the end of the interview the discussion should return to these issues of how the information will be used, what needs to be done, and how to protect the witness.

E. Interview

30. During the interview, the HRO should maintain rapport with the interviewee, and develop a climate of acceptance and trust. Basic to the development of this climate, the interviewer must **avoid the appearance of judging the individual**, disapproving of his or her conduct, or disbelieving the information provided. In addition, the interviewer must always **follow through on his or her promises**. The interviewer should exhibit an interest in the person as an individual, someone worthy of respect and concern, and requiring attentiveness to their perspective and motivations. The interviewer should treat the individual as having important information and as worth the interviewer's undivided attention. The individual should not be made to feel like only a single case in a succession of nameless cases of momentary interest.

1. Narrative statement

31. It is a good idea to **let the interviewee begin by narrating his/her story**, as this approach will minimize his/her feelings of loss of control and helplessness. The interviewer should ask the witness what has happened to him/her which might be the subject of a complaint. The interviewer should listen attentively to the "narrative presentation" of the witness, and be patient with circular and repetitive statements which are not logically ordered. Allowing the witness to tell the HRO what the witness considers to be important is a *critical element of establishing rapport*, even though the information may not be strictly relevant to the monitoring task. Indeed, the **HRO**

should be patient in listening to political and other discussion, which is not strictly relevant to human rights. *If the witness is not permitted to tell the story in his/her own way, s/he may be reluctant to talk about sensitive issues* (such as ill-treatment) which are directly relevant to the human rights field operation. The witness should be given time to develop trust and confidence in the interviewer.

32. **Questions should be formulated in an understanding tone** to get clarification, rather than in a cool or harsh manner. The interviewer should **use open-ended questions**, rather than many specific questions in the style of cross-examination. In general, the interviewer should **work from non-controversial and non-sensitive questions towards more sensitive issues**. The interviewer should *not try to push the witness. If a topic arises that is too emotional or sensitive for the witness, change the subject and come back at a later time. Take a break during the interview* or between interviews, if it appears that the witness, the interpreter or the interviewer is growing tired. Again, the interviewer might wish to offer water or coffee. The interviewer should be respectful and sympathetic to the painful experiences the witness has suffered. The interviewer can let the witness know that the HRO is trying to help. The interviewee may need to express his/her emotions and the interviewer needs to be patient and reassuring.

33. The interviewer should try to be very **careful not to communicate** through body language, facial expressions or other means **that s/he does not believe** what is being said. If there is a capacity for video taping mock or practice interviews, the interviewers might want to look at themselves taking evidence, so as to be sure that they do not communicate negative messages which would deter the flow of information. *Some note-taking while maintaining regular eye contact* would appear to be the best way of handling a narrative statement.

34. Interviewers should **avoid leading questions**, because the witness may be tempted to give the questioner only the information they want rather than the truth. Interviewers should *not directly challenge exaggerations or credibility* problems. Much of the exaggerations may relate to the failure of previous fact-finders to establish their own credibility or to their failure to act on individual cases. The informants may feel they must exaggerate in order to engender action. The HROs need to build their credibility. Direct challenges to the credibility of witnesses may result in the witness refusing to provide further information. Also, other informants may hear that the interviewer does not find witnesses to be credible.

35. If the interviewer believes that the narrative is inconsistent, the *interviewer should try to clarify the facts by telling the witness that s/he did not grasp the sequence of events*. Once again, the interviewer should *not betray scepticism, mistrust or condescension*. It may be useful to **ask the same questions in different ways** in order to help the individual see the facts from different perspectives and to assess the reliability of the entire story.

36. Based on the information needed to support a complaint of a human rights violation, certain information should be collected. If the witness is literate, the interviewer should ask the *witness to spell each name*. It may also be very useful to *carry a map*. The map will contain place names which might be cited during the interview. It is also useful to carry a calendar, which may help the witness keep events in order. If the witness uses numbers (persons killed, injured, etc.), the interviewer should ask how the witness knows the number. This question will enable the interviewer to get a sense of the witness' ability to observe the facts.

2. Specific questioning

37. After hearing the witness' narrative statement, the interviewer may wish to **ask questions about specific incidents**. For example, if a witness says that soldiers came to her house, the interviewer might want to ask questions such as:

- ✓ How could you tell that they were part of the military?
- ✓ How were they dressed? A certain type of uniform?
- ✓ How many soldiers were there?
- ✓ Did they carry any weapons? If so, what kind?
- ✓ Did you know any of their names? Their unit?
- ✓ Did anyone else see them at your house?
- ✓ What did they do when they arrived or while they were at the house?
- ✓ Did they threaten you or your family?
- ✓ Did they harm any of your family?
- ✓ Did you have any physical contact with them?
 - ┆ If so, did they physically harm you in any way?
 - ┆ If so, were you beaten or ill-treated?
 - ┆ If so, how long did the beating take place?
 - ┆ How many blows were struck?
 - ┆ What did they use to strike you?
 - ┆ To what part(s) of your body?
 - ┆ How did you feel at that time? Later?
 - ┆ Did it have any effect on your body?
- ✓ Did the soldiers ask you to do anything?
 - ┆ Did they ask you to leave the house?
 - ┆ Were you taken away to a jail or detention centre?
 - ┆ Where?
 - ┆ Did anything happen during the trip?
- ✓ What happened when you arrived at the jail or detention centre?
- ✓ What were the conditions of confinement? (Size of the cell, number of occupants, amount and nature of food, sanitary conditions, etc.)
- ✓ Do you know the names of other persons who may have been held at the same time?
- ✓ When were you released? How?

38. Such questions are suggested in **Chapter XX: “Human Rights Reporting”, Appendix 1: “Questionnaire — Interview Form”**.

39. The interviewer should also ask about other witnesses or sources of information. In addition, the interviewer should ask the name, date of birth, address, and method of contacting the present witness. As a security precaution, the HRO might **keep the information separate from the notes of the interview** itself. Accordingly, if those notes are somehow obtained, they will probably not be able to be used easily to endanger the individual.

40. The interviewer should attempt to ascertain the kinds of information about which the witness would have personal knowledge. These questions will help in assessing later information, without in any way suggesting that the witness is being quizzed as to their credibility. The interviewer might also **ask the same questions to several individuals in order to identify concordant facts**. The interviewer should never, however, **tell the witness what other people have said**. It may be that some information, albeit inconsistent in some ways, will have concordant elements which will be useful in establishing the facts.

41. An average interview would probably run no less than 45 minutes for an involved witness. A valuable informant, who knows what has been happening in the neighbourhood, may require far longer to gather information.

F. Concluding the interview and keeping in contact

42. The interviewer should **ask the witness if she or he has any questions or has thought of any additional information** which might be useful. The interviewer should, once again, assure the witness of confidentiality. The interviewer may give advice to the witness, but should avoid raising false hopes. The interviewer should explain what possible follow-up actions will be pursued in connection with the problem, once again without encouraging expectations which are unlikely to be fulfilled. The interviewer may also wish to review his/her notes with the witness.

43. The interviewer should be sure to **establish a mechanism for continuing communications** with the witness. It may be possible to **keep in touch** through the telephone, a reliable contact, a religious leader, or some other individual in whom both the UN human rights field operation and the witness have trust. At a minimum, the witness should know how to get in touch with the UN operation. Always leave the door open to a person who has contacted the operation, so that s/he can reach an HRO quickly at any time, to provide any new information, or to inform about threats or reprisals received because of his/her testimony.

44. At the end of the interview, the HRO may wish to arrange a **follow-up meeting** with the interviewee or a way of getting together in a few days in order to give sufficient time to verify statements with other sources and to take the steps agreed upon, etc.

45. The interviewer should also **verify that the interviewee has fully understood the modalities of the interview and the follow-up required**, the actions to be undertaken, whether the information was given anonymously, and whether negotiation or other intervention with the authorities will be undertaken. This last precaution is necessary, because the person has the right to change his/her mind during or after the meeting.

G. Interview report

1. Reconstructing the interview

46. After the interview is completed, the interviewer should **immediately prepare complete notes on the interview** based on the sketchy notes taken during the interview and the outline which was prepared in advance — particularly if notes were not taken during the interview. The information should provide the detail which is necessary to determine what happened, when it happened, where it happened, who was involved, how it happened, and why it happened. (See the **Questionnaire — Interview Form** in **Appendix 1 to Chapter XX: “Human Rights Reporting”**). The more detail contained in the report of the interview the more useful the report will be for undertaking action and in preparing more formal reports.

47. Psycholinguists have learned that recall strategies are different from strategies for communicating. The witness probably used a recall strategy during the interview; it is the task of the interviewer to convert the material recalled into a logical presentation. In writing the interview report, it is important for the HRO to structure the story in such a way as to best communicate what happened. For example, the *facts should normally be presented in chronological order*.

2. Assessing credibility

48. The interviewer should explain why s/he did or did not believe a witness' account. HROs should not, however, feel compelled to make a definitive judgement in this regard. It is not uncommon to be unsure as to a victim or witnesses' credibility. In considering issues of credibility, the interviewer should consider several general observations about credibility:

- (a) A person would not ordinarily take the time and risk to give an interview unless something serious had happened. The interviewer needs to **identify the information which is based upon the personal experiences** of the witness. Nonetheless, any indirect information may be useful to provide leads to other relevant information.
- (b) Many fact-finders consider a person to be credible if they are assertive and clear. The witness may have been neither clear nor assertive. The witness may be relatively powerless and traumatized. The **culture of the country** may not permit the witness to communicate so directly or even to look at the interviewer while talking. Nonetheless, there is probably a core of important information which needs to be identified.
- (c) As discussed more fully in the section on interviewing torture victims, individuals who have been traumatized often have difficulties with their memory and, for this reason, may not be assertive or clear. This **problem of memory loss** applies to all traumatized individuals and not just torture victims.
- (d) The interviewer needs to be patient with a witness who is **not very clear about time sequences**. Many witnesses may not refer regularly to the calendar in their

daily lives. They may need to be assisted by tying the events of concern to holidays or other remarkable days which are clearly fixed.

- (e) The interviewer should try to identify the information from the witness which is consistent with the information from entirely independent sources. Many fact-finders consider that a fact cannot be established unless **two unrelated witnesses give concordant testimony**. The reliability of the witnesses and the experience of the HROs with that reliability may be an important factor in assessing the veracity of information. **Detail helps to provide credibility**, and the fact that a witness is able to give a lot of particularized information is important. Also, some witnesses may have evident biases and those biases need to be factored into the assessment of veracity.
- (f) The interviewer should record information provided by a witness even if the interviewer is not sure of its reliability, because that information may be useful when further information is collected.

H. Further inquiry

1. Verification and cross-checking of information and documentation

49. The interviewer should **verify the information collected with appropriate persons** — for example the family of the alleged victim, friends, neighbours and other witnesses. In this context the interviewer may visit families, neighbours, workplaces, schools, prisons, etc. The interviewer may wish to examine documents or other records (medical records, death certificates, departure from territory, etc.). The interviewer may also collect, register, photograph or reproduce necessary information.

50. HROs may consult with doctors, psychologists, psychiatrists and forensic experts. HROs should obtain any medical reports which may be necessary. They should also request the assistance of all organizations or individuals working for the protection of human rights having knowledge of the case or the general situation.

51. The HROs or their superiors in the human rights operation should **request information from the appropriate authorities**. (See **Chapter XIX: “Following-Up and Seeking Corrective Action”**.) The authorities should, in turn, promptly and conscientiously furnish a response. In that context, HROs may wish to consider suggesting provisional remedies to the authorities, so as to avoid aggravating the situation. If the authorities do not provide requested information within a reasonable time, HROs should make their own conclusions, recommendations and decisions on the matter insofar as the material available permits. A “reasonable time” should ordinarily be about five days, but could be either as little as 24 hours in an urgent situation or much longer in a routine situation. The UN operation should continue to intervene politely but firmly with the authorities for as long as they have not provided a satisfactory response, have not taken the required measures, or if the evolution of the case requires it.

2. Follow-up cases

52. Some witnesses, such as torture victims, will probably have to be interviewed several times in order to establish rapport and to allow the interviewer to get a clear and accurate understanding of their stories.

53. If possible, the HRO(s) who dealt with the case should be entrusted with the follow-up. But, all-in-all, it is the area office staff that is responsible for the follow-up of each case. (See **Chapter XIX: “Following-Up and Seeking Corrective Action”**.) This principle is essential to compensate for the effects of personnel transfers and other changes in the team (leaves of absence, sick leaves, etc.). Until the case is closed, HROs should proceed with the investigation as an “active” case of a violation.

I. Interviewing “special groups” or individuals with particular characteristics

54. HROs should be aware that some interviewees have particular characteristics, such as age or traumatic experiences, that provide special challenges. In addition, “special groups” such as women and children may need to be approached and dealt with differently. Preparation and a little extra patience are needed to interview these individuals successfully.

1. Victims of torture

55. Interviewing torture victims (and witnesses who are so traumatized that they are very much like victims) about their experiences is an extremely delicate process and one which should never be taken lightly. The fact-finding interview may sufficiently mimic the torturer’s interrogation to raise conscious and subconscious fears in the torture victim. Interviewers should be particularly aware of the problem of sensitivity and **avoid retraumatizing the victim/witness**.

56. While such terms as “torture victim”, “victim” and “case” are used in this Manual for ease of exposition, the HRO should be aware that such terms may dehumanize and continue the degradation which the torturer may have intended to inflict upon the individual. *The individual must be made to feel important and not a subject of pity.*

57. An HRO who interviews a torture victim must be **prepared to deal with emotions**. The HRO should empathize with the victim and encourage him/her to talk about the traumatizing experience. If the victim becomes overcome with emotion, the interviewer should be supportive. The interviewer can suggest that they **take a break** from the interview and offer water or coffee. After allowing the interviewee to regain his/her composure, the interviewer should, if possible, try to bring the interview *back to less upsetting topics*. HROs should be sympathetic, but should keep in mind that they are not trained psychiatrists and that their job is not to provide treatment.

58. Victims suffering from **post-traumatic stress disorder** (particularly after experiencing torture) are characterized by severe anxiety; insomnia with nightmares about persecution, violence, or their own torture experiences; and somatic symptoms of anxiety, phobias, suspiciousness and fearfulness. Torture victims may also suffer from psychic numbing, minimization, repression or denial of the experience. *Victims' lack of trust, shame, humiliation and memory impairments can lead to confusing and seemingly contradictory statements, as well as inability to remember details.* In short, victims may not be able to describe the torture they experienced. In such cases, it may be necessary to rely on other sources of information (such as statements of friends and relatives) about the victim's history and background. HROs should, whenever possible, obtain expert medical advice.

59. The **medical examination** of a torture victim generally includes the individual's (1) pulse; (2) blood pressure; (3) height; (4) weight; (5) any significant changes in weight experienced; (6) any breakage of the teeth, bones, etc.; (7) condition (including tenderness, swelling and flexibility) of the individual's muscles and joints; (8) bruises and scars; (9) a general assessment of the intellectual functioning and orientation of the individual; (10) voice modulation which might reveal stress; (11) any complaints about hallucinations, sleep disruption, nightmares, fear, etc.; and (12) emotional appearance, including crying, tears, trembling lips, depression, etc. In the course of the medical examination, detailed information should be recorded as to each of these subjects. Since neurological damage due to beatings may be one of the most serious medical effects of torture, the examining doctor should look for evidence of neurological damage.

60. **Physical, emotional and psychological damage** may also be confirmed by using laboratory, roentgenographic, histopathological biopsy and photographic evidence. In order to avoid identifying the individual and to obtain the individual's consent for photographs, only the affected portions of the body should be photographed. All torture victims, however, must be handled with sensitivity as to the sorts of ill-treatment they underwent and the sorts of testing they will tolerate.

61. The fact-finding doctor may also attempt to obtain *access to the results of other medical or psychiatric examinations* performed on the individual both before the detention and as soon as possible after the ill-treatment supposedly occurred. By interviewing the doctors involved in any such examinations and by reading the reports, the fact-finding doctor may be able to distinguish pre-existing medical conditions or self-inflicted injuries from those caused by ill-treatment, may be able to *learn of bruises and other symptoms of ill-treatment* which may diminish or change over time, and may be able to confirm or question his or her own diagnosis.

2. Women²

62. Female interviewees may be particularly **reluctant or unable to talk about rape** or other forms of sexual violence because of the social stigma attached to such suffering. Extra effort should be made to develop rapport with women who may have suffered rape or other sexual violence. More effort should be made to make sure that

²See UNHCR, *Guidelines on the Protection of Refugee Women* (1991); UNHCR, *Sexual Violence against Refugees, Guidelines on Prevention and Response* 32-34, 38-41 (1995).

the woman wants to be interviewed and understands that the information will be kept confidential or used only in the ways she accepts. The interviewee should be informed that she may refuse to answer any question she finds uncomfortable and can stop the interview at any time. Great delicacy is necessary in establishing the basic facts of torture or other abuse, including what occurred, when, where, by whom, and whether there were other witnesses. Once those facts have been established, however, there may be no need to dwell upon the details of abuse.

63. If at all possible, **a female member of the UN human rights field operation should conduct the interview and a female interpreter should be used.** The female HRO should be sensitive and yet objective in handling the interview. The HRO should be alert to signs that the interview is causing the retraumatization of the witness. If the witness is overcome by memories of her suffering, the interview should be suspended briefly or resumed at another time. The officer should be aware of the **differences in cross-cultural communication** which may occur in talking with a stranger. For example, a woman may be reluctant to make eye contact because of the dictates of her culture. The HRO should inquire as to whether the woman needs medical and/or psychological care. However, as in every other interview situation, care should be taken to avoid making offers or promises which cannot be kept.

3. Refugees and other displaced persons

64. It is important to be sensitive to the fact that **refugees and displaced persons are under a lot of stress** due to the fact that they are without resources, and away from their homes and (possibly) families. The interviewer should determine the refugee's current status. Are they at risk of being sent back to their home country/region? Are they seeking asylum or resettlement? The interviewer should be sure to find out where the refugee is staying (camp, placement in a home, etc.) Such information is important for future follow-up action.

65. The interviewer may begin by asking why the individual fled his/her country or region. This question will eventually lead into a discussion of the human rights abuses experienced by the refugee. The interviewer should empathize not only with the refugee's experiences as a victim or witness of human rights violations, but also with his/her feelings of uncertainty, displacement and loss of control.

66. Corroborating the testimony of refugees and displaced persons presents a special problem as it may not be possible to visit their home country or region. It is especially important, therefore, to review with the interviewee his/her testimony to **check for detail and veracity.** *Further corroboration may be obtained by interviewing other refugees/displaced persons from the same area.*

4. Children³

67. A child perceives the world very differently from an adult. The interviewer should keep in mind this difference and should **approach the interview differently according to the age, maturity and understanding of the child.** It will probably be

³For further information on the rights specific to children, please refer to **Chapter XII: "Children's Rights"**.

necessary to use simpler language and to spend more time developing a rapport with a child who needs to be interviewed. If an interpreter is needed, the HRO may wish to *identify an interpreter who is either trained for or accustomed to dealing with children*. It may be particularly useful to explain more carefully the role of the HRO, the interview process, and the need to ask certain types of questions. The HRO should encourage the child to ask questions during the interview and to indicate if s/he does not understand a question or the reasons for asking it. The HRO should expect that the interview will require patience and more time than usual. The HRO should be attentive to signs that the child is growing anxious or overwhelmed. It may be necessary to interrupt the interview, to take a break, or to return another day. (For further information, see also **Chapter XII: “Children’s Rights”**.)

68. In addition to interviewing the child, the interviewer should (if possible) **talk to members of the child’s family and community**, teachers, other care-givers, etc. who have provided services. It may also be useful to seek advice from individuals with expertise in understanding the child’s perspective.

5. Rural populations

69. Like members of indigenous groups, individuals accustomed to a rural lifestyle may have a *different conception of time*. It is important to clarify statements about dates and times. Precise dates may have little meaning, so it is important for the interviewer to use a familiar frame of reference. For example, the interviewer may ask “Did that happen before or after the planting season?”

70. It is also important to keep in mind that *poor, uneducated or otherwise vulnerable individuals may lack confidence and may be reluctant to share information*. Local human rights organizations may be of assistance by working to reassure the interviewees who are afraid to come forward with information.⁴

6. Indigenous communities

71. Indigenous communities may have a way of life that is very different from the rest of the society or country — or indeed, from that of the fact-finder. The interviewer should be sensitive to and respectful of differences in language, methods of communication, sense of time and social structure. If possible, the interviewer should learn about the particular indigenous group’s culture and customs before the interview.

7. Lower-income groups

72. Lower-income groups including slum-dwellers, squatters, and those living in poverty generally may also have different views and perspectives than those working for human rights field operations. The poor may just as easily have unrealistically high expectations of an improved standard of living as a result of the UN operation as they

⁴Daniel J. Ravindran, Manuel Guzman, Babes Ignacio eds., *Handbook on Fact-Finding and Documentation of Human Rights Violations* 41 (1994).

may be entirely distrustful of uninvited involvement in their communities. Great care should be exercised by field workers to recognize and understand points of view which may, at first glance, appear difficult to fathom. For instance, a squatter community (even if they might have occupied the land in question for many decades) might become suspicious if the human rights worker begins immediately discussing issues of law. The often massive discrepancies between income and opportunities of the human rights worker and persons belonging to lower-income groups, too, may create significant hurdles in securing fruitful cooperation.

8. Government officials and suspected perpetrators

73. **Interviewing authorities** is very different from interviewing victims or witnesses of human rights violations, and **requires both diplomacy and careful planning**. The interviewer must probe statements without being too confrontational. The interviewer must remain polite and keep an open mind while questioning. The more significant the interview, the more important would be the preparation. The interviewer should, as suggested above, **prepare a list of questions** and should even think carefully about the order of the questions. Such an order of questions should not be too rigidly followed, because it will be more important to respond to the information provided by the Government official and to ask follow-up questions. If possible, Government officials should be interviewed *after the UN human rights field operation has gathered a fair amount of information, but with time to collect more material*. This approach will allow the Government to give explanations of statements made by victims and witnesses, and permit the UN operation to make further inquiries with regard to the Government's responses.

74. A difficult situation may arise when, in the course of interviewing an individual, the interviewer comes to believe that the interviewee is or was involved in personally persecuting others. This scenario should be discussed in advance, so that the interviewer has a plan of action should this situation arise. In general, it is important to gather the individual's information and include it in the interview report. Occasionally a Government official will provide invaluable information regarding human rights abuses.

.....Chapter IX

VISITS TO PERSONS IN DETENTION

Key concepts

Persons in detention are protected by a number of international human rights standards. Torture, corporal punishment, prolonged solitary confinement, punishment by placement in a dark cell, and other cruel, inhuman or degrading treatment or punishment are always prohibited. In addition, specific rights are set with regard to arrest and legal procedures, pre-trial detention, physical conditions of detention, discipline, supervision of detention, and other.

The UN human rights field operation should:

- | *ascertain whether the ICRC is already visiting persons in detention in the country of operation;*
- | *always try to coordinate their prison visits with the ICRC;*
- | *be aware of ICRC methods of work from which some basic methodological principles relating to such visits can be inferred.*

In visiting persons in detention, a team of several HROs (usually including a doctor/ medical staff) should:

- | *talk to the prison director;*
- | *tour the entire facility;*
- | *be able to visit all detainees freely and without witnesses, although in practice may talk only to some detainees;*
- | *talk to other prison officials;*
- | *have a final interview with the prison director;*
- | *within a few days prepare a confidential summary report for the prison director of the conclusions and understandings established during the visit;*
- | *prepare a confidential report (often relating to several facilities) to the Government;*
- | *repeat the visit to the prisoners and particularly those whom they have seen in previous visits; and*
- | *be able to visit all places of detention in the country.*

A. Introduction and definitions

1. This section will discuss **international standards relating to detention** and treatment of detainees. In addition, this section sets forth **guidelines for undertaking** both global and focused **visits to places of detention**.
2. The following **definitions** have been adapted from the Body of Principles for the Protection of Persons under Any Form of Detention or Imprisonment.¹
3. **“Arrest”** means the act of apprehending a person for the alleged commission of an offence or by the action of an authority.
4. **“Detainee”** is *any person deprived of personal liberty* as a result of administrative detention, pre-trial detention or conviction for an offence; prisoners of war; and persons held in mental institutions (see definition of “prisoner” below). There is some diversity in the way the term “detainee” is used in various countries. For example, a “detainee” under the Body of Principles relates principally to the pre-trial period and does not include persons held after conviction, that is, prisoners. In some countries “detainee” may refer only to those persons who are held under administrative order or under security legislation, and may not relate to individuals held in connection with the criminal process. In any case, this section seeks to comprehend the broadest possible use of the term “detainee” to cover all persons who are deprived of their liberty or are otherwise held in governmental custody. Accordingly, “detainees” include those persons held in prisons, police stations, mental institutions, centres for asylum seekers, juvenile institutions, military prisons, etc. In communicating with local and national officials, however, HROs are advised to understand and use the most appropriate terminology.
5. **“Detention”** includes pre-trial, administrative and post-conviction deprivation of liberty or any other condition in which a “detainee” is deprived of liberty.
6. **“Prisoner”** means any person deprived of personal liberty as a result of conviction for an offence.
7. **“Prison”** means post-conviction imprisonment.
8. **“Global visits”** are visits to the entire prison or other detention facility.
9. **“Focused visits”** relate to specific detainees or a particular problem within a prison or other detention facility.

¹Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. res. 43/173 of 9 December 1988, annex.

B. International standards relating to detention and treatment of detainees

1. Generally applicable standards

10. A number of international human rights treaties set forth standards of treatment for individuals in detention or prison. A brief summary of those standards has been adapted from *Human Rights and Pre-trial Detention: A Handbook of International Standards relating to Pre-trial Detention*². While this Manual sets forth the basic principles, summarized information cannot replace detailed standards. For detailed references, the HRO should refer to the last part of this chapter, section **F: “Further reference”**, which contains a full list of documents.

11. These *standards* are set forth here because they should inform the HRO in visiting places of detention and in working to ameliorate the conditions under which detainees are held. Hence, the *standards can assist the HRO in knowing what to request and expect from officials who are responsible for detention facilities*. HROs should, however, be very careful when referring to specific instruments or standards to ensure that the relevant officials understand that the **international standards provide a minimum level of protection for detainees**. Government officials should be encouraged to provide conditions which exceed those minimum standards. It is conceivable that officials who are already exceeding international standards in some respects and are given particular instruments may be tempted to decrease the quality of care provided to detainees. Hence, HROs are encouraged to *exercise their good judgement in seeking an amelioration of conditions of detention in referring to specific standards*.

a. **Non-discrimination**

12. The first international principle relating to detention and other aspects of governmental policy is *non-discrimination*. When implementing rights, States should assure those rights to every person within their jurisdiction. (See Universal Declaration of Human Rights, Art. 2; Covenant on Civil and Political Rights, Arts. 2(1) and 26.) Pursuant to rule 6(2) of the Standard Minimum Rules, special measures respecting religious and moral beliefs do not constitute discrimination in violation of the above standards. *Measures designed to protect the rights and special status of women, juveniles, the aged, sick or handicapped persons are not discriminatory* (Principles on Detention, principle 5(2)).

b. **Prohibition of torture and cruel, inhuman or degrading treatment or punishment**

13. A second fundamental precept is found in Article 5 of the Universal Declaration of Human Rights and Article 7 of the Covenant on Civil and Political Rights: “no one shall be subjected to torture and cruel, inhuman or degrading treatment or punishment”.

²UN Doc. HR/P/P.T./3 (1994).

14. Article 2 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment requires each State Party to “take effective legislative, administrative, judicial or other measures to prevent acts of torture in its territory”. Furthermore, Article 16 requires a State Party to “undertake to prevent in its territory any other acts of cruel, inhuman or degrading treatment or punishment when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”. These principles are also found in Articles 3 and 4 of the Declaration on the Protection of All Persons from being Subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

15. **Corporal punishment, punishment by placing in a dark cell** and all other cruel, inhuman or degrading punishments are completely prohibited as punishments for disciplinary offences by rule 31 of the Standard Minimum Rules. The prohibition against torture and cruel treatment has been authoritatively interpreted to forbid prolonged solitary confinement for all detainees. In addition, detainees should be provided with information about disciplinary offences and punishments, as well as information about their rights (Standard Minimum Rules, rule 35; Principles on Detention, principle 30).

16. **Law enforcement officials**, in their relations with persons in custody or detention, **shall not use force** (Principles on the Use of Force, principle 15) **or firearms** (Principles on the Use of Force, principle 16) **except in certain very limited circumstances including self-defence and the defence of others against an immediate, serious threat**. Moreover, rule 33 of the Standard Minimum Rules states that, “Instruments of restraint, such as handcuffs, chains, irons and straight jackets, shall never be applied as punishment.”

c. *Physical conditions of detention*

17. The authorities have an obligation to treat all persons deprived of their liberty with dignity and humanity as required by Article 10(1) of the Covenant on Civil and Political Rights. This principle guarantees a **minimum level of physical conditions of detention**. All accommodation provided for the use of detainees should meet *minimum standards of health* (rules 10 and 19 of Standard Minimum Rules). Detainees should keep their persons clean (rule 15 of Standard Minimum Rules), and should be permitted daily exercise in the open air (rule 21 of Standard Minimum Rules). In addition, detainees should be provided with *adequate, wholesome food and drinking water* pursuant to rule 20 of the Standard Minimum Rules. Detainees should also be allowed to wear clothing that is clean and adequate (rule 17 of the Standard Minimum Rules).

18. In addition, detained and imprisoned persons are entitled to adequate **medical, psychological and dental care**. (See rules 22, 24 and 25 of the Standard Minimum Rules; principles 24, 25 and 26 of the Principles on Detention.)

d. *Religion, culture, education*

19. Detainees should be allowed to satisfy the **needs of their religious life** (Art. 18(1) of Covenant on Civil and Political Rights; rule 42 of the Standard Minimum Rules). Detained or imprisoned persons should also have the right to obtain reasonable

quantities of **educational, cultural and informational material**. (See Principles on Detention, principle 28; Standard Minimum Rules, rules 39 and 40; Basic Principles on Prisoners, principle 6.) In addition, the **opportunities for meaningful employment** during detention required by principle 8 of the Basic Principles on Prisoners promote the dignity and human rights of detainees.

e. *Supervision of places of detention*

20. Effective supervision of places of detention by **impartial authorities** interested in maintaining humane treatment is vital for the protection of the human rights of detainees. Pursuant to rule 36 of the Standard Minimum Rules and principle 33 of the Principles on Detention, detained or imprisoned persons should have the right to make a request or complaint regarding their treatment. *In the event of the death of a detainee*, special measures must be taken to find its cause and prosecute any persons found responsible, especially in cases of torture or ill-treatment. (See Principles on Prevention of Execution, principles 9, 12 and 13.) Moreover, in order to supervise the strict observance of relevant laws and regulations, places of detention shall be **visited regularly by qualified and experienced persons external to the prison administration**. (See Principles on Detention, principle 29.) Detained or imprisoned persons have the right to communicate freely and in full confidentiality with the persons who visit in accordance with principle 29 of the Principles on Detention.

21. All *money, valuables*, clothing and other effects belonging to a detainee which s/he is not allowed to retain after admission should be placed in safe custody until release (rule 43 of the Standard Minimum Rules).

2. Standards particularly applicable to pre-trial detainees

22. According to Article 9 of the Covenant on Civil and Political Rights, detention pending trial should be the exception rather than the rule. There are several issues to be considered to assess whether pre-trial detention is necessary in a given case, including:

- ✓ Are there reasonable grounds to believe that the person has committed the offence?
- ✓ Would the deprivation of liberty be disproportionate to the alleged offence and expected sentence?
- ✓ Is there a danger that the suspect will abscond?
- ✓ Is there a significant danger that the suspect will commit further offences?
- ✓ Is there a danger of serious interference with the course of justice if the suspect is released?
- ✓ Would bail or release on condition be sufficient?

23. International human rights instruments contain specific standards to be applied to people in pre-trial detention. These standards provide for additional guarantees and protections in view of the particular situation of pre-trial detainees as individuals who are deprived of one of their fundamental human rights — the right to liberty — without yet having been convicted for an offence.

a. **Presumption of innocence**

24. One of the *distinctions between pre-trial detainees and convicted persons is that pre-trial detainees* have “the **right to be presumed innocent** until proved guilty according to law.” (Universal Declaration of Human Rights, Art. 11(1); Covenant on Civil and Political Rights, Art. 14(2)). Furthermore, pursuant to Article 10(2)(a) of the Covenant on Civil and Political Rights and rule 84(2) of the Standard Minimum Rules, *unconvicted persons are guaranteed the right to separate treatment appropriate to their status.*

25. *Presumption of innocence*, requires better treatment for persons who are not yet detained as punishment. (See rules 86, 87, 88 and 91 of Standard Minimum Rules.) All detainees (whether pre-trial or post-conviction) are entitled to humane treatment, but the use of discipline and restraints is also guided by respect for the presumed innocence of the pre-trial detainee.

b. **Segregation**

26. The different categories of detainees are to be segregated in accordance with Article 10(2) of the Covenant on Civil and Political Rights and rule 8 of the Standard Minimum Rules. **Accused persons should be kept separate from convicted persons, and juveniles should be segregated from adults. Men and women should be detained in separate institutions.** Pre-trial detainees in many countries are subject to the worst conditions of confinement. Pre-trial detention facilities are often overcrowded, antiquated, unsanitary, and unsuitable for human habitation. Detainees are held for months or even years while their cases are investigated and processed by the judicial system.³

c. **Prohibition of arbitrary arrest**

27. Arrest begins the process of detention. No one should be subjected to arbitrary arrest or detention. (See Universal Declaration of Human Rights, Arts. 3 and 9; Covenant on Civil and Political Rights, Art. 9(1); African Charter, Art. 6; American Convention, Art. 7; European Convention, Art. 5(1).) Furthermore, pursuant to principle 9 of the Principles on Detention, arrest must **always be subject to judicial control or supervision** to ensure that it is legal. As set forth in principle 12 of the Principles on Detention, **accurate records of arrests should be kept** for effective judicial supervision and the prevention of disappearances.

d. **Notification of reasons for arrest and charges**

28. Article 9(2) of the Covenant on Civil and Political Rights contemplates a two-stage notification process: at the moment of arrest, a person must be told the reason s/he is being taken into custody; within a short period of time, the person must be informed of the charges brought against him or her. Principle 13 of the Principles on Detention extends the notification requirements to the detained person’s rights, especially the right to legal counsel.

³*Human Rights and Pre-trial Detention: A Handbook of International Standards relating to Pre-trial Detention*, UN Doc. HR/P/P.T./3 (1994) at 3.

e. *Judicial access*

29. The right to be brought promptly before a judicial authority, whose function it is to **assess whether a legal reason exists for a person's arrest and whether detention until trial is necessary**, is guaranteed by Article 9(3) of the Covenant on Civil and Political Rights. (See also Principles on Detention, principles 11 and 37.) Article 9(3) of the Covenant on Civil and Political Rights also guarantees the right to **trial within a reasonable time or to release pending trial**. (See also Principles on Detention, principle 38.)

30. The **right to challenge one's detention before a judicial authority** is guaranteed to anyone deprived of his or her liberty, but is particularly relevant to pre-trial detainees. (See Universal Declaration of Human Rights, Art. 8; Covenant on Civil and Political Rights, Art. 9(4); and Principles on Detention, principle 32.)

f. *Detention places*

31. In addition, authorities should detain persons only in **official places of detention** (Art. 10 of Declaration on Disappearance) and **keep records of all detainees** (rule 7 of Standard Minimum Rules). These measures are important for securing the effective judicial oversight prescribed by principle 4 of the Principles on Detention.

g. *Access to legal counsel*

32. The right of access to counsel is guaranteed in **connection with the right to fair trial in the determination of a criminal charge against a person**. (See Covenant on Civil and Political Rights, Art. 14(3); Standard Minimum Rules, rule 93; Principles on Detention, principle 17.) Access to legal counsel is an important means of ensuring that the rights of a detainee are respected.

h. *Access to outside world*

33. In addition to having the right to communicate with legal counsel, detainees have the **right to communicate with the outside world, particularly with family and friends**. (See principle 15 of the Principles on Detention and rule 92 of the Standard Minimum Rules.) In addition, rule 44(1) of the Standard Minimum Rules requires authorities to inform relatives of a detainee's death in custody.

i. *Right not to be compelled to testify against oneself*

34. Torture and ill-treatment are sometimes used to compel persons detained before trial to confess and divulge information. Principle 21 of the Principles on Detention prohibits the use of torture or ill-treatment to compel confessions or testimony. Moreover, pursuant to Article 15 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, States Parties shall ensure that *statements procured by torture should not be used as evidence* against anyone (except to prosecute the torturer).

j. Right to a fair trial

35. Article 10 of the Universal Declaration of Human Rights and Article 14 of the Covenant on Civil and Political Rights have implications for the treatment of detainees. These articles ensure that all persons held on criminal charges have a **fair and public hearing** by an **independent and impartial tribunal**, as well as providing minimum guarantees (including effective access to legal counsel) necessary for **defence**.

3. Standards particularly applicable to administrative detention

36. Administrative detention occurs when **persons are deprived of liberty** by Government action, but **outside the process of the police arresting suspects and bringing them into the criminal justice system**. For example, foreigners who seek entry into a country but are not found immediately admissible, may be subjected to administrative detention. In some countries, governments use administrative detention against political opponents. Because in some countries administrative detention is not reviewed by independent judicial authorities, it is easily subject to abuse by States. Article 9 of the Covenant on Civil and Political Rights provides that **no one shall be subjected to arbitrary arrest or detention**. The Government may derogate from its obligations under Article 9 during times of declared public emergency, but such a derogation is subject to the limitations of Article 4 of the Covenant on Civil and Political Rights. A person arrested or detained on a criminal charge shall be **entitled to trial within a reasonable period** (Art. 9(3) of the Covenant on Civil and Political Rights; principle 38 of the Principles on Detention). According to rule 95 of the Standard Minimum Rules, the above-mentioned rights are guaranteed to all people, even those persons arrested or imprisoned without charge.

37. The **right to an effective remedy** exists for acts which violate the rights or freedoms of a detainee. (See Universal Declaration of Human Rights, Art. 8; Covenant on Civil and Political Rights, Arts. 2 and 9; Principles on Detention, principle 35.)

38. Furthermore, the savings clauses in Article 5 of the Covenant on Civil and Political Rights and principle 3 of the Principles on Detention state that the standards contained therein cannot be used as a pretext to limit the application of fundamental human rights which are recognized by or applicable to the State in question.

4. Standards applicable to women

39. Women detainees are particularly **vulnerable to rape, other sexual violence and sexual exploitation**. Such violations against women and their rights often go unnoticed and unreported. One reason for the “invisibility” of such violence against women detainees is clearly the overwhelmingly male nature of law enforcement and justice administration in many countries. **Sexual violence against women, committed by the State or its representatives, has been recognized as torture**. The relevant provisions of the Covenant on Civil and Political Rights and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, are thus fully applicable to such situations.

40. Importantly, the Declaration on the Elimination of Violence against Women⁴, provides that States should exercise “due diligence to prevent, investigate and, in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the State or by private persons”.

41. Measures that are designed solely to **protect the rights and special status of women**, especially pregnant women and nursing mothers, are not considered to be discriminatory. (See Principles on Detention, principle 5(2).)

42. Rule 53 of the Standard Minimum Rules states that women detainees should be attended and supervised by female officers and staff.

43. In accordance with rule 23(1) of the Standard Minimum Rules, special accommodation should be made for **pre- and post-natal care and treatment**. Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery where infants shall be placed when they are not in the care of their mothers. (See rule 23(1) of the Standard Minimum Rules.)

5. Standards applicable to juveniles

44. Because of their young age, juveniles receive special treatment in international human rights instruments. These standards should be implemented with the goal of **rehabilitation** in mind.

45. The Convention on the Rights of the Child, the Minimum Rules for the Administration of Juvenile Justice (Beijing Rules), and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty establish minimum standards for the protection of juveniles deprived of their liberty. A **“juvenile” is defined as a person under the age of 18**. Juveniles should be presumed innocent, and shall have the right to legal counsel.

46. Juveniles deprived of their liberty have the right to facilities and services that meet all the requirements of health and human dignity. They should be **separated from adults** and given **individualized treatment with an eye towards rehabilitation**. Wherever possible, prosecution of juveniles should be replaced by **alternative measures**. Moreover, juveniles should be permitted to pursue **education, vocational training and work**. See **Chapter IV-E-9: “Administration of juvenile justice”** for more detailed information.

C. Global detention facility visits

1. Defining preconditions and objectives

47. Global visits, that is **visits to the entire prison or other detention facility**, constitute one of the most *difficult* and sensitive monitoring tasks. Detainees have

⁴G.A. res. 48/104, 48 UN GAOR Supp. (No. 49) at 217, UN Doc. A/48/49 (1993).

frequently been human rights victims of arbitrary arrest, ill-treatment or other violations. They are among the most vulnerable in a society to further abuse. Hence, visits to detention facilities would appear to be an obvious priority for a UN human rights field operation. Nonetheless, a human rights field operation should pursue such visits only after *careful reflection and planning*. The first question the operation must ask is: What are the objectives in visiting this detention facility? Second, can this field operation realistically achieve those objectives? Global visits can be **extremely time-consuming**. Depending on the number of detainees, a global visit may require the efforts of several HROs for a few weeks. Also, a poorly planned visit to a detention facility, or a visit conducted without abiding by strict methodological standards as indicated below, can actually do **more harm than good**. Such a visit can raise false hopes in the detainees for prompt relief from their suffering. If the visits fail to make progress towards achieving such objectives as preventing torture, some improvements in conditions of the facility, and possibly the identification of detainees who were arbitrarily arrested, the detainees may actually suffer more from the dashed hopes than if the visits had never occurred.

48. Also, the *International Committee of the Red Cross (ICRC)* has the greatest experience with regard to visits to persons in detention, and the UN human rights field operation should ascertain whether the ICRC is already visiting persons in detention in the country of operation. If so, can the human rights field operation be of assistance or make progress in areas the ICRC's mandate does not reach? Can the UN human rights operation develop a division of labour with the ICRC in which each can make a contribution? Such an agreement was, for example, established between the Human Rights Field Operation in Rwanda and the ICRC. A copy of that agreement is found in **Appendix 3** and is discussed below in **section E: "Coordination with ICRC"**. Assessing the scope of complementarity between the ICRC and the UN field operations' action in a particular country, and deciding about an appropriate division of labour, is the responsibility of the leadership of the field operation and not of the individual HRO.

49. Once the UN human rights field operation has made a considered decision to pursue visits to places of detention, it *should be aware of ICRC methods of work and their considerable experience from which some basic principles relating to such visits can be inferred*. Also useful are **principles** drawn from the experience of previous UN human rights operations and the work of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT). Those principles include the need for HROs to make **regular, repeated visits** to all detention centres and prisons; the officers must be able to **take note of the identity of the persons detained**, so that they can be seen again; the HROs **must be able to visit all detainees**; the officers must be able to **speak with detainees freely and without witnesses**; and the officers must be able to **visit all places of detention in the country**.

50. Global visits to places of detention can be made to **monitor the general human rights situation and make recommendations** on the operation and reform of the detention system. Specifically, the human rights operation's mandate may include the following among its principal objectives of a global visit:

- (a) to put an end to torture and other ill-treatment, including for example, a systematic practice of beatings;
- (b) to secure the release of persons arbitrarily detained for political reasons;

- (c) to obtain access to justice for detainees in accordance with procedures and delays provided by law;
- (d) to intervene or to make sure that victims of human rights violations — and specifically victims of beatings, ill-treatment and torture — receive the medical care required by their condition;
- (e) to ensure that the authorities responsible for detention centres establish a register of detainees, that it be kept up to date, and that it mention the legal situation of the detainees; and
- (f) to promote, with the competent authorities and specialized organizations, improvement of the material and psychological detention conditions of the detainees.

2. Selection of HROs to visit places of detention

51. *A global visit should be planned by the entire visiting team.* Each person's role should be well-defined. HROs should also recognize that conducting a proper global visit takes a long time. *It may take a few weeks to do a comprehensive global visit* — particularly on the first visit. As preparation for the visit, the HROs should study the first part of this chapter concerning international standards relating to detention and treatment of detainees, together with the Standard Minimum Rules for the Treatment of Prisoners as well as the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

52. The **visiting delegation** should ordinarily be comprised of **a doctor and several HROs**. If problems of torture or ill-treatment are found, the doctor's participation in the visiting delegation will be particularly needed. Hence, the first visiting delegation should include a doctor. If no problems of torture are encountered, later visits might involve a nurse, public health professional or other medical personnel. Experience suggests that it may be easier to elicit information from detainees if the doctor or one of the HROs is a woman. Accordingly, *one or even all of the HROs could usefully be women* — particularly on a visit to a women's detention facility.

53. The advantage of having two or more persons is that they can compare notes and consult with each other during the detention facility visit. They can also defend and provide support for each other if challenged by detention facility authorities. In general, **they should generally work in teams of two** and remain together rather than separating during the detention facility visit.

54. The HROs should wear clothing which clearly distinguishes them from detention facility employees. They should **wear a badge or other clear indication of their UN status**. HROs should not, in general, **bring cameras, tape recorders or similar instruments into the detention facility**, as such technology may raise security concerns on the part of the administrators of the detention facility and may raise suspicions in the authorities about the desire to publicize the information gathered. Also, such instruments may raise concerns for the detainees about the security of the information gathered. Under some exceptional circumstances, tape recorders may be used for interviewing detainees. (See **Chapter VIII: "Interviewing"**.)

3. Entering the detention facility and announcing the visit in advance

55. It is ICRC practice that a visit to a detention centre **should be announced in advance** to give the authorities an opportunity to improve conditions as much as possible. While it may seem at first glance that such warning would give the authorities enough time to cover up any poor conditions, the ICRC considers this effort an advantage. Any improvements the Government makes will help the detention facilities.

56. **Surprise visits should, however, also be considered.** Surprise visits are especially effective when reasonable suspicion exists that visits are pre-arranged by authorities to cover up problematic practices. The ECPT particularly engages in surprise visits to police stations when they are otherwise visiting a country's prisons, because it may not be possible to visit all such facilities in a country and sudden visits may give a more candid picture of police practices. In any case, surprise visits are not practicable in large facilities, because most of the prison guards will be notified of the visit before the HROs have reached much of the facility.

57. The HROs should always be on the **look-out for “temporary improvements”**. Hence, one of the questions to ask in detainee interviews is, “How does this day and the treatment you have received differ from other days at the detention facility?” In addition, such “temporary improvements” need to be the subject of discussions with the warden/detention facility director at the end of the visit, so that such problems will not occur happen on future visits.

58. It would be helpful if the HROs **obtain and study a map of the detention centre before entering it.** The map will make it more likely that the officers will be able to find all detainees, and will prevent the officers from getting lost. Such a map may be requested from the detention facility authorities. A map may, however, need to be developed during the visit, from previous visitors (*e.g.*, from Physicians for Human Rights, Amnesty International, etc.) or from other sources. A map **should not**, however, be brought into the detention facility because it might be used by a detainee to plot an escape. In any case, during the visit *one HRO should have the responsibility of developing a sense of the entire detention facility*, so as to be sure that the visitors do not miss parts of the facility.

4. Seeing the director of detention facility for initial discussion

59. **On entering** the detention facility, **the HROs should discuss the visit with the governor**, director or warden. The HROs should explain who they are and briefly describe their mandate and working procedures. The officers need to conduct themselves with confidence and self-assurance. They should seek to **develop a rapport with the director** through initial small talk before getting down to business. In introducing themselves, it is useful for the HROs to present visiting cards. In **explaining their standard procedures** for visiting places of detention, the HROs should mention: the initial discussion with the director and possibly other prison personnel (including health professionals), the *tour of all parts of the detention facility*, the

individual interviews in confidence with all those detainees whom the officers wish to see, the concluding discussion with the director, the summary report of the principal points and recommendations arising from the visit, and the resulting report to the central office of the field operation.

60. The HROs should be prepared to explain in simple terms why it is necessary for the officers to follow its standard procedures in visiting places of detention and be prepared to refer to the mandate of the field operation or any agreement which the field operation has made with the Government. The HROs should also be prepared to remind the director that the modalities of the visit have been set forth in the agreement, if that is the case, but it is also acceptable to remind the director that he may well benefit from the visit, for example, by obtaining further information about the situation in the prison, by helping him get resources from the central authorities through the recommendations from the HROs, etc. It may be useful — especially on the first visits — to carry a copy of the mandate or agreement in the local language, which can be shown to the director. The HROs should not bargain with the director over issues which were settled in the overall agreement with the Government. Instead, they should professionally and clearly indicate their expectations as to the visit. *They should make it clear that they expect cooperation and that cooperation is the standard process.*

61. The HRO should note that in some detention facilities the guards will be cooperative; in others, the guards may be uncooperative and possibly even threatening with their weapons. *It may be useful for the HROs to carry letters of introduction from the Government to help assure cooperation.* If they meet with resistance, the HROs should politely but firmly challenge the failure to cooperate and indicate that lack of cooperation will be pursued with higher Government officials.

62. In many cases it will be possible to have a reasonable discussion with the director of the detention facility. S/he may see the visit of the UN HROs as a *way of trying to communicate to his or her superiors the need for more resources for the detention facility.* The HROs may find two kinds of directors. Some directors have chosen work in the detention facility as their profession — in which case they may have a sense of orderly administration and have risen through the ranks to their present high position. Other directors may have been given that job as way of punishing them; they may have little idea of orderly management.

63. In any event, the HROs should ask the warden/director/governor a series of **standardized questions**. The officers should have *read carefully any report from previous visits to the detention facility* and make sure that they know precisely what had occurred in past contacts, so that they can discuss points which were made during previous visits and so that they can avoid being misled by comments from the director. In general, HROs should discuss with the director in the initial interview each of the points which were made in the summary report from the previous visit — particularly those points which are likely to arise in discussions with the detainees. Other questions are suggested by the form of the report (see **Appendix 1** and **2**). The HROs should listen carefully to the responses of the director which may indicate a willingness to remedy past problems or problems that may arise. *The detainees should later be asked the same questions, so that trouble spots and inconsistencies can be identified.*

64. In pursuing the discussion with the warden, the *leader of the visiting human rights delegation should be in control of the interview* and should ask his/her colleagues to participate as the leader sees fit. The other HROs in the delegation should not interrupt, but should

make their views known by a quick note or some other discreet sign. The **HROs should be prepared to handle requests for assistance from the director**. What sorts of things can the human rights operation do and what can it not do? HROs should feel free to accept an offer of hospitality, such as lunch in the prison cafeteria or a cup of coffee, because it will give them an opportunity to have a discussion in a slightly less formal context, but they should not accept any offers which would jeopardize the appearance of independence and neutrality of the delegation, for example, a suggestion that the director take a female delegate dancing that night.

65. At the end of the interview, the HROs should try to **summarize the result of the discussion** and then conclude on a friendly note with an indication that the HROs will be looking forward to seeing the director at the end of the visit. For further guidance on meetings with the director and other officials, see **Chapter XIX: “Following-Up and Seeking Corrective Action”**.

5. Interviewing other officials

66. *HROs should also visit with lawyers, religious advisors, educators, doctors and others who provide care to detainees in the detention facility.* These individuals usually have an independent perspective of the facility as distinguished from those responsible for guarding the detainees.

67. For example, a doctor who is part of the visiting delegation should find that his/her professional relationship will allow medical personnel at the detention centre to share their experiences in a forthright manner. While some detention facility doctors become absorbed in the institutional ethos, their sense of professional responsibility and relationship may be of use in obtaining relevant information.

6. List of detainees and the roster

68. **Before going** to a detention facility, it would be helpful if the HROs collected the **names of some individuals who are thought to be held in the detention facility**, so that they have particular individuals about whom they may inquire.

69. The HROs should **ask the detention centre authorities for a detailed list of all detainees held in the facility**. If no such list exists, the HROs should insist that the detention authorities develop an adequate and up-to-date log including: names, dates of birth, other personal details, the charges against each individual, the date of detention, the date of the next expected judicial procedure, health problems, etc. Such a register is required by rule 7 of the Standard Minimum Rules as well as Article 10 of the Declaration on Disappearances. The HROs should assist the detention facility authorities in making sure that such a list is compiled and regularly kept, but should not generally take over the role of compiling a roster. If there is no other way to assure that repeat visits can be properly conducted, if the authorities are unable to prepare a register, and if the human rights operation has adequate resources, HROs should consider preparing a register of detainees.

7. Visiting the entire facility

70. When touring the detention facility, the **HROs should decide which parts should be visited and which doors should be opened**. In principle, the HROs should visit the entire facility or at least satisfy themselves that they have seen all the detainees. The HROs should try to *press for as much access as possible*. Sometimes authorities cite security reasons or lost keys for not opening doors. The delegation may need to assess the truthfulness of such excuses. If appropriate, protests should be made through recourse to the human rights field operation central office and to higher levels of the Government.

71. HROs should be aware that some cells may have been walled up or otherwise hidden. One way of determining if there is a hidden cell is to look at the electrical wires in the ceiling. It is also helpful to *consult other detainees or someone who has previously been to the detention facility*. HROs may get information from other or former detainees, who will know where detainees are hidden.

8. Interviewing detainees

72. HROs should consider using **both group and individual interviews with detainees**. To save time on some general issues, the HRO may conduct group interviews, for example, of all detainees in a cell or a small section of the facility. Group interviews are useful for learning of common problems, identifying leaders, getting a sense of the political culture of the detention facility, and determining whom to interview separately. The HRO should also try to *get a sense of what groups cannot be interviewed in front of other groups* (for example, two opposing ethnic groups).

73. The HRO may want to identify the detainees who have become **leaders of detainee organizations**, factions or groups, which ordinarily exist in detention facilities. It would be preferable to learn of the names of such leaders before entering the detention facility, but if the names are not known upon entry, individual detainees can be asked about such leaders. From the HRO's discussions with detainees and detainee leaders, the officer should be able to understand the culture of the detention facility. Which are the various groups or factions? Who are the underdogs? Who are the leaders of which groups? Leaders may be more vocal in identifying detention facility problems or they may be informants for the prison authorities. Leaders may be planted by the authorities and may not be the real leaders. In some contexts, the detainee leaders effectively control the facility. For this reason and others, identifying leaders may be provocative to the authorities. To avoid putting detainees in danger, the HRO may determine which cell block houses certain leaders, and then ask to interview detainees in that cell block. The HRO can then talk to a smaller group, chosen at random but including the leaders.

74. **All individual interviews with detainees should take place without witnesses** and at a spot decided by the HROs. The HROs should try to **identify a place which appears to be most secure from eavesdropping**. In general, the HRO should assume that there is no safe place to conduct an interview. Often the detention facility authorities will have prepared a particular room for interviewing. Because of the risk of eavesdropping, the HROs should not generally accept such offers. Sometimes

interviews can be done in an unoccupied cell. In other situations, it may be possible to do the interview in a courtyard or in the detainee's own cell; often, however, such locations may be too insecure and may make the detainee too nervous. For general observations on interviewing, see **Chapter VIII: "Interviewing"**.

75. It is important to **gain the confidence of the detainee**. The detainee is likely to think that the HRO is a fake and has been planted by the authorities. The HROs should introduce themselves, the purpose of the visit, and the confidential nature of the interview. The HROs may have previously provided this information in a general announcement to all the detainees or all the detainees in a group/cell block/large cell, but it may be necessary to repeat the information during the individual interview. The HRO may want to offer water or cigarettes. The detainee should be assured that s/he is an anonymous source, unless the detainee wants his/her concerns to be identified and the HROs consider that a reprisal is unlikely.

76. In general, the *first interview with a detainee should generally last at least 20 to 30 minutes — not including any medical examination*. The length of an interview will depend upon the issues covered. Interviews may take longer if there is a greater need to develop a sense of confidence and rapport. Interviews are also likely to take *longer if torture* may have occurred. In addition, interviews may take longer if an interpreter is involved. HROs may be able to reduce the length of interviews by letting a group of prisoners or their leaders know that they are or are not interested in more information about general conditions, *e.g.*, food, toilets, etc.

77. HROs should be prepared to be **very patient** with the detainee interviews. The detainees may not have had any other opportunity to tell their stories. The HRO on a detention facility visit should be prepared to hear very similar stories from each detainee. Nonetheless, the *detainees have a real need to tell their own experiences*. The UN HRO may be the first visitor the detainee has seen in a number of years. *The HRO should never forget that at the end of the interview, s/he can leave the detention facility, but the detainee has to return to his or her cell*. The HRO should keep attentive during interviews. If the HRO is beginning to get fatigued, s/he should take a break or otherwise renew his/her ability to stay alert.

78. A detainee may ask the HRO to carry a message to his/her family or a family may similarly request an HRO to deliver a message to the detainee. The ICRC manages a well-established system of exchanging written messages between detainees and their families; those messages are routinely reviewed by the authorities before they are delivered. **In general, human rights field officers should not accept written messages and should urge that the correspondents use the ICRC system**. If the ICRC is not active in the country or in that facility, the human rights operation should consider carefully whether it wants to replicate the ICRC message system. Individual HROs should not, in general, accept written messages from or to detainees, because they may raise security concerns for the authorities.

79. An HRO on a global detention facility visit may want to insist on seeing all detainees in a particular detention facility or may pick some detainees at random. Otherwise, there is a risk of reprisals against individual detainees who have been interviewed. During a second or repeated visit, the HRO should **call back most of the detainees seen on previous visits** to make sure that they have not suffered reprisals.

9. Departing meeting with director

80. A detention centre visit should **end with another meeting with the director**. Many of the same considerations apply to both the initial and the departing meeting. (See this chapter, **section C-4 “Seeing the director of detention facility for initial discussion”**.) The HROs may use the departing meeting to request clarification of discrepancies between the initial information provided by the director and the information collected during the visit from observation and interviewing the detainees.

81. In preparing for the departing interview the visiting team should consider what elements to raise and in what order. After some initial small talk, the HROs should tell the director the issues which will be discussed. The team might want to consider putting a relatively positive item first, so that they can establish a friendly rapport with the director, but they should not leave the most important issues until last. It is not necessary to raise every possible issue on a single visit.

82. Depending upon the policy of the field operation as to reporting visits to detention facilities, the team might, for example, *explain that they will be sending a summary report* (see **Appendix 1**) *with the principal recommendations and conclusions of their visit* to the prison director in a short time. The human rights field operation would also be likely to require the visiting HROs to prepare a fuller report (see **Appendix 2**) to the operation’s central office. The central office may include the information in a report to the authorities, but that report may cover several institutions or particular issues. Hence, the larger report would not ordinarily be shared with a single prison director, but would be reflected in further contacts with the central authorities. The director should be promised a copy of the summary report, but the visiting team need not go into all these technicalities of human rights operation internal practice. Instead, they can simply indicate that **the director will be receiving a summary report** or a “report” on this visit.

83. The visiting team should be **practical in developing and presenting its recommendations to the prison director**. The HROs should be aware of prison regulations and international human rights standards, including the Standard Minimum Rules for the Treatment of Prisoners, in developing their recommendations, but they should not necessarily refer to those standards. Instead, they should rely principally on good sense under the circumstances. The director may be bound to provide the minimum treatment in the prison regulations, but the HROs can also ask him to provide better treatment. On major issues (such as lack of access to certain detainees), the team should consult the head of the field operation before the concluding discussion with the warden. If necessary, the visit could be suspended so that the head of the field operation could raise critical issues with the higher authorities, before the final discussion with the prison director.

84. At the concluding discussion, HROs should **make preliminary suggestions for improvements** and offer assistance where appropriate (*e.g.*, blankets, disinfection of cells, mail services, or training of detention facility officers — to the extent the human rights operation has those services available). It may or may not be within the human rights operation’s mandate to provide such assistance, but the *operation may be able to identify other sources of assistance*. It is not the objective of the human rights operation to substitute itself for the existing prison or justice system, but the operation should encourage the proper functioning of existing structures and may provide assistance, if

within the mandate and if available. If medicine or other materials are provided to the director, the team should ask the director to sign a receipt for the materials and should give a copy to other relevant officials, *e.g.*, the doctor for medicines.

85. The visiting team should give the director an opportunity to respond to the recommendations and listen to the director carefully. At the end of the interview, the HROs should summarize those understandings and promise to send the director a “report” on the visit in a few days. The discussion with the director should conclude on a positive note.

10. Follow-up and reporting

86. UN HROs should **promptly after a visit to a detention facility prepare a summary report** indicating the principal points and understandings arising from the visit and the concluding interview with the prison director. A draft form of the summary report (Appendix 1) has been provided for adaptation to local conditions. The HROs should also prepare a longer and more detailed report for the central office of the operation. A draft form (**Appendix 2**) has been provided for the fuller report.

87. In general, the summary report should include the principal concerns regarding such issues as the **adequacy and condition of detention facilities**; prison register or **list of detainees**; personal **hygiene**; medical care and **health condition** of detainees; **water; food and nutrition**; outdoor **recreation** or other physical exercise; family and other **visits**; other contact with the outside world; **treatment** when arrested or during detention; **length of pre-trial detention**; disciplinary cells and nature of **disciplinary punishment**; **violence** among detainees; **prison rules** and **complaint mechanisms**; etc. The summary report should also indicate the reaction of the prison director and **any understandings reached** as to those principal points of concern.

88. The area office of the human rights operation **should submit the summary report to the prison director** and to the operation’s central office a few days after the visit. The summary report should be understood as providing a prompt, confidential, informal and interim summary of the principal points and understandings arising from the prison visit or similar visit to a place where persons are held in custody by the Government. The summary report is *not* intended to provide a comprehensive report of the visit and is also *not* intended as a high-level official communication from the UN field operation. The summary report helps to *build communication* and a level of trust between the area office of the human rights operation and detention facility officials.

89. The HROs should also **prepare a fuller report** (see **Appendix 2**) to the field operation central office, which may then decide how to present any more global concerns to those ministers in the Government responsible for detention facilities. The reports may be the subject of demarches to improve detention facility conditions. In addition, publication of relevant information may be needed if the authorities are not sufficiently cooperative.

11. Follow-up visits

90. HROs should do a global visit first, and then **follow-up focused visits** with regard to issues such as (1) torture or ill-treatment, (2) medical concerns, (3) protection

of particular detainees, or (4) prison conditions. In general, a visit for additional information should be undertaken as an extension to the first visit. After a summary report is submitted to the Government, the **authorities should be given a reasonable time** to reply to the observations received and to **comply with the recommendations**. Further visits should then be undertaken, to monitor the evolution of the human rights situation in a given detention facility. Special attention should be given to any change in the treatment of detainees by authorities and the reasons for it (*e.g.*, change of commander, transfer of personnel and acceleration of procedures for appearing before the judge). If appropriate, follow-up visits may be undertaken without previous notice to the authorities.

91. During repeat visits, the HROs must actively **seek out the persons interviewed in the course of previous visits** to make sure that they have not been subjected to ill-treatment or punishment, and have not been interrogated by warders (guards) or any other Government official regarding their statements to the HROs.

92. In addition, HROs may want to make further inquiries about and follow-up cases that present — in addition to violations of legal procedures and guarantees — a violation of another fundamental right (such as integrity of the person, freedom from arbitrary arrest for exercise of freedom of expression and association, etc.).

D. Focused detention facility visits

1. Defining objectives

93. Focused detention facility visits are **specific visits and inquiries concerning individual cases or matters of concern**. One use of focused visits is to document particular cases which illustrate the general situation before considering a global visit to a detention centre.

94. A second use of focused visits targets specific detainees. Focused visits may be used when information about an illegal detention of a person is communicated to the HROs, and that information received plus previous experience give reason to fear that the detained individual is the victim of a violation of the right to life, of the right to personal integrity and security, or of freedom of expression and association.

95. The HROs should go to the detention centre to talk to the victim as well as with the detention facility authorities. They must do so particularly when there is a case of ill-treatment, of torture, or a serious threat of torture, even if a victim is being held for a common crime. The purpose of the visit is to verify and complete the information received, and to stop the violation. To avoid putting particular detainees in danger, however, the HRO may try to determine which cell block houses contain certain detainees, and then ask to interview detainees in that cell block. The HRO can then talk to several of the residents of that cell block, chosen at random but including the individuals of concern.

2. Variations from the global visit

96. Focused visits vary from global visits in that they **do not usually involve prior notice to any authority**. If, when carrying out a visit to investigate the situation of a specific victim, the HROs are informed of other violations committed in the same detention centre, they should register the new communication and take advantage of their being on the spot to check all possible information.

97. *If HROs are refused access to the detention centre, they should not impose themselves, nor remain outside, waiting for permission to enter the centre. The HROs should contact the operation's central office and raise the issue of access at higher levels in the Government.*

98. After interviewing detention facility authorities and the detainee(s), the HROs should use the information collected to complete the form for individual cases (see **Chapter XX, Appendix 1**). Additional information and other elements of information (copy of arrest warrant, medical records) should be appended to the form on separate sheets. Besides its use for the handling of an individual case, this information will contribute to subsequent reports on the situation of a specific detention facility, as well as reports on the general situation of detention facilities.

99. Communications concerning individual cases, as well as additional information obtained on the occasion of individual visits, should be communicated to the person in charge of the field operation, who will forward a copy to the person in charge of detention facilities.

E. Coordination with ICRC

100. The International Committee of the Red Cross (ICRC) was established in 1863 as a Swiss-run private, independent and neutral organization. It has a staff of about 650 at its headquarters in Geneva and approximately 9,000 other staff in about 50 other countries, depending upon operational needs. The Geneva Conventions of 1949 and the Additional Protocols of 1977 authorize the **ICRC to visit prisoners of war and other persons deprived of their freedom as a result of armed conflicts**.

101. In addition, the **ICRC makes agreements with governments to visit persons deprived of their liberty**, for example, detainees for security reasons, because of ethnic, political or other internal conflict situations to which the **Geneva Conventions and Protocols do not specifically apply**. The ICRC *does not generally visit genuine common law prisoners* unless there is such disorder in the society that visits are considered necessary to avoid torture, disappearances, or deleterious conditions of confinement. Only for exceptional humanitarian reasons does the ICRC work for the **release** of prisoners (for example, to obtain medical care for sick people, people who have already served more time in pre-trial detention than they would if they had been convicted, or very old prisoners). In the large majority of cases, it is **principally interested in preventing torture or disappearances and in improving prison conditions to prevent unnecessary suffering**. When the ICRC seeks to see prisoners in a particular country — for example, where there is internal strife and disturbances — it ordinarily requests complete access to all prisoners in all places of

detention for interviews in private with no limit as to the length of such interviews. The ICRC manages a system of **exchanging written messages between detainees and their families**; the messages may be reviewed by the authorities to make sure that they do not raise security concerns. **Standard practice** of the ICRC is that its delegation of several persons (usually including a doctor or other medical staff) ordinarily talks to the prison director; then tours the entire facility; registers or identifies all the detainees in the facility; must be able to visit all detainees freely and without witnesses, but in practice may talk only to some detainees; talks to other prison officials including medical personnel; has a final interview with the prison director; within a few days prepares a confidential working paper for the prison director summarizing the conclusions and understandings established during the visit; prepares a confidential report (possibly including other facilities) to the Government; repeats the visit to the prisoners and particularly to those whom they have seen in the previous visit; and must be able to visit all places of detention in the country.

102. **UN HROs should always try to coordinate their prison visits with the ICRC.** Coordination enhances complementarity of action and prevents wasteful duplication of work. As mentioned above, in Rwanda the ICRC Delegation and UN Human Rights Field Operation agreed on Guidelines for Coordination in the Field, which might serve as a point of departure for other such efforts of coordination. (See **Appendix 3**.) It is *also important for HROs to be aware of ICRC methods of work because any compromise by HROs regarding the procedures for visiting places of detention might have a deleterious impact upon the willingness of the authorities to cooperate with the ICRC.* For example, an HRO who accepts to do interviews of prisoners in the presence of a guard might not only jeopardize the work of other HROs who have insisted upon interviews in private, but also might have a consequence for the ICRC and other organizations which visit prisoners.

F. Further reference

103. For further reference, the human rights field operation should have a resource centre, which might include documents and instruments related particularly to detention, such as those on following list. (The most critical and relevant items are marked with an asterisk —*.)

- ✓ Alderson, J, *Human Rights and the Police* (Council of Europe, Strasbourg, 1984).
- ✓ Association for the Prevention of Torture, *Guidelines for Investigations about the Conditions and the Treatment in Places where People are Detained and Deprived of their Liberty* (1994).
- ✓ *Basic Principles on the Role of Lawyers*, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990, UN Doc. A/CONF.144/28/Rev.1 at 118 (1990).
- ✓ **Basic Principles for the Treatment of Prisoners*, G.A. res. 45/111, annex, 45 UN GAOR Supp. (No. 49A) at 200, UN Doc. A/45/49 (1990).
- ✓ **Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment*, G.A. res. 43/173, annex, 43 UN GAOR Supp. (No. 49) at 298, UN Doc. A/43/49 (1988).

- ✓ *Code of Conduct for Law Enforcement Officials*, G.A. res. 34/169, annex, 34 UN GAOR (No. 46) at 186, UN Doc. A/34/46 (1979).
- ✓ *Compendium of UN Standards and Norms in Crime Prevention and Criminal Justice*, UN Doc. St/CSDHA/16 (1992).
- ✓ *Consolidated List of the Secretary-General of provisions in the various United Nations standards relating to human rights in the administration of justice*, UN Doc. E/CN.4/Sub.2/1991/26 (1991).
- ✓ **Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, G.A. res. 39/46, annex, 39 UN GAOR Supp. (No. 51) at 197, UN Doc. A/39/51 (1984), entered into force June 26, 1987.
- ✓ Daudin, Pascal & Hernán Reyes, “How visits by the ICRC can help prisoners cope with the effects of traumatic stress”, in *International Responses to Traumatic Stress* (1996).
- ✓ **Declaration on the Protection of All Persons from Enforced Disappearances*, G.A. res. 47/133, 47 UN GAOR Supp. (No. 49) at 207, UN Doc. A/47/49 (1992).
- ✓ European Committee for Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT), *Health Care Services in Prisons*, extract from ECPT, Third Report (1993).
- ✓ European Prison Rules, *Council of Europe Recommendation No. R (87) 3* (1987).
- ✓ *Guidelines for Coordination in the Field Between International Committee of the Red Cross Delegates and Field Officers of the Human Rights Field Operation in Rwanda with regard to Visits to Persons Deprived of their Freedom in Rwanda* (1996).
- ✓ Human Rights Watch, *Global Report on Prisons 291-97* (1993) (Questionnaire for Prison Visits).
- ✓ Morgan, Rod & Malcolm Evans, “Inspecting Prisons, The View from Strasbourg”, 34 *British J. Criminology* 141 (1994).
- ✓ O’Neill, William G., “Monitoring the Administration of Justice”, in Hege Araldsen and Øyvind W. Thiis, *Manual on Human Rights Monitoring* ch. 7 (Norwegian Institute of Human Rights 1997).
- ✓ *Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions*, E.S.C. res. 1989/65, annex, 1989 UN ESCOR Supp. (No. 1) at 52, UN Doc. E/1989/89 (1989).
- ✓ **Prison Reform International, Making Standards Work, an international handbook on good prison practice* (1995).
- ✓ Reyes, Hernán, *ICRC Visits to “political” Prisoners, How they work, What they accomplish* (1992).
- ✓ Reyes, Hernán, *Visits to prisoners*, 3 *Torture* 58 (1993).
- ✓ Reyes, Hernán & Rémi Russbach, “Le rôle du médecin dans les visites du CICR aux prisonniers”, 284 *International Review of the Red Cross* 497 (1991).
- ✓ Rodley, Nigel, *The Treatment of Prisoners under International Law* (1987).
- ✓ Rutherford, A., *Prisons and the Process of Justice* (1984).
- ✓ Rzeplinski, Andrezej, “Monitoring Prison Conditions”, in Swennenhuis, Raymond, *Handbook for Helsinki Committees, A Guide in Monitoring and Promoting Human Rights, and NGO Management* 5.2 (1995).
- ✓ Sorensen, Bent, *Guidelines for visits to prisons* (1996).

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- ✓ *Standard Minimum Rules for the Administration of Juvenile Justice* (“The Beijing Rules”), G.A. res. 40/33, annex, 40 UN GAOR Supp. (No. 53) at 207, UN Doc. A/40/53 (1985).
 - ✓ **Standard Minimum Rules for the Treatment of Prisoners*, adopted Aug. 30, 1955, by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, UN Doc. A/CONF/611, annex I, E.S.C. res. 663C, 24 UN ESCOR Supp. (No. 1) at 11, UN Doc. E/3048 (1957), amended E.S.C. res. 2076, 62 UN ESCOR Supp. (No. 1) at 35, UN Doc. E/5988 (1977).
 - ✓ United Nations, *Analysis of the Haitian Justice System with Recommendations to Improve the Administration of Justice in Haiti: A Report by the Working Group on the Haitian Justice System of the OAS/UN International Civilian Mission to Haiti* (1994).
 - ✓ *United Nations, *Human Rights and Law Enforcement, a Manual on Human Rights for the Police* (High Commissioner for Human Rights/Centre for Human Rights Professional Training Series No. 5, 1997).
 - ✓ *United Nations, *Human Rights and Prisons, a Manual on Human Rights for Prison Officials* (Office of the High Commissioner for Human Rights, Professional Training Series No. 8, forthcoming).
 - ✓ *United Nations, *Human Rights in the Administration of Justice, a Manual on Human Rights for Judges and Lawyers* (Office of the High Commissioner for Human Rights, Professional Training Series No. 6, forthcoming).
 - ✓ United Nations, *International Human Rights Standards for Law Enforcement, A Pocket Book on Human Rights for the Police* (High Commissioner for Human Rights/Centre for Human Rights, 1996).
 - ✓ *United Nations Standard Minimum Rules for Non-custodial Measures* (The Tokyo Rules), G.A. res. 45/110, annex, 45 UN GAOR Supp. (No. 49A) at 197, UN Doc. A/45/49 (1990).
 - ✓ *United Nations Rules for the Protection of Juveniles Deprived of their Liberty*, G.A. res. 45/113, annex, 45 UN GAOR Supp. (No. 49A) at 205, UN Doc. A/45/49 (1990).
 - ✓ *United Nations Centre for Human Rights, *Human Rights and Pre-trial Detention*, UN Doc. HR/P/PT/3 (1994).

Appendix I to Chapter IX

Summary Report After Visit to Detention Facility

CONFIDENTIAL

Date of Report: ___/___/___
D M Y

Summary Report Number: S-_____

Officer(s) Preparing Report: _____

Area Office: _____

SUMMARY REPORT ON VISIT¹

This form is intended to provide a prompt, *confidential*, informal, and interim summary of the principal points and understandings arising from a recent visit to a place where persons are held in custody by the Government. This summary report is **not** intended to provide a comprehensive report of the visit and is also **not** intended as a high-level official communication from the UN field operation. Please use supplementary sheets if there is insufficient space. Also use supplementary sheets for any additional information not included in the questions.

1. Introduction — highlights:

Note the principal issues, responses, and understandings arising during the visit that may require action by the governor/director/warden, by the area office, by the operation's central office, or by the authorities.

¹This summary report is *confidential* and is intended only for the authorities to which it is submitted. It must not be published without the written agreement of the UN Human Rights Field Operation.

2. Modalities, materials and methods:

a. Visiting procedure (include location, name of facility, visit date)

b. Cooperation of the authorities

c. Administration of the facility (please identify director, etc.)

3. Principal points:

Note the principal points arising during the visit and indicate the response of the governor/director/warden or the understanding established as to each point. The principal points may relate to such issues as the adequacy and condition of detention facilities, prison register or list of detainees, personal hygiene, medical care and health condition of detainees, water, food and nutrition, outdoor recreation or other physical exercise, work or other activities, family and other visits, other contact with the outside world (e.g., mail), treatment when arrested or during detention, length of pre-trial detention, disciplinary cells and nature of disciplinary punishment, violence among detainees, prison rules and complaint mechanisms, etc. Not all issues, however, need be included here. Try to be as specific as possible.

a.

Response or understanding:

b.

Response or understanding:

c.

Response or understanding:

d.

Response or understanding:

(Add supplementary sheets as necessary)

4. Other matters arising from final interview with Director

2. Modalities, materials and methods:

a. Administration of the facility (please identify director, etc.)

b. Visiting procedure (including date of visit)

c. Cooperation of the authorities

d. Number and categories of detainees:

- persons awaiting criminal trial

- sentenced prisoners

- persons held pursuant to administrative order

- other categories (specify:)

- total
 - adults
 - male
 - female
 - persons under 18
 - male
 - female
- nationality or ethnicity of detainees
- other classifications of detainees

3. Principal points:

Note the principal points arising during the visit and indicate the response of the governor/director/warden or understandings established as to each point.

a. Adequacy and condition of detention facilities

Indicate size of cells, detainees in each cell, punishment or isolation cells, nature and age of the buildings, capacity of the facility, problems of overcrowding, average of square metres per person, hours spent in cells, separation of different categories of detainees (e.g., adults/children, arrested/sentenced, common law/security, women/men, etc.

Response or understanding:

b. *Prison register or list of detainees*

Response or understanding:

c. *Personal hygiene (facilities for toilets, showers, or other washing, etc.)*

Response or understanding:

d. *Medical care and health condition of detainees (access to a doctor, adequacy of care, patient consent and confidentiality, illness, AIDS, tuberculosis, parasites, rats, insects, suicide prevention, etc.)*

Response or understanding:

e. *Water (supply, cleanliness, removal after use)*

Response or understanding:

f. *Food and nutrition*

Response or understanding:

g. *Outdoor recreation, other physical exercise, and/or work*

Response or understanding:

h. *Family and other visits; other contact without the outside world*

Response or understanding:

i. *Treatment when arrested*

Response or understanding:

j. *Treatment during detention*

Response or understanding:

k. *Length of pre-trial detention*

Response or understanding:

l. *Disciplinary cells and nature of disciplinary punishment*

Response or understanding:

m. *Violence among detainees*

Response or understanding:

n. *Prison rules and complaint mechanisms*

Response or understanding:

o. *Other concerns*

Response or understanding:

(Add supplementary sheets as necessary)

4. Other matters arising from final interview with director

5. Further action planned by the area office

Note the expected date and nature of the next visit

6. Recommendations for action by national prison authorities

7. Recommendations for action by the central office

8. Conclusions

Please include any concluding remarks which would be helpful to the central office in dealing with the recommendations or information provided.

9. Attachments

Please append any documents or other materials which would help to explain the situation or recommendations. One attachment should be an updated list of detainees indicating biographical data, information about arrest, trial, etc., if such information is available from the prison register maintained by the authorities or was compiled by the human rights officers. A second attachment should be a list of detainees interviewed together with interview forms for those detainees, see Appendix 1 to Chapter XX. A third attachment might be prison rules and/or complaint mechanisms.

10. Approval by Coordinator

Area Office Coordinator: _____ Date of Report: ____/____/____
(Signed) D M Y

Date and time the summary report was submitted to the director of the detention facility:

Date: ____/____/____ Time: _____
D M Y

Date and time the present report was forwarded to the central office:

Date: ____/____/____ Time: _____
D M Y

Appendix 3 to Chapter IX

Guidelines for Coordination in the Field between the International Committee of the Red Cross Delegates and Field Officers of the Human Rights Field Operation in Rwanda with Regard to Visits to Persons Deprived of their Freedom in Rwanda

I. OBJECTIVE

- 1.1. The present guidelines are intended to avoid duplication of activities and to place the complementarity of the respective tasks of the field teams of the two organisations on a systematic basis in order to optimise their effects for the benefit of detained persons.
- 1.2. These guidelines set out practical methods of coordination designed to avoid the counter-productive effects of mutually contradictory actions or representations which might be prejudicial to the ultimate aim of work in places of detention, namely securing proper and humane treatment of detainees and respect for their rights.
- 1.3. They shall have the authority of instructions issued by the heads of mission of the two organisations to their respective teams in the field.

II. COMPLEMENTARITY OF ACTION IN PLACES OF DETENTION

A. Prisons and penitentiaries

- 2.1. The ICRC delegates shall visit detainees in prisons in order to ascertain their material and psychological conditions of detention and their treatment, with particular attention given to any matters concerning inhuman, cruel or degrading treatment. They shall register the identity of the detainees in order to follow their movements throughout the detention places until confirmation of the end of their detention time. They shall ensure that contacts are maintained between the detainees and their families by means of Red Cross Messages. In general, they shall look into the application of basic judicial guarantees.

The ICRC delegates shall be informed by the Human Rights field officers before any initiative is taken to provide material assistance to detainees.

- 2.2. The Human Rights field officers shall monitor respect for judicial guarantees with regard to detainees in prisons and pursue other investigations regarding possible human rights violations. They shall announce their presence to detainees in the prisons so that those who wish to communicate with them may do so. As far as possible, they shall interview detainees in a private place.
- 2.3. Should cases of ill-treatment of detainees be brought to the attention of the Human Rights field officers during these visits, the ICRC delegates shall be notified immediately. If the Human Rights field officers decide to investigate such cases, they shall continue to keep the ICRC delegates informed of their findings and shall consult the ICRC delegates before making representations.
- 2.4. In the event of ill-treatment occurring in the presence of Human Rights field officers or extreme conditions of detention observed, immediate action will be taken and the Human Rights field officers shall inform the ICRC delegates accordingly, to enable the latter to follow up on any action taken.
- 2.5. In order to record their own observations regarding the respect for international human rights standards, the Human Rights field officers shall carry out fact-finding missions in prisons once a month or at such other interval as the Chief of HRFOR may decide, after consultation with the Head of delegation of the ICRC. The Human Rights field officers shall notify the ICRC delegates of the schedule of all such missions, including any additional missions which the Chief of HRFOR may decide should be carried out in exceptional circumstances. The Human Rights field officers shall consult the ICRC delegates before making representations to the authorities regarding concerns about conditions of detention arising from these fact-finding missions.

B. Places of temporary detention: sector and communal lockups, gendarmery brigade cells and others

- 2.6. ICRC delegates and Human Rights field officers shall visit detainees in places of temporary detention in accordance with agreed priorities: the ICRC delegates shall deal as a matter of priority with conditions of detention from the point of view of physical and psychological treatment and material conditions until confirmation of the end of their detention time; the Human Rights field officers shall give priority to ensuring respect for judicial guarantees with regard to the detainees, including the circumstances of arrest, the duration of temporary detention, the establishment of individual legal files, the release of arbitrarily detained persons and the confirmation of release.
- 2.7. The Human Rights field officers shall inform the ICRC delegates of those places of temporary detention where they have identified acute problems relating to detention conditions and ill-treatment so that these can be followed closely; the ICRC delegates shall inform the Human Rights field officers of places where serious problems of a judicial nature have been identified.
- 2.8. With regard to places of temporary detention, oral representations in the priority areas defined under point 2.6 as falling within the purview of the other institution shall be subject to prior consultations between ICRC delegates and human rights field officers in order to avoid the application of different standards vis-à-vis the authority which might

place the detainees at risk. The same applies to initiatives taken to provide material assistance.

- 2.9. The immediate action required in the event of ill-treatment occurring in the presence of Human Rights field officers or extreme conditions of detention observed, shall not be subject to prior consultation. The Human Rights field officers shall inform the ICRC delegates accordingly, to enable the latter to follow up on any action taken. In cases where such immediate action is not required and the Human Rights field officers decide to investigate cases of ill-treatment which have been observed, they shall continue to keep the ICRC delegates informed of their findings and shall consult the ICRC delegates before making representations.
- 2.10. In the cases referred to in points 2.6 to 2.9, ICRC delegates and Human Rights field officers shall not visit any place of temporary detention at the same time: such a simultaneous presence must be avoided by the exchange of weekly schedules of visits to places of temporary detention and, if necessary, by prior notification of any change.

III. TRAINING ACTIVITIES

- 3.1. The Human Rights field officers shall provide support for the prison administration, police investigators, courts and public prosecutor's office by organising, inter alia, training courses and seminars designed to promote respect for human rights.
- 3.2. In so far as these training courses relate to aspects of detention, the ICRC delegates should be invited to contribute to them by giving talks on international humanitarian law, on the mandate and activities of the ICRC with respect to visits to persons deprived of their freedom.

IV. MEANS OF COMMUNICATION

- 4.1. The reports drawn up by ICRC delegates are confidential and are addressed exclusively to the detaining authorities. The Human Rights field officers shall base their various reports on their own findings and assessments, and when making use of information made publicly available by the ICRC, they shall mention the source of such references.
- 4.2. For the purpose of the application of these guidelines, the two heads of mission agree to exchange information as follows.
 - The ICRC delegates may only communicate to the Human Rights field officers:
 - the total number of detainees and of places visited;
 - the places of detention where the judicial situation of the detainees gives rise to particular concern;
 - individual requests by detainees — regularly visited by the two teams — concerning their judicial situation.
 - The Human Rights field officers shall inform the ICRC delegates of places of temporary detention where there are acute problems relating to conditions of detention and treatment.

- 4.3. Regular meetings, at least once a week, between representatives of the two organisations shall be held in the prefectures where they are present, in order to coordinate their activities as outlined above.
- 4.4. Monthly meetings, and any other such meetings as deemed necessary, between the representatives of the two organisations shall be held in Kigali with a view to ensuring effective implementation of the present guidelines.

Kigali, 21st March 1996

Ian Martin
Chief of Mission HRFOR

Philippe Lazzarini
Head of Delegation
ICRC in Rwanda